SPEECHES IN STIRRING TIMES

RICHARD HENRY DANA JR.

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(*Author of "Two Years Before the Mast"*)

SPEECHES IN STIRRING TIMES
AND
LETTERS TO A SON

EDITED, WITH INTRODUCTORY SKETCH AND NOTES
BY
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PREFATORY NOTE

Those who have followed Mr. Dana as a sailor in his "Two Years Before the Mast" may have a special interest in following him as a lawyer, publicist, statesman, and father in the Speeches and Letters.

In the Introductory Sketch and the Notes, I have freely stated what I thought, without reserve. I believe the facts will warrant all the statements; but I have not held back from saying what was in my mind or heart for fear of any bias I may have in writing of a much beloved father.

Let the reader, now that he is forewarned, forearm himself with as many grains of chloride of sodium as he desires.

R. H. D.

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RICHARD HENRY DANA, JR.

1815–1882

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INTRODUCTORY SKETCH

Mr. Charles Francis Adams in 1890 wrote a striking biography of my father, and for this our family is deeply indebted to him. It was then planned that I should publish, as a supplement, my father's speeches. They had a far more permanent value than most literary remains. They dealt with important matters, on broad, permanent principles. Many were on subjects still before the public to-day, such as the appointment of judges for life as contrasted with election for terms of years, the inutility of usury laws, the use of the Bible in the public schools, and the true principles of the Monroe Doctrine. Others were on subjects having a lasting historical value, such as the arguments in the Fugitive-Slave cases, his Lexington Oration, his addresses on Edward Everett and Rufus Choate, the arguments on the Prize Causes, and the speeches just before the outbreak of the Civil War and on the beginning of the Reconstruction Period. There were also letters from my father to me, which I believe are models to aid fathers generally in dealing with sons.

The project, however, of publishing a selection of these was delayed some sixteen years by one of those curious and provoking accidents that happen in the best regulated families. Mr. Adams returned, by ex-

press, addressed to my mother's house in Cambridge, the letters, journals, speeches, etc., mostly contained in a large, bright green, sheet-iron box, in which they had been sent to him. When I came to look for them, they were nowhere to be found. None of my mother's family or servants had seen this green box since it was sent to Mr. Adams. They lit a candle, swept the house and searched diligently, but found it not. Besides the loss of letters, some of the addresses preserved were only in the form of newspaper clippings, with corrections by my father, impossible to be replaced. About two years ago, being in the L attic of my mother's house in search of some papers, a bit of bright green, in the very eaves, caught my eyes. I climbed over trunks and discarded furniture, through dust and cobwebs, and there was the missing box! Eagerly I dragged it out and opened the cover, there to find all intact. After this, who does not believe in ghosts?

With regard to the letters from a father to his son, the question arose, should I publish these or not? I submitted them, with an introduction showing how my father had dealt with me at critical times of my youth, to several friends. The advice I received was most contradictory. Some said, the cold unsympathizing world would ridicule my frankness, deride my youthful faults, and at best consider the whole a string of trifling details, not worth the printing. Others thought they would be a great help to perplexed fathers in the difficult task of training their boys, and that if published, there would be many grateful fathers and many more well-brought up sons. For the possible, and I believe probable, good that these letters might do, and also as showing another side of my father's character not brought out in the bio-

graphy or in the speeches, I have decided to lay aside personal feelings, run the risk of caustic criticism, and publish these letters and an introductory explanation, for better or for worse.

As to Mr. Dana's dealing with permanent principles, a late eminent jurist, who had known him as a student in the Harvard Law School, said that Dana thought out his moot-court cases on fundamental principles, and sought the underlying philosophy of jurisprudence. My father told me that, in a case of doubtful law, he first made himself master of all the facts, then worked out the reasoning that should apply, and last of all looked up the precedents, and in the light of the principles he had evolved, could best weigh and arrange the authorities. By pursuing a contrary course, he said, and going first to the cases and text-books, one would become lost in a thicket of undergrowth.

By this mental process, he, when twenty-nine years of age, worked out the true rule of law regarding the burden of proof in criminal trials, in the Peter York case.[1] Peter York was charged with murder, and Mr. Dana defended him. Mr. Dana urged that upon the government lay the burden of proving, beyond reasonable doubt, the malice aforethought as well as the mere killing. The language employed in the legal text-books and in the published judicial opinions was opposed to Mr. Dana's contention, and the majority of the Massachusetts Supreme Court then decided against him; but Mr. Dana's view has prevailed, as will be told more fully farther on in this sketch, and is now the law of the land.

In 1854 the law of collision at sea as between a

[1] 9 Metcalf, 89 (1845).

sailing vessel and a steamer had been settled, as it was supposed, by a decision of the celebrated English Admiralty judge, Dr. Lushington. Mr. Dana, in the case of the Osprey, before Judge Sprague, took the stand that Dr. Lushington's opinion was wrong. He not only had the English decision overturned and won his case in an American court, but his rationale is now the established law of the high seas for all nations.

In the celebrated Prize Causes during the Civil War, there seemed to be a dilemma. Without the power to stop commerce of neutrals with the Southern Confederacy, the war would be indefinitely protracted. The usually accepted definitions of the law of prize and blockade, neutrals, and belligerents, riots, war, and insurrection, seemed to make it impossible to condemn blockade-runners as prizes without acknowledging the Confederacy as an independent nation. This would have given the Confederacy great advantages in dealing with foreign powers, to say nothing of its being inconsistent with our denial of a constitutional right of secession. Thus arose a crisis in the Civil War as real as the battle of Gettysburg. The Justices of the Supreme Court of the United States, though feeling that the power of blockade ought to be justified, were unable to satisfy themselves on what legal grounds it could be sustained. Mr. Dana argued for the power of blockade. Judge Grier, who wrote the opinion of the court, unanimously sustaining Mr. Dana's contentions, afterwards said that Mr. Dana had cleared up all their doubts. In the note to the Amy Warwick and "Enemy's Territory" will be found what was said of this argument by the court and members of the bar who were present, and an explanation of the points involved; but it is enough for the present

to say that Mr. Dana developed "the philosophy of the law of prize" by excavating to the very foundation of that law, and showing, when uncovered, its real simplicity and unity, and that the confusion had existed chiefly in the definitions under which the true principles had lain concealed.

Mr. Dana's speech in the Massachusetts Legislature on the usury laws[1] is another illustration of his power of thinking out on broad principles. He was not a profound student of political economy, though somewhat of a reader and ponderer on it, and yet, to use Mr. Adams's words in the Life,[2] this speech is "one of the most admirable presentations of the argument against usury laws which has ever been made," and "it has since been printed repeatedly, and is still one of the documents in use wherever the question . . . is under discussion."

At the close of the Civil War arose another dilemma. That was how we could preserve the fruits of the war without acknowledging the right of secession. Mr. Dana, in his speech on the "Grasp of War," put the situation on what seems to be the most philosophical ground.[3] In that speech he also advocated an educational and property qualification for negro voters, a measure which it is now generally believed would have been the sane, wise course to have adopted. It pleased neither extreme at the time, however, and it was the extremists, both North and South, that had the majorities in those times of excited feeling.

In the debates in the Massachusetts Constitutional Convention in 1853, he went "quite into the meta-

[1] See *post*, p. 117.

[2] Vol. ii, p. 337.

[3] See notes to "Grasp of War" speech.

physics of a constitutional government." Mr. Rufus Choate said of Mr. Dana's speech on the Judiciary, "It is philosophical, affecting, brilliant, logical, everything."

Besides this power of original thought, is his power of logical and orderly arrangement, with a sense of the picturesque and striking. This we see carried out not only in his "Two Years Before the Mast," and in his journals of travel, in his account of the court-martial of Commander Mackenzie for hanging Spencer and others, printed in the Life,[1] for example, but even in treating of technical and abstruse subjects. As an illustration of the latter is his article in the "American Law Review" of 1871 on the "History of Admiralty Jurisdiction in the United States."[2] There the reader is led on to see the steps, one by one, by which the law was developed into a complete and consistent whole, the predicaments into which some of its own early decisions put the Supreme Court, and the ways taken by that court to extricate itself. The article is some forty pages; too long to reprint in this collection. It shows how a technical subject may be dressed in simple, every-day language, so as to meet the ordinary reader on even terms. This treatise carries one along with an absorbing interest, like that created by a well-constructed detective story.

I, personally, shall never forget his clear and patient explanation of the rig of sailing vessels, how the square sails were worked in tacking, box-hauling, and the like, or the methods of calculation of position at sea, told while walking the beach or piazza at Manchester. When I was sailing round the Horn in 1879–80, I used

[1] Vol. i, pp. 47–70.

[2] *American Law Review*, vol. v, No. 4, July, 1871, pp. 581–621.

to take the observations for latitude and longitude; and I well remember, for example, how, with the picture in mind which he had drawn in words only, I avoided the mistake which the second mate made when passing south of the sun and reversing conditions.

In addition to the natural powers of mind and trained habits of thought, quick observation, and orderly arrangement, Dana's writings are enriched by a wealth of historical, literary, classical, and philosophical illustration, used, like gestures, with discretion. His rule was to use neither gestures, quotations, nor allusions, unless helpful to the presentation of his subject or required by the occasion; never for show.

Mr. Dana was born and lived in a veritable garden of literature, where there were great trees, hardy perennials, and many sweet annuals, whose memory hardly lasts beyond the seasons they blessed, but whose influence with him was none the less potent.

To begin with, he was born in one of the "literary families," as Colonel Thomas Wentworth Higginson calls them. His father, Richard Henry Dana, Senior, was a poet and essayist. He was one of the founders of the "North American Review," the first literary magazine in America to last. He lectured on Shakespeare, maintaining, against many authorities of the time, that Shakespeare was the greatest poet in the English language. Literary and philosophical discussion and criticism formed the staple family talk, as society gossip does in some circles, and reading aloud was the most common entertainment. The elder Dana kept up his varied, voluminous, and critical study until the last week of his long life of over ninety-one years, and my father, even after his marriage and

in the busiest parts of his life, was a frequent caller at "Chestnut Street" or visitor at the "Shore," as he named the homes of my grandfather in Boston and at Manchester-by-the-Sea.

The elder Edmund T. Dana, his father's brother, was a delightful talker, humorist, traveler, and reader, whose literary judgment was much sought after. He greatly resembled, so Mr. Charles Eliot Norton said, our delightful John Holmes. This Edmund T. Dana, Senior, had listened to many great Parliamentary speeches and debates of his generation. He had talked with authors and painters in the England of his day, and is said to have had remarkable powers of imitation and narration.[1]

Mr. Dana's aunt, Miss Martha Dana, had, in 1830, when Dana was fifteen years old, married Washington Allston, whose prose and verse were as remarkable as his painting. Allston was a personal friend of Samuel Taylor Coleridge, Wordsworth, Washington Irving, Verplanck, Sir Thomas Lawrence, Collins, West, Leslie, Hazlitt, Charles Lamb, Turner, Thorwaldsen and other [2] painters and authors of, or frequenting,

[1] Some journal entries of conversations with this "Uncle Edmund" are appended to this sketch.

[2] It may be suggested that I should have included Keats, Shelley, and Byron. Sweetser, in his *Washington Allston*, quotes Vanderlyn as telling how Allston frequented the famous Café Greco in Rome with Turner and Fenimore Cooper in 1805, and adds, "There, too, were to be seen Shelley, Keats, and Byron." This is a mistake if it means they were to be seen there in 1805, the only year Allston was in Rome, for Shelley was born in 1792 and would have been but thirteen years old, and did not leave England for Italy until 1818; Keats was born in 1795, and was but ten years old in 1805, and set sail for Italy in 1820; and Byron's first trip to Italy was in 1809. Allston may have met them in England before he returned to America in 1818, but of this we have no record.

Wm. Allston

the old world. He sent and received letters from some of them while he resided in Cambridge. All this made such men seem real, while Allston's charm, so fascinating to his associates, made a young man like his nephew, Dana, fall in love with the humanities. "All my childish notions of Europe," writes Mr. Dana, on the death of his Uncle Edmund in 1859, "were derived from him and Mr. Allston and my Uncle Francis. From them I heard of Pitt and Fox, of Nelson, of Mrs. Siddons, John Philip Kemble, Coleridge and Wordsworth and the painters. At his room, on the green, in the old Trowbridge home, Ned and I used to spend evenings listening to him and Allston and such chance visitors as gathered there."

Miss Charlotte Dana, my father's elder sister, was a woman of remarkable literary and philosophical mind, with rare musical taste and discrimination; and his brother, Edmund, first scholar of his class at Burlington College, Vermont, a student for many years at Heidelberg University in Germany, where he got a doctor's degree "summa cum laude," and an accomplished gentleman, was one who made a deep impression on all who met him, for his varied acquirements and keen powers of mind.

In that family life there was also an abundance of wit, laughter, fun, humor, to offset the more serious side of literature and art.

Such was the immediate family group; but beyond was the greater part of this remarkable literary garden of which I have spoken. To any one caring enough in literature to take this book in hand, and wanting to know the kind of flora that flourished there, it suffices merely to name as friends or acquaintances of Mr. Dana, whom he met often in Cambridge, or Boston

and the other suburbs of Cambridge, Longfellow and his wife, Mr. and Mrs. James Russell Lowell, Emerson, Oliver Wendell Holmes, John Holmes, the Nortons, Wheatons, Willards, Greenoughs, Charles and George Sumner, Bancroft, Prescott, Sparks, Palfrey, Ticknor, the Quincys, the Adamses, Everett, William Ellery Channing, Professor E. T. Channing, Harrison Gray Otis, Thomas W. Higginson, the "young Professors Child, Lane, Cooke, and Gould," Agassiz, Rufus Choate, Dr. S. G. and Mrs. Julia Ward Howe, Mr. and Mrs. James T. Fields, Leonard Woods, William M. Evarts, Senator and Judge Hoar, Hillard, Henry James, Senior, Motley, and not a few others.

Mr. Dana not only lived in such a garden, with its inevitable influence on any one with literary instincts and aspirations, but he assiduously cultivated his own plot in that garden. When going to boarding-school, not being quite nine years of age, his father gave him the parting words, "Put your bones to it, my boy." This instruction he seems to have carried out in his school-work, though he says he indulged in no little day-dreaming during his one year in this particular boarding-school, chiefly because he had been so well prepared, and there was so little work to occupy the school-hours.

He seems to have preferred those teachers who enforced "system and discipline" as more likely to "insure regular and vigorous study," and as on the whole more valuable "though not so popular with us nor perhaps so elevated in the habits of thought as Mr. Ralph Waldo Emerson," who was his teacher at the Cambridge school for a short time. While this shows Dana's estimation, even when a boy, of hard work, none the less did Emerson's "elevated habits

of thought" undoubtedly have their influence for good.

While a school-boy of scarcely ten, occurred the fiftieth anniversary of Lexington and Concord and Bunker Hill, with the great speeches of Webster and Everett, with Lafayette's triumphal progress through the country, and the popular enthusiasm aroused. These things, he wrote, "made us all ardent patriots," and led him to read Thacher's Journal, Heath's "Memoirs of the Revolution," and "short lives of Washington and Lafayette."

I must not close his boyhood work without noting what he says of the day-school which he and so many other dwellers in the literary garden attended.

"There is one feature of the school at Cambridge which I always recur to with great pleasure. This is the uncommon gentlemanly spirit that prevailed among the scholars. We were all, with never more than one or two exceptions, the sons of educated men, lived at our own homes, and being so much connected with the University, saw a good deal of literary society and became familiar with much higher style of conversation and range of topics than boys usually are. The profanity, vulgar and indecent language so common among school-boys was almost unknown among us . . . a high sense of honor and a certain pride of personal character was the *esprit de corps*. . . . Topics of conversation also among the boys were much more select and improving than I ever knew at any other school, and even more so than with most college students."

Who can tell how much this "*esprit de corps*" and these "topics of conversation" in the Cambridge school, for which the boys themselves were respon-

sible, had to do with the wonderful growths that followed in the literary garden! If these are some of the causes, then let us exclaim, in a more primitive sense perhaps than the words were used by Juvenal: "Maxima debetur pueris reverentia." Perhaps it was his experience as instructor of these very youths that suggested to Emerson his oft-quoted remark, "Send your son to school and the boys will teach him."

Mr. Dana was brought up, also, to be manly and self-reliant as a boy. His father, though naturally of a foreboding cast of mind, concealed his fears from his son and encouraged him to run all the risks, ordinary and extraordinary, of boys' sports. Let me give an illustration. Young Dana and his boy-friends were in the habit of swimming in the Charles River, with its treacherous bottom and sweeping tides. One of his companions was there drowned. A few days after, he asked his father if he should go in swimming as usual. His father said, "Why not?" Off went Richard; but his father, in his anxiety, walked the floor of his study back and forth until his son returned, though of this his son never heard a word until long after he had grown to manhood.

In college Dana immediately took high rank in his class. He returned from his two years before the mast "hungry for literature," and from then on, he not only stood first, but had "the highest marks that were given out in every branch of study." He took the Bowdoin prize for English prose composition and first Boylston prize in elocution.

Of his early college days, before going to sea, he says in his journal, written ten years later: "Having very strong eyes, I usually learned my morning lesson by candle-light before breakfast, and gave my even-

ings to general reading, frequently sitting up until past midnight. Croker's edition of Boswell's 'Life of Johnson' and Carlyle's 'Life of Schiller' I remember as among the books I dispatched during the winter."

In the vacation of his sophomore year, he read, among other books, Johnson's "Lives of the Poets." In the Law School, as he put it, "We were placed in a library under learned, honorable, and gentlemanly instructors [the chief of whom were Judge Story and Professor Greenleaf], and invited to pursue the study of jurisprudence as a system of philosophy," — and in this pursuit he took a high stand. There was no rank list in the Law School of those days, but he is said to have held his own among such stimulating opponents as his classmates, George Bemis, William Davis of Plymouth, Judge Hoar, and William M. Evarts.

The following anecdote, taken from Mr. Dana's journal, shows Judge Story's estimate of how profitable the study in the Law School had been to his pupil: —

"In the autumn of 1839, I made an argument before Judge Story upon the subject of the effect of a judgment between creditors and accommodation indorsers, which he requested me to write out for him in full that he might take it to Washington with him in the winter and show it to the judges of the Supreme Court as a specimen of what could be done upon a two years' education at a law school. I did so and upon his return he brought me very gratifying compliments from the judges and especially from Judge McLean, in whose circuit the question had arisen, but had not been argued."

While in the Law School, in furtherance of his edu-

cation, and to aid him financially as well, he taught English and elocution at Harvard as assistant to Professor Edward Tyrrel Channing. Under the influence of his father and Professor Channing, and also, doubtless, from choice, his style was simple, and he preferred the short, Anglo-Saxon words. A committee of the American oculists, recently preparing tests for eyes, sought out passages of shortest words and clearest style, and finding these in "Two Years Before the Mast," wrote for permission to use extracts. This was granted, and now, at the oculists' and opticians' throughout the United States, one finds, put before him in neat frames, in type of varied size, these extracts from Dana's sea narrative.[1] During the last year in college and two and a half years in the Law School, he made a point of spending "one evening a week" with Washington Allston. So much for his early preparation of his own plot in this remarkable garden.

But Dana did not stop with the spring digging, fertilizing and seeding, as so many do, and then let matters alone; but all through his career he kept up his literary gardening. In the Life Mr. Adams gives a picture of the killing work Mr. Dana did, and the want of variety, entertainment, and diversion, that is as pathetic as it is true. Mr. Adams ends a sketch of a day as follows:—

"By and by, when the dreary evening meal — in no way dreary to him — was disposed of, and the evening paper read and the talk with the children over,

[1] Since the publication of the Biography, *Two Years Before the Mast* has been included in a collection of the World's Greatest Books (1901), and also in the Harvard Classics, edited by ex-President Charles W. Eliot (1910).

Dana would disappear into his library, the green bag would be emptied of its papers, and the lawyer would be immersed in a study of his case until bedtime."

As to the detail of the evening paper, my father told me he never read an evening paper except during some critical periods of the Civil War, urging on me that one paper a day was enough in the economy of time. There is, however, an omission of real importance from this picture of the evening habits, and that is the hour, or hour and a half, before bed, when Mr. Dana put his law papers back into the green bag, changed from lawyer to student, and took up general reading. He explained to me how much could be accomplished by this one or two hours in twenty-four, if persisted in. In this way, he told me, taking notes and reviewing the previous night's portion, he read the whole of Grote's Greece, twelve volumes, Mitford's Greece, Gibbon's Rome, Hallam's Middle Ages and Constitutional History, Hume's England (unabridged), and, as he said, "to get the Catholic view-point," Lingard's History of England, then Macaulay's England, Burke's speeches and essays, much of which he read and reread, learning passages by heart, and Campbell's "Lives of the Chief Justices." He read many of Erskine's and Webster's speeches and also some European history from the Middle Ages on, and I do not remember what else. He told me he usually read a little Latin, and he took up his French again at one period in these evening hours, both reading and writing, supplementing this at the time with French conversation at the end of an afternoon or two a week. In 1852 he writes in his journal of the plan of cultivation as he was then carrying it on, as follows:

"My rule is to write a little Latin every Tuesday, Thursday, and Saturday evening, and to read a little French every other evening, and then to read in my course of History or Law."

On Sundays, after the midday meal of cold roast beef, which, under the ameliorating rules of Sunday observance, later became hot roast beef, he retired into his library for some turns of the clock's long hand, before the children's hour with its questioning and home-teaching; and there, excepting for the afternoon church in the earlier days, and a walk in the fresh air, besides his study of the Bible and commentaries on it, the New Testament in Greek, and purely religious works, he re-read his Milton's poems, also "finished Milton's prose," and read, for example, Coleridge's philosophy and poetry, Wordsworth, Southey, and other "Lake" poets, Spenser's "Faerie Queene," Bishop Berkeley, Adam Smith, Jeremy Taylor, Confessions of St. Augustine, "Practical View" and speeches of William Wilberforce, and speeches of his son, the Bishop, speeches of Gladstone, the Bishop of Oxford and other great parliamentarians, Life of Henry Martyn, "Double Witness for the Church," Newman, Pusey, Bacon's "Novum Organum," Tennyson, learning some whole poems by heart and passages of others, which he sometimes repeated to us children, to our great delight, at home or in the walks in the woods or on the smooth sand beach at "beloved" Manchester.

It is true, as told by Mr. Adams in the Life, that in 1856 he had not read, nor did he at the time care to read, "Henry Esmond." He had read "Vanity Fair," and from that judged Thackeray to be a cynic. He had seen a bad effect of "Vanity Fair" on some

young people. He advised me not to read it while in school. Later he read "Pendennis," and was so fascinated that he read it right over again to his wife; and later "The Newcomes" and the "Paris Sketch-Book"; and ultimately he changed his view of Thackeray.

In going over his journals and a few of his letters, I find he speaks of reading, besides some of the above, Romilly's Memoirs,[1] Ruskin, "Guesses at Truth," by Augustus and Charles Hare, "School-Days at Rugby," "The Heir of Redclyffe," Cowper's Odyssey, "Friends in Council," "Broad Stone of Honour," Adams's "Social Compact," "Don Quixote," much of Dickens, Bulwer, George Eliot, Cooper, Byron, Gray, Pope, Burns, Cowper, Scott, both poems and prose, Keble, the "Judicious" Hooker, Hazlitt's "Table Talk," and the "Spectator," and at times he writes of re-reading Shakespeare on his short journeys.

This is a meagre list, to be sure, but it is not fair to limit the catalogue of his mental library by the journal entries. Several times he speaks of "reading," without naming book or author. "My mode of life" one summer in town, for example, he says, has been "as follows: Rise at six, take a swim in the back bay at Braman's, and read and write till half-past eight." The journal has lapses, first of weeks, then of months, and later of half years, and ceases altogether in 1859. We know, for example, he read, re-read, and took the greatest delight in Smith's "Rejected Addresses," but no mention of them appears of record. As another illustration of the imperfection of this kind of cataloguing, he nowhere

[1] Sir Samuel Romilly, three volumes.

speaks of reading Bolingbroke or Warburton, but evidently must have, from the following, taken from the journal account of his first visit to Washington in 1844: —

"The (U. S.) Supreme Court was still in and I heard parts of arguments from Choate, Daniel Lord, and Crittenden and a little ex tempore classical encounter between Judge Story and Choate, relating to a quotation from Pope, as interpreted by Warburton against the imputation of Bolingbroke. Choate said, 'The infidel sentiment the poet was *made* to utter.' Judge Story broke in with an expression in defense of Pope from the charge of infidelity, which Choate explained by referring to his own phrase, '*was made to utter*,' meaning what Bolingbroke had said, and they both simultaneously referred to Warburton's explanation. This little episode was quite characteristic and agreeable. I doubt if Kentucky Crittenden had ever heard of Warburton, though he might of Pope and Bolingbroke."

Mr. Dana's delight in literature is constantly manifested in his journal. When coming back from short outings and settling down to work in his office, he sometimes wonders how it might be if he had a competence and leisure, though concluding that perhaps he is, after all, happier in hard work. These Elysian dreams, it is worth noting, include "devoting" himself to "literature." In the autumn of 1853, he says: "I am again established in my own house. . . . If I can have a winter of successful work in my office and in my library, with my delightful course of study before me, with all my troubles, shall I not be perfectly happy?"

Showing how such things interested him, we may

note that, in a very busy period, when he made but three entries in his journal in three months, one of them is as follows, November 27, 1849: —

"Sunday Ev. Spent an hour at Uncle Edmund's. Talking of Boswell's Johnson, he said that when he was in England, visiting at his uncle's (Rev. Edmund Dana of Wroxeter, Salop), he met a gentleman by the name of Lockhart Johnstone, a near relative of Mrs. Dana's, who was a daughter of Lord Kinnaird and niece of Sir W. Johnstone. Mr. Johnstone had been intimate with Dr. Parr,[1] and some time in his house. He said Dr. P. told him that Boswell used to make a minute of Dr. J.'s conversation each night when he got home, and take it to Johnson the next morning, read it to him and have it corrected. Uncle E. says he asked Mr. Johnstone if this could be relied upon, and Mr. J. told him it might be, for he had it from Parr himself, who was friendly to Johnson."

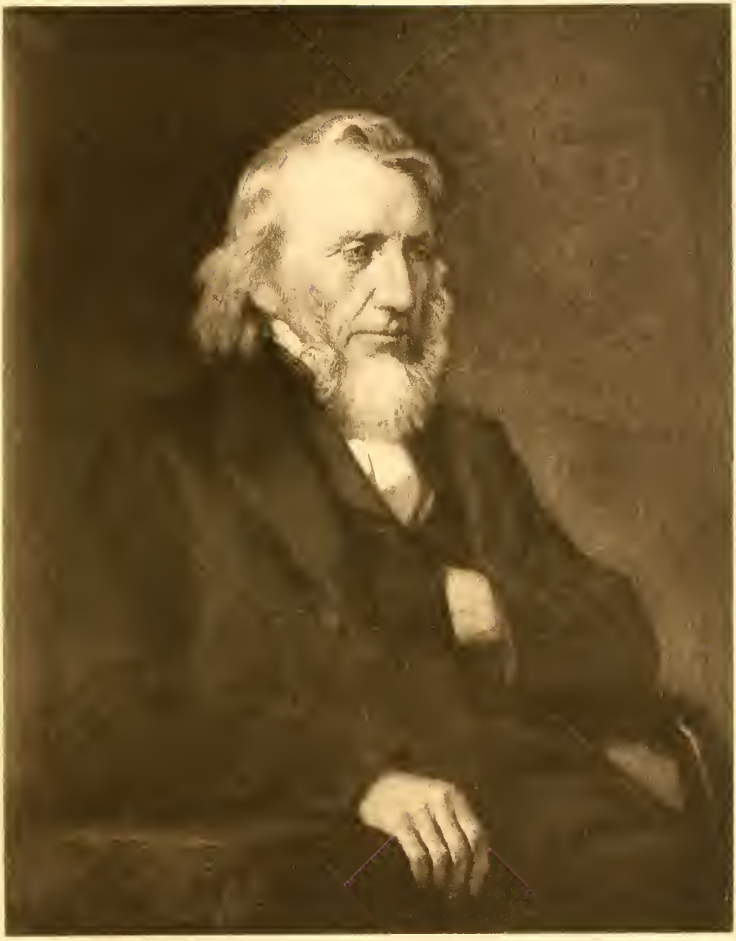
Some of his daughters, after "finishing" their education, as was the too common phrase, joined a reading club of friends, taking up serious history, philosophy, and literature. They were surprised to find that their busy lawyer father not only knew a great deal of what they were studying, but was able and willing to suggest and explain. While it is clear that his exacting profession curtailed his general reading, yet, with such tastes and enthusiasm, being a rapid reader, hearing stimulating literary talk, and with books at hand, he managed to be, or perhaps I had better say, could hardly be kept from being, a remarkably well-read man among well-educated persons.

In philosophy, he studied metaphysics and moral and intellectual philosophy in college, and planned at

[1] Samuel Parr, LL.D., 1747–1825.

one time to pursue these studies in a post-graduate course with Professor James Marsh of Burlington, so great was his interest in them. Besides reading those philosophical works I have previously mentioned, he in later days discussed Spenser, Comte, Darwin, Tyndall, Huxley, Emerson,[1] and some of the modern German philosophers, with his father and brother Edmund, who, with their leisure, had time to read in full what he, with his quick mind, took in only in talks or from essays, short passages and criticisms. Comte, for example, was one of the familiar names in the Chestnut Street talks, with his ideas on humanity as the "deus," and "the impluse to serve humanity" as "religion." Mr. Dana's friend and former partner, Mr. Francis E. Parker, I have heard discoursing on modern philosophy with my father. Any philosophy, however, which seemed to militate against Christianity was read with a critical eye, not because he closed his mind to truth, but because he queried whether every new philosophy, however plausible or convincing it might seem, was in reality *the truth*. As he said to me, in substance, one generation or decade has been carried away with a system that the next modifies or refutes altogether. Even in nature, what the scientist recently ridiculed as impossible is the commonplace of to-day. He quoted Professor Cooke as saying he had had to change his fundamental ideas of chemistry some twenty times. He believed there were mysteries behind the phenomena of nature not dreamed of by the physicists. If, for example, matter is but "centres of force," then, said he, matter is non-material, as we think of the material,

[1] He writes in his journal of going out of town to hear Emerson lecture.



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and comes pretty near being the creation of an omnipotent spiritual will. This view of "centres of force" is coming prominently forward again, and we are told the marvelous power of these forces is something almost beyond belief. We do not know what a law of nature is. The usual definition, "an observed sequence of phenomena," explains nothing. Some German philosophers, he remarked, doubted the universality of the laws of time and space. Our reasoning on infinity brings us to contradictions. He believed Coleridge's idea, that human reason is limited perhaps wholly to the scope of its experience. If, even in the region of experience, Mr. Dana added, it cannot explain such familiar things as matter, or the laws of nature, or even what electricity is, or chemical affinity, how can the human mind be trusted, then, in its theories of the great cause of all, of the supernatural and of eternal life? The one thing, he said, that has lasted through all this change, is religion. Men have changed their philosophical views of matters religious, but religion itself has outlasted all else; therefore let us not easily throw it aside at the bidding of the last thinker. Nor would natural religion be enough. Social and economic conditions may lead to certain utilitarian morals; but the idea that "honesty is the best policy," for example, probably never made any man really honest in matters not likely to be found out.[1] He believed it was only the love of a personal God that would influence men to real goodness, and that the highest love of God was aroused in human

[1] There is found, in one of Mr. Dana's public addresses, the following: "Aristotle, the greatest of all reasoners, says the attempt to apply geometrical rules to moral reasoning leads to the most dangerous of all sophistries."

beings through the manifestation of God in the Son of Man.

Berkeley's philosophy, so like that of the post-Kantian idealists, was, he told me, a comfort to him. He named the street in Cambridge, where he built his house, after that Lord Bishop philosopher. Had he lived to read "Robert Elsmere," what would have been his comment on the words of Henry Gray, "God is not wisely trusted when declared unintelligible." "Such honor rooted in dishonor stands; such faith unfaithful makes us falsely true." "God is forever reason; and His communication, His revelation is reason"? I believe it would have been something like this, judging from his many talks on kindred subjects. "If by 'unintelligible' is meant that human reason, limited by concrete experience of finite things, is expected to reject what it cannot comprehend of the infinite spirit, then I should ask how, *a priori*, could such intelligence be expected, unless we limit the immortal mortalwise, the infinite finitely, and the great first creator creaturewise? If, however, it is conceded that our faith may transcend experience, may apprehend though not comprehend the infinite, but that it should not *contradict* reason, then these words of Gray's I adopt."

These statements may not meet acceptance at the hands of modern philosophers; but what statement is accepted? It is somewhat gratifying to those in the outer courts to hear that there is no complete agreement among those in the inner temple. At a recent after-dinner address, the late Professor James said of the Philosophical Department at Harvard, "We are united because each thinks the others are cultivating the soil from which truth may spring,

but not because we all agree. We do not disagree, chiefly because none of us understand what the others are saying."

In private talks with me in 1875 to 1878, he expressed, as possible, views of religion which at that time would have been considered as "advanced," but such as are now generally held, or at least allowable, by thinkers of his church in America and England. To sum up, Mr. Dana, in his religious opinion, was conservative, not easily carried away by new views, but open-minded, fair, and, above all, not dogmatic.

In political economy, I remember my astonishment, while an undergraduate, as he told me, during a walk over the West Boston Bridge, that, though a Republican, he believed that the best authorities were against a high protective tariff. He said the party had become committed to protection as a method of raising funds during the war, and to offset the high internal revenue taxes on certain home products. Later, as I studied political economy more fully, I came to appreciate his position.

While in college I took several courses in philosophy and did some collateral reading in this branch. I was surprised, in talking with my father, to find how much he knew of what I thought was beyond his reading. Later in life, he became more tolerant of some of the new philosophical ideas as they became better understood, and accepted them. As to accepting them, Mr. Dana did not, like the late Philip Henry Goss, F. R. S., in his "Omphalos," believe that the earth, with its fossils and glacial marks, was created just as it is by one catastrophic act in a day of twenty-four hours. He admitted long peri-

ods of development and evolution, but he believed it was evolution by successive creations, not by natural selection alone. Indeed, as it now appears, natural selection is not the final word, nor the whole explanation. Whatever the ultimate conclusion, there are at least sudden developments, now called "mutations," which are preserved, modified or lost by natural selection, but which are not caused by it.

As to Mr. Dana's attitude toward Darwinism, we must remember that Agassiz had not accepted that when he died in 1874, and Mr. Dana survived Agassiz less than eight years. In a letter to one of his married daughters, written from Rome, eight months before his own death, speaking of the poetry and romance inseparably connected with that city, he says, with a touch of humor: "Thank God, imagination and sentiment are still the strongest forces we have to deal with, notwithstanding the attempt of scientists to debase the nature of man."

In biography Mr. Dana was much interested, and, of course, in all American history. He kept scrapbooks and bound volumes of pamphlets, in which all the best current speeches, arguments, party platforms, and the like were preserved, which enabled him to make immediate reference to them in preparing his public speeches and addresses. He belonged to a "Book Club" in Cambridge, was an original member and constant attendant of the celebrated Saturday Club[1] even before it was organized and named, and was sometimes present at the Longfellow Dante readings, out of which grew the famous Dante Society.

As a part of his literary work after beginning his

[1] See Adams's Life, vol. ii, pp. 162–170 and 359–360.

law practice, he wrote an account of Professor Edward Tyrrel Channing as introduction for the published "Lectures," edited Allston's "Sylphs of the Seasons" and "Poems" and "Lectures on Art," and wrote biographical sketches of Major Vinton, of Rev. Leonard Woods, of Judge Wilde, part of Rantoul's, and others. Mr. Dana's Lyceum lecture, "Sources of Influence," which he delivered so often, is not written out in full, but in part as mere head-notes. In that he took the stand that what we call temperament or character had more to do with a man's influence than his learning. This he illustrated from history, literature, biography, and experience in life.[1] He also gave, in various cities from Baltimore to Portland, what he calls his "Sea Lecture," one on "Knowledge is Power," one called "American Loyalty," one on Edmund Burke, and another on "English Contrasts," all of which took him outside of his professional work. None of these latter, however, are in complete form for publication.[2] The "English Contrasts" is of little novelty to-day, as so many people visit England now. If published it would be of interest chiefly as showing the contrasts between the America of 1856 and of 1910. In 1856 our railway "depots" were mostly of wood with wooden platforms, a general air of dirt and uncleanliness about, with no shrubbery or ornamental grass and flowers. The rails were light, the bridges mostly of wood, grade-crossings were the rule, the cars were noisy and dirty, and the cinders almost unendurable.

[1] See Adams's Life, vol. i, pp. 42–45 and 114.

[2] See Bibliography at end of this volume for various published speeches, addresses, letters, political "resolutions," and lectures.

There were almost no well-kept private lawns, even in the suburbs, hardly any good architecture, and almost no art.

As a part of the preparation for his profession, he studied double-entry bookkeeping, and for many years while practicing law, he kept his cash-book, journal, ledger, and day-book, making all the entries and postings himself, footing the columns and making trial balances. Later he simplified his system, keeping only check-book, office-ledger, and docket. Even to the end, most of them are in his own handwriting. The early experience in bookkeeping he found most helpful in tracing out the transactions and cross-examining the expert witnesses in some of the banking and business lawsuits. The amount of labor this bookkeeping entailed, while he was in court all day, was enormous; but labor he did not shirk. His were no eight-hour days.

I can best sum up this cultivation of his own garden-plot by quoting the entry in his journal, made on first taking possession of his study in his new house in Berkeley Street, Cambridge, March 16, 1852: "May my private room be consecrated to study and thought, for my own good and the good of my fellow-men."

I must say a word as to some of the statements in Adams's Life, especially in the chapter of Reminiscences, as it appeared in the first edition. In a later edition Mr. Adams made important corrections; but it is the first edition that most of Mr. Dana's friends read and that is in most of the libraries. Before proceeding further, however, I want to repeat how deeply Mr. Dana's family are indebted to Mr. Adams for what seems to them the fine way in which he

treated his subject, and how small a part the criticisms here made bear to the admirable whole.

Mr. Adams's idea that Mr. Dana was "not an especial admirer of Milton"[1] came from a letter to his wife, in which he made fun of her great knowledge of that poet. This was really intended as a humorous, indirect compliment, as she could recite pages on pages of Milton's poems, while he knew by heart only short passages or quotations. That he admired Milton as a poet and writer (though not as a theologian) is evidenced by the fact that he read the "Paradise Lost" twice, and the "Paradise Regained" and "Samson Agonistes" once with me in our too brief Sunday afternoon hours while I was in college and the Law School, and the "Hymn of the Nativity" to us all nearly every Christmas Eve; and also by the marginal marks in the three-volume edition of Milton's Poems he bought while he was in the Law School. He had to rebind it in the seventies. It had nearly come apart from frequent use.

As to his "not caring for Tennyson," Mr. Adams inferred that, because, in 1856, returning from his delightful trip in England, he said he had seen all[2] those he cared to see, and yet he did not see Tennyson.[3] Such words should not be taken too literally. The remark was an ebullition of enthusiasm, not a mathematical census of his admirations, based on a count of noses. Perhaps it may be true that he did not particularly care to see Tennyson personally. He was aware of Tennyson's dislike of strangers, and especially of Americans, and I remember my father said to me, and Mr. Lowell confirmed it, when I was

[1] Life, vol. ii, p. 151.

[2] His journal says "almost all."

[3] Life, vol. ii, p. 151.

about to visit England, "You had better know Tennyson from his works." A distinguished American author, a friend of my father's, told me of Tennyson's morbid state of mind on the subject of strangers. While walking in the garden at Farringford, Isle of Wight, Tennyson pulled him aside and said earnestly, "People are looking at me through the hedge," when there was no one to be seen there; and, while on the housetop, looking at the view, Tennyson exclaimed, "There they are, rushing to look at me!" when, in reality, some farm-hands were merely hastening to shelter from a threatening shower. This was said, too, in the way of complaint, not in a vein of humor.

As to not seeking out Darwin in 1856, very possibly Mr. Dana would not have had sufficient sympathy with Darwin's views to look him up, even had he been visiting England later. But, though somewhat known among scientists, Darwin had not made his great popular reputation in 1856. His "Origin of Species by Means of Natural Selection" was published in 1859, and his "Descent of Man" not until 1871.

In general, therefore, it may be said that it was through such natural advantages, by means of such preparation in school and college, and such industry all through life, that Mr. Dana was equipped to prepare such an oration as that on Edward Everett with only three weeks' notice; and that he was enabled, for example, in the celebrated case of Dalton *v.* Dalton, and in many another unpublished legal contest, to cap the wealth of illustration and quotation in Rufus Choate's arguments, sometimes turning them against his renowned opponent, or at a moment's notice to give such an address as that on

Mr. Choate's death at the meeting of the Suffolk Bar in 1859.

As to Mr. Dana's argument in the Dalton case, I have not included it among these speeches. It was, according to the custom of those times, long. Then lawyers reiterated the same idea over and over, from every point of view and in varied language, and hammered in again and again certain telling phrases, lest one single juror should fail to understand. That was a day when people were used to long prayers, long sermons, and long lectures. Mr. Dana's argument in this case is about 66,000 words, and would make up half a volume in print. It took twelve hours to deliver; but he had to meet, single-handed, the combined onslaughts of the two best lawyers of the state, Rufus Choate and Henry F. Durant, and an extremely hostile judge, and had to combat a popular prejudice raised against his client in the press. He had to counteract Choate's ten hours of eloquence. It was a case of divorce against a wife on the scriptural ground, and Mr. Dana was for the husband. Mr. Dana's argument[1] shows a most delicate handling of a *cause scandaleuse*. He succeeded in making a deep impression on the public in favor of his client, and won over eleven out of twelve jurors, though he had the burden of proof. The twelfth juror afterwards explained that he was influenced by just one argument of Choate's, and that was: "If you acquit, if you show that a Suffolk jury assures him his surmises are groundless, will it not be *he* rather than *she* that will have occasion to bless you for your judgment?"

A curious coincidence, the story of which should

[1] Reprinted in pamphlet form, and to be found in many of the older libraries.

not be lost, arose about this case and the twelfth juror's reason of action. Some years after Mr. Choate's death, Mr. Dana was relating to a younger lawyer in his office, Mr. E. N. Hill, the chief incidents of this case. Just then, Mr. Durant, the only other living person connected with its conduct, unexpectedly called to see Mr. Dana's partner. Mr. Dana then closed the door of his private room so as to talk more freely. He had just reached the end of the narrative, and explained the action of the twelfth juror, when a knock came on his door. He went to it, and there was a man with the dress, voice, and manners of a Westerner. He said, "Mr. Dana, you do not recognize me; I was one of your clients." To this Mr. Dana replied that he had many clients, his memory for faces was bad on account of near-sightedness, and perhaps, too, his client had changed in appearance. Then, to his astonishment, came out the name, "Dalton." Dalton explained that, after his first disappointment, he had become more and more impressed with the same point in Mr. Choate's argument that had influenced the twelfth juror; that, failing to get his divorce, he decided to make it up with his wife; that they went to a far western territory where their names were unknown, and there started life anew. They had had several children and lived happily, and he was glad he did not succeed in his lawsuit.[1] Does any instance of supposed telepathy, or psychic influence, show a more remarkable coincidence than Mr. Dana's narrative and the accidental coming close together of the three chief actors then living?

[1] Mr. E. N. Hill confirms this story just as I recall hearing it from my father, so this strange coincidence depends not on my memory alone.

There was another *cause célèbre et scandaleuse* in which Mr. Dana took part. In this he defended a then well-known clergyman, "a brilliant orator, who drew like a magnet," from the criminal charge of adultery. This case, too, Mr. Dana handled with the utmost delicacy. The few points on which he had to speak plainly he condensed into a few short sentences. The whole argument was only one fifth of the length of his argument in Dalton *v.* Dalton. He drove through the government's case like a troop of cavalry on full gallop, and carried the jury and audience along with him. Notwithstanding this unanimous acquittal by the jury, this clergyman's subsequent reputation was such as to cause him to leave Boston for the middle west. "From there he took another flight to" the Pacific coast, where later he was elected Mayor of San Francisco as the candidate of the Sand-Lots party in the days of Denis Kearney, and there he became involved in exciting episodes not necessary to follow out here. Into the defense of this man Mr. Dana had put his best efforts, in the full belief of the innocence of his client, and Mrs. Dana had aided him with some suggestions. To his infinite disgust, after the trial was over and after his client was assured there was no appeal, and that the constitution of Massachusetts protected him from retrial, no matter what new evidence might turn up, he boasted, or as Mr. Dana graphically stated it, "kicked up his heels" and said, "I did it, though!"

This may lead us to answer the question, so often in the minds, if not on the tongues, of laymen, how a man so high-minded, nay, "lofty-minded" as Mr. Lowell says of him, can practice law when he must have to defend men he *knows* to be guilty. On this

subject my father often spoke somewhat as follows: Every one charged with crime has a constitutional right to have the case proved against him beyond the reasonable doubt of a jury. In taking such a position for a client, however, the lawyer must not mislead the court. His duty is to stand by and see that no inadmissible evidence is produced by the prosecution, and that the witnesses' statements agree and will bear cross-examination; but to get up a false alibi, for example, is not only not required of a lawyer, but is against his oath of office[1] and a cause for disbarment. Such cases of putting the government to its proofs as a part of the constitutional right of an accused, where there is no other defense, are uncommon, and in a long and varied practice, Mr. Dana never had to do this when he knew that his client was guilty.

The nearest to such an attitude that he ever took was his defense of the fugitive slave, Anthony Burns. Mr. Dana believed the Fugitive Slave Law, though pronounced constitutional, to be immoral and unjust in many of its provisions, and that a man, free under the laws of Massachusetts, should have the right to compel the claimants to show their proofs and establish them by the strictest rules of law and evidence. Mr. Dana showed that the testimony on identity was contradictory, and argued that they had not made out a case, though he doubtless felt morally sure that

[1] The oath of office in Massachusetts is as follows: You [Richard H. Dana], solemnly swear that you will do no falsehood nor consent to the doing of any in court; you will not wittingly or willingly promote or sue any false, groundless or unlawful suit, nor give aid or consent to the same; you will delay no man for lucre or malice; but you will conduct yourself in the office of an attorney within the courts according to the best of your knowledge and discretion, and with all good fidelity as well to the courts as your clients. So help you God.

the Anthony Burns he was defending was a runaway slave of that name, and belonged to some one. Then there was also doubt whether Sutton, the claimant in that case, had not really lost his claim by having leased Burns to another.

Mr. Dana, it is true, had cases when he knew his client had done an act, as in the Peter York case; but his part was only to try and prove by evidence and argument that the act was manslaughter and not murder, or in other cases that it was trespass instead of larceny, or that the defendant was insane, or that criminal intent was lacking, or to show mitigating circumstances that would reduce the penalty. To illustrate, take the following from his journal under date of December 14, 1842: —

"Defended an Irishman named David Keefe for assaulting his wife with intent to kill. The evidence was so strong against him that I only argued the possibility of its not being done with a murderous intent. He was convicted. I satisfied the court that he was a temperate, industrious, and faithful man, and he was sentenced to one year in State Prison."

But the query sometimes takes another form. If the lawyer does not take a case he *knows* to be wrong, does he not take cases in which he does not *believe?* First, the personal contact with the client, who persists in his innocence, or the justice of his cause, arouses a sympathy and belief that the distant public may not share; indeed, the real danger to the cause of justice comes, in actual practice, from too much sympathy for and belief in one's client, not from too little; but second, and most important, the lawyer has no right to disbelieve a client. He should, it is true, examine his client's statements, for the double

purpose of better understanding the case and testing its truth; but it is when the circumstances are most incriminating to an innocent man, when the press and the public are most against him, that he most needs the services of able counsel. A cold-blooded murderer may add to his dark deed the despicable plan of committing it in such a way as to throw suspicion upon another, to divert attention from himself. What would happen then if a lawyer should say to the innocent man under such suspicion, "Oh, I have read the papers and believe you are very likely guilty, and therefore I will have nothing to do with you"? If one reputable lawyer may do this, then another may, and the disheartened man will be deprived of all reputable support in the hour of his great stress. No, the lawyer is an officer of the court. Our system of jurisprudence is to have one such officer support one side and another the other, and then to have the jury, with the aid of the judge, make the final decision.

There is actual danger to justice in disbelieving one's client too readily. There is a celebrated Vermont case which my father told somewhat as follows: An old man was missing. He was last seen by his neighbors going into the forest, in the direction where two young men were cutting wood. These young men owed him money which they were unable to repay. He held their notes for this money, and these notes were also missing. Blood was found on the clothes of the young men. Their defense was that the blood was the blood of their dog, killed by the slipping of an ax, on the very day the old man had disappeared. No one believed their story, not even their own lawyer. He advised them to plead guilty, urging

that perhaps a frank confession, saving the expense to the country of a trial, might give him ground to secure from the governor a commutation of the death sentence to imprisonment for life. But even this failed. The day fixed for the hanging was close at hand when, to their joy, the old man turned up alive. He had wandered way out to Ohio in a dazed condition of mind; and on his person were found the missing notes. Then, for the first time, the public, the governor and their lawyer believed the whole story of the dog and the slipping ax, and then the youths were set free.

My father further illustrated the same idea by the story of how Charles G. Loring gave up a case in court, because he found his chief witnesses answered falsely on one point. He was on the side of an insurance company resisting payment for loss of a vessel which Mr. Loring contended had been scuttled. It turned out afterwards that his case was right, that the main story was true. The vessel when raised was found with the holes bored in her bottom; but, sailor-like, the chief witness had tried to support the truth by some "collateral lying."

I had somewhat the same experience in principle, though the reverse in details, when my father was alive. We were for the cargo-owners, claiming insurance for total loss. After the first trial of the case, and as it was about to be tried again, our chief witness told us for the first time that the ship had been scuttled, and said he would tell this to the other side if our clients did not pay him $4000. The other side had not even suspected scuttling; but we went to them, told them the story of our chief witness, and urged that they should have him indicted, both for

his perjury at the first trial and for his own criminal acts in connection with the scuttling he had disclosed to us. Fortunately, the case had not been concluded before we found by new and unsuspected evidence that our clients were in the right after all, and that our chief witness had got up a false story for the purpose of this blackmail, and we were able in the end to make a favorable settlement.

If, indeed, a lawyer should permit himself to prejudge his client's case, and only to take such side as he believed the more likely to be true, who would have been found to defend Desdemona, after the incriminating handkerchief had been seen in Cassio's hands, after she had been heard to befriend him, speaking of "the love I bear to Cassio," and after Cassio's (seeming) confessions? The true attitude of the lawyer may be given in the words of Professor Greenleaf, which Mr. Dana wrote in his journal about the time of opening his law office: —

"A man who begins law properly and studies it philosophically, will never find it dry. And if he practices it upon the principles of Christianity and professional honor, and conscientiously as a man and a member of the body politic, his interest in it will increase as he goes forward in life."

Or again, in Mr. Dana's estimate of Charles G. Loring, in whose office he studied law: —

"It gives me pleasure to combine my testimony with that of all others who knew him, to the high tone of professional morals and gentlemanly conduct, kindness, liberality and perfect fairness and integrity of that gentleman."

We have been considering the orderly and logical mode of expression and the historical, literary, clas-

sical and philosophical illustration with which Mr. Dana enriched his arguments, and the moral ground on which he practiced law. To complete the literary portrait, we ought now to go back to his grasp of fundamental principles of law, and his presentation of them before the court, on which we touched briefly in the early part of this sketch.

While he was District Attorney of the United States, a most complicated case arose about the conflicting claims of the United States Treasury and the State National Bank to certain funds, involving new points of law *inter apices juris*, and depending upon an intricate and much involved series of facts. Mr. Dana argued for some hours, following out the course of all the transactions, with dates, amounts, and names, without once referring to his notes or making a single mistake. I have more than once heard the story of this argument from lawyers engaged in the case. I do not remember all they said or exactly how they said it; but the general impression left on my mind might be expressed in the figure of a plant, with roots, stem, branches, flower, and fruit, all developing as if by magic under the warming climate of Mr. Dana's own creating. This held the attention and interest of the court in a way that might be illustrated by Morley's description of Gladstone's speeches on the budget: "Peel's statements were ingenious and able, but dry; Disraeli was clever but out of his element; Wood was like a cart without springs on a heavy road; Gladstone was the only man who could lead his hearers over the arid desert, and yet keep them cheerful and lively and interested without flaging."

In the Peter York case, where Mr. Dana took the side of the accused, we can see the process of thought.

York was accused of murder. The killing by the defendant was proved, but there was a doubt as to the intent. If there had been malice aforethought, it was murder, punishable by death; if the act was done in the heat of passion, suddenly aroused, it was manslaughter, followed by a lesser penalty. There was just enough evidence of passion from sudden conflict to raise a reasonable doubt in the minds of the jury, but not enough for preponderating proof. Should the jury then find murder, or only manslaughter? The answer to this legal question meant to his client death or life. It was an admitted principle of law that a crime must be proved beyond reasonable doubt in order to secure conviction. Mr. Dana contended that, as murder consisted of two parts, killing and malice aforethought, and as both must concur to make the crime, the government must prove the concurrence of both beyond the reasonable doubt. The government, on the other hand, contended that, having proved the killing, there was a presumption of malice aforethought, that is, of the worst possible motive, that the burden of proof "shifted" to the prisoner to *disprove* this presumption, and that if the jury was in doubt as to whether or not there was such malice aforethought, it should be instructed to declare for murder. Mr. Dana argued that "from the mere act of killing, there is no presumption, in nature or from experience, that it is murder rather than manslaughter. Of all the homicides that are committed, few are found to be murder. A presumption of murder, from the mere fact of killing, is therefore contrary to reason and experience, hence against liberty and life."

The language employed in the text-books and

judicial decisions was against Mr. Dana; but he maintained that this language, when traced back, either originated in the dark days of trial by fire and water, or arose from some *obiter dictum* of an early judge, in a decision not involving the present issue, and that no case was, on its facts, ever adjudicated against his proposition. The majority of the court, in a very learned opinion of twenty-five pages, by Chief Justice Shaw, decided for the legal presumption, from the killing, of the worst possible motive and a consequent death sentence; but Judge Wilde, in a dissenting opinion of nine pages, upheld Mr. Dana's contention; and, strange to say, it is this dissenting opinion that is now the law in every Anglo-Saxon judiciary, including that of Massachusetts, and not only in cases of murder, but in proving motive in all crimes.

Besides demonstrating the right rule of burden of proof in prosecutions, Mr. Dana's argument had much to do with emphasizing the true and now generally accepted doctrine that, in determining law from precedents, we must look through the phrases employed by the judges in their opinions to the actual principles necessarily involved in the cases they have decided. To appreciate the change in this respect since 1845, a lawyer educated in such modern methods as are employed at the Harvard Law School, for example, need only read Chief Justice Shaw's opinion in this case.

Perhaps the way in which Mr. Dana brought simplicity of principles out of apparent chaos can best be stated by his own words, taken from his journal of September, 1854: —

"I take to myself the entire credit of the case of

the Osprey[1] just decided by Judge Sprague. It presented the question directly, what the rule was when a steamer met a sailing vessel going free. . . . A recent case of Dr. Lushington's, City of London (4, Notes of Cases), was directly against me. He held that, in such a case, each vessel must keep to the right. I carefully examined every case of collision in England and America, and made up my mind that there was a rationale which lay at the bottom of the whole law of collision, which had never been expounded or even hinted by any judge or commentator, and which, if sustained, would overturn Dr. Lushington's decision and give me my case. I presented it in full to Judge Sprague, in an argument of nearly four hours long, illustrating and enforcing it in every way in my power. I acknowledged it to be new, but told him that by propounding and enforcing it, he could do for the law of collision what the great Lord Holt did for the law of bailments in Coggs *v.* Bernard. The result was that, after a deliberation of ten days or so, Judge Sprague adopted and sanctioned it entirely, overruled the City of London, and gave me my case, and, what was more gratifying still, he adopted not only my positions, but my reasons, and did not add anything material to my argument."

The rationale was delightfully simple, as is so often the case with discoveries. It is, "whether the two vessels meet on terms of equality or inequality . . . the vessel having the advantage takes the whole duty upon herself, and the other vessel keeps her course. If the favored vessel *may* keep her course, she *must* do so, that the other vessel may know what to depend upon."

[1] 1 Sprague, p. 245.

Mr. Dana's view is still the established law of all nations on the high seas.[1]

How Mr. Dana extricated the country from the dilemma raised by the Prize Causes during the early part of the Civil War will be told more fully in the notes to the Amy Warwick argument and his explanation of what the decision meant.

In addition to Mr. Dana's naturally philosophical and logical mind, and his habit of going to fundamental principles, his literary tastes and careful cultivation of them, I wish to say a word as to his good, sound judgment. In how many instances of doubt and perplexity in the public mind, Mr. Dana's views have now become generally accepted! In the anti-slavery times, he was a Free Soiler, not an Abolitionist. He opposed extension of slavery to new states and territories theretofore free. He preferred Washington's and Lincoln's ideas of gradual emancipation to sudden abolition of existing slavery. He felt that the preservation of the Union and the Constitution were matters too important to risk by agitation for extreme measures. He opposed the Fugitive Slave Law, not because it was improper to return fugitive slaves as the Constitution then was, but on account of the drastic and unjust provisions of that law itself.[2] In the John Brown episode, before the Civil War, how calm was Mr. Dana's judgment! "I could see the courage and heroism of Brown, but to my mind, there was . . . an unmistakable vein of insanity running through it." Mr. Dana had been counsel for

[1] Act of Congress, August 19, 1890, and amendments August 13, 1890, May 28, 1894, June 10, 1896; Arts. 20 and 21, adopted under a general plan of uniform code for the world.

[2] See introductory note to "Great Gravitation Meeting," *post.*

every fugitive slave, and for most of those who were indicted for rescue, and he plainly noted the difference between a fugitive slave and the John Brown incident in these words: "When a man is escaping from slavery, it is a question between his freedom and his master's money . . . and in a question between freedom and money, the sympathies of every man go with freedom; but an appeal to arms is a war of races . . . and I confess that, in a contest like that, my duty and my sympathies go with my own race."

Had Mr. Dana's views more generally prevailed in the forties and fifties, we should have avoided the Civil War and the evils of sudden emancipation of the whole five millions of an enslaved race without preparation for freedom. Just as the Civil War was pending, he urged every reasonable conciliation with the South, but not submission to the claims of slavery extension. In the Prize Causes, it was good judgment and common sense, as well as good law, in Mr. Dana, wholly to acknowledge a great war against a *de facto*, though wrongfully formed, nation, and to point out that this course did not acknowledge the right of secession or independence of the confederacy, or allow other powers to acknowledge them. He turned the English acknowledgment of "belligerency" into an acquiescence on the part of Great Britain in our right of blockade.

In the Trent affair, when Mason and Slidell were taken off that British steamer by an American war vessel, Mr. Dana believed that we should take England's former attitude, and refuse to return these gentlemen. England up to that time had always claimed the power of taking persons out of neutral

vessels in time of war; but when it appeared that England was ready to abandon her old position,[1] in favor of the opposite contention of the United States, urged since the days of armed neutrality in the Revolutionary War, through the War of 1812, and up to 1861, Mr. Dana's sound sense, as well as his knowledge of international law, made him heartily acquiesce in the return of these men. In 1862, when Mr. Lincoln was being severely attacked, Mr. Dana had the good judgment to appreciate the great qualities of Lincoln, and stood up in his defense at the Worcester Republican Convention.

As to his arguments that changed the law of collisions at sea, and the shifting of the burden of proof in criminal cases, one sees at bottom the sound, practical common sense leading to conclusions, which no mere logic can account for. At the beginning of the reconstruction period, he showed that we must carry out the purposes for which the war was fought; and in his "Grasp of War" speech showed the principles upon which that could be done under our Constitution. It was very easy then to be misled into all sorts of technical and subtle reasoning; but Mr. Dana had the good sense and sound judgment to construe the Constitution so as to allow unusual powers in unusual circumstances as to which that instrument was silent. At that time, he had the good sense to see that the freedmen should be granted the franchise only on educational and property qualifications, and to make a clear distinction between social or race equality, in which he did not believe, and equality of political rights under the law. It was a certain sound

[1] See letter of Adams to Seward, Dec. 27, 1861, Diplomatic Correspondence, 1861–62, p. 13, and Dana's Note to *Wheaton*, pp. 644–649.

judgment that made Mr. Dana espouse the repeal of the usury laws in Massachusetts.

Many political reforms of uncertain value have been urged with great vigor, and others of only secondary importance. Such do not go to the root of the evils, nor affect the motives which govern the actions of men. In "Points in American Politics," written in 1876,[1] Mr. Dana showed his sound sense in selecting for presentation the really urgent needs of our country. He started off by laying down the fundamental principle of all civic reform in the proposition that frauds in government will always be found wherever affairs are controlled by human beings; "*but the extent of the frauds will depend upon the temptations offered.*"

This principle he proceeded to apply to the manner of electing the President of the United States. Presidential electors, he showed, are allotted to each state and chosen by the state at large; consequently the area for the operation of a single fraud is the entire state, and it may determine the choice, not of one elector, but of thirty or forty, which, taken from one party and added to the other, might make a difference of sixty or eighty in the Electoral College of some four hundred. In this article, Mr. Dana advocated the election by Congressional districts, each district electing one presidential elector, so as to confine the area of a single fraud to the one district, and so determine not forty, but only one electoral vote, and thus reduce the temptation to invest much capital, labor, or risk in that kind of fraud. The sound sense of this is quite generally acknowledged.

Another application of the general principle he

[1] Published in the *North American Review*, January, 1877.

made to the presidential tenure of office. The four-year term of our national executive, with the right of reëlection, lays the president open to the temptation of manœuvring for renomination and reëlection; and Mr. Dana advocated a longer term of, say six or seven years, and ineligibility afterwards, as removing the temptation and yet giving a president time in which to carry out his policies. This same arrangement, he showed, would also reduce the frequency of the exciting and unsettling process of "king-making," with its consequent partisan activities in our republic.

Mr. Dana also showed the enormous temptations to use, for partisan and personal purposes, the unlimited power of appointment and removal over the one hundred thousand federal office-holders, as they then numbered, with their united salaries of over one hundred millions a year. He showed how fidelity to the political and electioneering service of the member of Congress procured appointment; how this made the employees of the custom-house and post-office "the prætorian guards and corps of janissaries for congressmen, paid from the public treasury"; how to the fight for the spoils of office was attributable much of the "corruption of those various demoralizing labors known by the names of pipe-laying, log-rolling, capturing and managing of caucuses and conventions," and its bad effects on the members of Congress: —

"It nurses a love of power over individuals, it accustoms them to look to the selfishness of men, their fears and their cupidity, as the sources of their own influence and the means of their advancement. It occupies a large portion of their time to the exclusion of their proper public service. It allows them to

believe that their reëlection or promotion depends more upon the manner in which they have managed their patronage than upon the part they have taken and the labors they have performed in the service of the nation."

This was written before the civil-service-reform addresses of George William Curtis. The principle has never been better stated. To remove this great temptation, with its consequent evils, Mr. Dana suggested civil-service reform, which he had long advocated in its days of unpopularity, and which, although applied to-day to only about two thirds of our enormous federal service of nearly three hundred and fifty thousand places, has done so much to remove those temptations and evils.

In this article, he exposed the temptation to use the United States troops in the South for the interests of the Republican party, and though himself an ardent Republican, strongly urged the withdrawal of the federal troops months before President Hayes took that remarkable and patriotic action.

Lastly, if not too much an anti-climax after subjects of national importance, let me mention a purely local matter, — that of making the Charles River at Boston a great water park. Mr. Dana's interest in the sea led him to devote much time and thought to Boston Harbor, and, as a corollary, to the Charles and Mystic rivers flowing into it. When plans were being considered for the layout of the streets in the Back Bay district, before any of the section west of the Public Garden had been filled in, he advocated a boulevard along the water front of the Charles River Basin, with houses fronting over this and looking towards the river. That plan was defeated by land-

holding interests which saw a chance to crowd in more building lots by another scheme. Like untutored farmers and fishermen, Boston backed its houses on its best view.

Afterwards, in 1875, he urged with great force, as the next best plan, filling in behind the Beacon Street houses next to the river, a space sufficient for an avenue, grass and shrubbery, in place of what he called "Scavenger Alley," that narrow, muddy, rutty passage, which, with its tin cans, ash barrels and waste-paper, disfigured the margin of the river for so long, to the disgrace of Boston's good taste and public spirit.

Now, after thirty-five years, Scavenger Alley, or Boston's "Rotten Row," as it has sometimes been called, has been replaced by a river park somewhat like Mr. Dana's "next best plan." But now that we have this river park, the public sees only the backs of the houses adjoining it. How much better would have been the first scheme which Mr. Dana, with his sound judgment and wise forethought, so earnestly urged, and which now we can never have!

I would also say a word as to his unusual powers in debate. I shall give two examples, — the repeal of the usury laws in Massachusetts and the support of Lincoln, — of which I have just spoken. As to the first, there was then no organization of business men, no special effort outside the legislature for the repeal of these laws. It was wholly the influence of a single debate by Mr. Dana that, to the surprise of the public, brought about the result. As to the latter, the late Senator Hoar has repeatedly stated, with great emphasis, that Mr. Dana's support of Lincoln at the Massachusetts Republican Convention in 1862, was

the most remarkable instance he ever knew of a large body of men who had publicly committed themselves to a course, being persuaded by the argument of a single man to change their minds and do the reverse.[1]

Notwithstanding Mr. Dana's natural ability, careful preparation, sound sense, eloquence, and hard work, he did not achieve the high political career for which he was undoubtedly ambitious. His friend, Judge Hoar, thought his "Episcopalianism" stood in his way, and that he would have done better if he had been a Congregationalist,—one might add, still better if a Methodist. Some of his friends thought him at times too "aristocratic." To this, his near-sightedness, inability to recognize faces quickly, a certain dignity of bearing, and his high-mindedness lent force; though, in so far as it existed, it was strangely inconsistent with his thorough democracy concerning human rights, his siding with the oppressed with such ardor and courage, and his condemnation and even ridicule of aristocratic tendencies or reliance on family name and prestige in a country like ours. A little more of this, and of his kindness and friendship for the humble, I shall set forth in the Introduction to the "Letters from a Father to a Son."

Sometimes he was impolitic in his open denunciation of what was low and mean in public life in general and in public men in particular, and he was often put forward to say the word that others shrank from speaking. It may be well to give one case, as illustration, which he related to me. Judge Clifford had

[1] The reversal was complete with the mass of the convention, but the leaders who were on the committees, by adroit tactics, partially thwarted Mr. Dana and the convention itself.

been made Justice of the United States Supreme Court from the New England district, and had the appointment of a United States Commissioner, a sort of minor judge. Ability in that position was of the greatest importance, and the Bar Association had two or three candidates to suggest; but it learned that the Judge had a candidate of his own, who did not have the confidence of the Bar. Mr. Dana was chairman of the committee appointed to see Judge Clifford. It was a delicate matter. No lawyer practicing before the United States Courts could well afford to incur the ill-will of so powerful a person as a Justice of the United States Supreme Court. In the interview, Judge Clifford replied that he would be glad to please the Bar of New England, but said, "Gentlemen, you should know that when my confirmation in the United States Senate was long in doubt, Senator —— came to my support and turned the tide in my favor. He wants this man appointed, and I must do as he wishes." To this principle of appointment my father felt obliged to make a protest. He afterwards felt that Judge Clifford never quite forgave him.

It may be interesting to know what Mr. Dana himself regarded as the chief stumbling-block to his public career. He believed it was the existence of the "spoils" system in American politics. He could not reconcile himself to the idea of securing personal success in politics by the use of public patronage, nor could he acquiesce in indirect participation of this breach of trust by others. His journals have frequent references to the evils of the system. "The state of mind of poor Cheever," the capable lighthouse-keeper at the Isles of Shoals, in August, 1843, anxious

to keep his place, but not knowing which way to turn in the political chaos, is well told in the Life,[1] a case "which illustrated the unhappy state of our country," as Dana says. Later in the same year, Cheever calls on Mr. Dana for help, having been removed without a hearing from his means of living. Mr. Dana, in the journal, describing the abject state of mind of the distracted man, writes that Cheever "would support the administration if they would give him his place," and ends the account with the remark, "I detested this vicious system, which is corrupting the morals of the republic." In 1854 he writes out a statement, made by Sumner, of the secret sessions of the Senate:

"Since I have been in the Senate, some thousands of nominations have been acted upon, and whether confirmed or rejected, the test openly and unblushingly put now, in debate, by Senators, is the test of fidelity to the slave power. At first it was the Fugitive Slave Law. Now it is Nebraska. It is not enough that he be of the ruling party, the least suspicion of infidelity to the Southern policy of the party is fatal. The most minute and gossiping evidence is gone into, on each side, pro and con, to prove or throw in doubt the position of the nominee, but the fitness for the office is not alluded to. Only in two instances, positively, only in two instances, can I remember that the moral character or fitness of the nominee have been alluded to."

Later, he quoted another remark by Sumner, made after the Republican party had been long in control. Fidelity to the slave power was no longer the test, but there was still the same neglect, in executive-session debate, of moral character and fitness. In

[1] Vol. i, pp. 91–93.

"Points in American Politics," already referred to, Mr. Dana speaks of civil-service reform as going "deeper into the political life of the nation than any other" matter of "legislative or executive policy."

Those were the days when the advocacy of civil-service reform required moral courage. It was before the formation of any civil-service reform association, and such advocacy was an obstacle to the advocate's political preferment. There were in public life a few men of high character; but even they, in order to keep their positions, had to aid in all the "pipe-laying" and "fence-building" of the local "machines," by recommending removals and appointments in office to suit the "boys." If the "machine" which really dictated nominations for elective offices in Massachusetts in those days, as it still does in some other states to-day, felt that a man really meant to refuse to give the offices to the workers, then, in the words of Professor Child, referring to my father, "they would have none of him." Preaching reform of the spoils methods before election "spread a coldness over" the "professional politicians," very like the proverbial effect of a sermon against stealing chickens on a darky meeting in the South just before Christmas.

In the Hayes-Tilden campaign, Mr. Dana made a political speech in Cambridge. He held his large audience, with men standing in the back passages and halfway up the aisles, through nearly two hours. At times you could hear a pin drop, and yet the address was dispassionate, with a few passages of what is called "eloquence." Many who had come in doubt left as strong supporters of Hayes. Some Cambridge Republicans urged that Mr. Dana be asked to repeat

this speech all over the state; but he had spoken too much and too earnestly about civil service reform, and so the request never came from the managers.

Even those great leaders, who were too high-minded to have inaugurated such a system, and who disliked it, yet acquiesced in it, and failed to denounce it. Naturally they were somewhat bitter toward civil service reformers, who, in attacking the system, attacked what these leaders had taken part in and profited by. I well remember, in 1888, going to one of these public men, who was a real civil service reformer at heart, and who supported the cause when it came to a vote in Congress. I had been intrusted by the National Civil Service Reform League with the task of getting a good plank on the merit system inserted in the Republican platform. This public man was a member of the Committee on Resolutions of the National Republican Convention, then being held at Chicago. The words "civil service reform" were to him, however, like a red rag to a bull. He spent the whole twenty minutes he had to spare in most rabid denunciations of George William Curtis and his whole flock. I could not get in a word "edgewise." He did not even look at my draft, and I had to go to a young delegate, not then prominent, Mr. Samuel W. McCall, now M. C., and he managed to get the plank adopted. Indeed, one of the incentives for attacking the spoils system, one of the objects mentioned in civil service reform literature, is that, by abolishing patronage, we abolish that which keeps out of politics, by the very necessity of the case, many of the high-minded men we most desire to have represent us.

Had Mr. Dana's lot fallen in another country, where, or in this country at a time when, the spoils

system did not prevail, his character, ability, courage, eloquence, sound sense, diligence, and attainments might have had a better chance to bring him that public career for which his friends have testified they thought him so eminently fit.

Yet his public career was not wholly wanting in honors. President Lincoln, through his Secretary of State Seward, in the most flattering terms offered him the position of Secretary of the Navy, on the supposition that Gideon Welles was about to resign. Mr. Welles reconsidered his project of resigning, and the appointment of Mr. Dana was not made, nor could the knowledge of the offer be published at the time. Mr. Dana took a conspicuous part in the famous Constitutional Convention of 1853. Of his work in that Convention, Mr. Adams says in the Memoir: "There was no man in the Convention who rose more rapidly or into greater prominence as a debater than Mr. Dana." He was offered a nomination to Congress, which meant an assured election, early in his career; but he had to refuse it for want of adequate means, which he felt a congressman should have in order to maintain his independence.

He had, as he said, "the privilege of being counsel for every fugitive slave and for most of those who were indicted for rescue"; and the reputation that he gained in the Prize Causes, already referred to, and the taking part in establishing the policy of the United States, as shown in the note to the Prize Causes, gave him great satisfaction.

While in the State Legislature for two years, he made one of the great speeches in the history of that body. It was on the repeal of the usury laws. He was made chairman of the Judiciary Committee, which

was the position of the leader of the House, after only one year's service. He was offered the position of Minister to Russia, and a seat on the Supreme Judicial Court of Massachusetts, both of which he declined. He was chosen counsel for the United States in the matter of the prosecution of Jefferson Davis for treason. In this he took the position, and so advised the government, that it was unwise to proceed, partly because it would be impossible to convict before a jury drawn from any of the scenes of Mr. Davis's overt acts, namely, the Confederate States, without excluding every man with secession sympathies, which in effect would look very like packing the jury with those of Northern feelings; while to try him in the North, for example in the State of Pennsylvania, on the ground that some of the troops of which he was the nominal commander-in-chief had invaded that state, would look very like changing the venue to secure conviction; that to punish one man, though a leader, and let others off who were as much if not more to blame for secession, would create a feeling of unfairness; and mainly, he took the broader ground that our policy should be to reunite the country into one lasting union, and for this, a magnanimous course of pardon was more effective than punishment. In this way, his advice was against his chance to increase a reputation which the trial of such a great national cause would have done.

He was also selected as chief counsel for the United States in the Fisheries Commission, held at Halifax in 1877, being a part of the arbitration arranged for under the Alabama Treaty. He undertook this case at great disadvantage, as the Treaty itself, as appears in the notes to Mr. Dana's argument before the Hali-

fax Commission, had given away the chief part of our case, and prevented our proving rights to which he believed we were really entitled, and which, if proved, would have greatly cut down the Canadian claims.

Though Mr. Dana's nomination for Minister to the Court of St. James by President Grant was not confirmed in the Senate, yet, as shown in the "Letters from a Father to a Son," it was confirmed by public opinion of the leading people throughout the country.

As to his professional career, it is told in the Life how successful Mr. Dana was as to the number of cases he tried in court, and the proportion of verdicts he obtained; and from the point of view of income, how frequently, though not always, he was on the side of the poor man, the sailor, or the fugitive slave, and how his attitude on the slave question, though he was not an extremist, not an Abolitionist, prevented his having many rich and influential clients; how, for example, an article had appeared in the papers urging Boston merchants not to retain him; yet the one critical point in his professional career is not set out in the Life. This was told me by the late Mr. Lewis S. Dabney, partner of Mr. Dana after his resignation as United States District Attorney, on the inauguration of President Andrew Johnson's famous "bread-and-butter policy." At this time, in 1866, all the opposition to Mr. Dana from the wealthy merchants on account of his anti-slavery principles, had vanished. The tide of sentiment during the Civil War had turned in Mr. Dana's direction. His great success in the Prize Causes, and the economic and able administration of his office, as well as his court work as United States District Attorney,

had brought him still more prominently forward at the bar. At this time, Mr. Dabney said, the largest cases in Boston were brought to him; but, at this point of his life, having saved a moderate sum of money, and feeling that this was his chance to begin the political career he craved, he decided to enter the Massachusetts Legislature. To his two years' work there, he devoted his best talents and almost the whole of his time and thought. Case after case, involving large amounts, was turned away from the office because Mr. Dana could not attend to it. The result but illustrates the saying that "Law is a jealous mistress, and the one thing she will not forgive is attention to another." Big cases like those he refused, and such as would have given him one of the largest incomes at the bar, did not come to him again when he went back to his office after these two years in the legislature; indeed, it took several years of heartrending waiting before he attained his former annual income. He managed, however, during the rest of his life, to save enough property indirectly, by adding to and greatly increasing the value of a trust fund, to leave his widow a good home and a fair income.

As to relaxation and recreation, Mr. Dana was indeed going at a killing pace all through his early and middle life, even forgetting at times to eat his noon-day meal. Let me give an account of one day's work, not told in the Life, found in his journal under date of March 8, 1853: —

"Monday night (7th) I lectured at N. Bridgewater. After an early breakfast left for Boston where I arrived soon after 9, argued Rand and Mather before the full bench Sup. Ct., closing at 2 o'cl'k, without dining took 2½ train for Dedham, and began the

trial of Bigelow and Wood immediately on my arrival — Immediately on adjournment of the Court took cars for Boston and thence coach to Charlestown and lectured 1¼ on Burke, returned to Boston, had an interview with Dr. Townsend who is a witness in White *v.* Braintree and thence to Cambridge — all this time eating nothing but a few figs and a sandwich in the coach — a pretty good day's work!"

He had less of what is called "amusement" than most men; but, it must be remembered, he enjoyed intellectual occupation more than most people, and got relaxation from what would appear hard work to others, while through it all he had a hopeful, buoyant nature, a great sense of humor, and was extremely fond of his home. In the midst of a hot summer, with cholera epidemic in Boston, just having lost a hard-fought case, "reserving" only "a point of law," having just been ill with symptoms of cholera, living and spending his nights in town, and tied close to his office, with plenty of cause for gloom, see how joy triumphs. In his journal of August 17, 1849, he writes: —

"Have entirely recovered and am remarkably well in the midst of so much sickness. For which God be praised. This general sickness and mortality has impressed upon my mind the frailty and uncertainty of human life, the certainty of death and eternity. I trust it has had a proper effect upon my life and my habits of mind and thought. How true are the melancholy words of Hamlet: 'If it be now, 't is not to come. If it be to come, 't will not be now. If it be not now, it will come, the readiness is all!' [evidently quoting from memory, and then ends] How much I have to make life desirable! Has any man more?"

As I think of his buoyancy and joy in living and working, I say, in the words of George Meredith, descriptive of Diana of the Crossways, "A linnet sang in his breast, an eagle lifted his feet."

One of Mr. Dana's great powers was that of a raconteur; but he also had ready and spontaneous wit and repartee. The tradition of his presiding at the Phi Beta Kappa dinners in the early seventies, and showing those qualities in rare degree, lasted for many years. As late as 1909, several older members spoke of it to me at the dinner. I well remember a dinner of the Lawyers' Club at his house, No. 361 Beacon Street, about 1874 or 1875. There were gathered the leaders of the Boston Bar, and I, a law-student at the time, was admitted as a guest. I remember how his face lighted up, the quick repartee, the lively humor, the laughter-giving wit, with which he enlivened his end, and not infrequently the whole of the table. He was noted for his laughter. I went once to see the elder Sothern as Lord Dundreary, and sat in the gallery. Some one on the floor led the bursts of laughter with quick appreciation of the points. This was so marked that I looked to see who it was, and found it was my father. Indeed, his sense of humor sometimes struck him on most incongruous occasions, as at funerals and the like. While at home, he was the life of the family, and many of his friends have said, as I have felt, that, long after his death, when they heard a funny story or a bit of quick repartee, as well as some important public news, their thought was, "I must tell this to Mr. Dana."

During one period only, when, in 1869–70, he was suffering from a combination of ill-health, caused by sewer-gas poison during the days when people ad-

mitted the anacondas of drains into their houses without making them harmless with traps and vents, and feeling the worries from a smaller professional income than he had been accustomed to, was he depressed. He fully recovered his health and spirits, however, by a voyage to Scotland and back, in the summer of 1870.

As Mr. Adams states in the Life, Mr. Dana has been called, by some of his wisest friends, a man of genius. He certainly was capable of great visions, without being visionary, and to his ideals he devoted, at times, "infinite pains." The night after the flogging of his two fellow-sailors off San Pedro, California, Mr. Dana, lying in his berth, "vowed that, if God should ever give me the means, I would do something to redress the grievances and relieve the sufferings of that class of beings with whom my lot has been so long cast." This vow he carried out in no visionary scheme of mutiny or foolish "paying back" to the captain, but by awakening a "strong sympathy" for the sailors "by a voice from the forecastle," in his "Two Years Before the Mast," a book which has had much to do with securing the enactment of laws against flogging seamen, overworking and underfeeding them, and the like, all which experiences he had so well portrayed. After his "Two Years Before the Mast," with much the same purpose he wrote "The Seaman's Friend," setting forth the rights of sailors, as well as their duties, a book, by the way, which had been reprinted in England under the title of "Seaman's Manual," and which I found in 1875–76 was in use by the Admiralty judges and in the Navy of that country.

Mr. Dana had a vision of manhood freedom, but

he was not an Abolitionist. He had no visionary plans of arming the negro slaves, of opposition to the Constitution, that "compact with the devil," as some extremists called it, nor of secession from the slave states. He favored rather the abolition of slavery by degrees, as recommended by Washington in his letter to Lafayette of May 10, 1786, or by gradual purchase, as suggested by President Lincoln. He had a vision of one great and united country, and to secure this, in 1861, he made a speech at Manchester, New Hampshire, repeated at Cambridge, which attracted public attention throughout the country. At that time, the slave states were on the verge of secession, and he urged every reasonable concession, even the direct acknowledgment of rights of slavery in the Constitution, and the enactment of a reasonable fugitive slave law; indeed, every concession to the slave power except the forcible extension of slavery in free soil and the unjust provisions of the fugitive slave law then in force. His vision of justice was upset by the barbarities of this same fugitive slave law; but he was not carried away by visionary schemes of punishing all those who carried out what the Supreme Court had declared to be the law. On the contrary, he defended Judge Loring against the petition to have him removed, on account of his decision against fugitive slaves, as more consistent with the vision of the reign of law, the only safeguard of true liberty. After the war was ended, he had a vision of securing the results of the war, and this he outlined in the first scheme of reconstruction policy, set forth in the resolutions which he drew up and which were accepted at Faneuil Hall July 10, 1866, and in his speech on their behalf; but these contained no vision-

ary plan of universal negro suffrage, but one based only on property and education, nor of death to all "traitors," but of general self-government and amnesty after acceptance of emancipation and union.

He had a vision of long lines of patriotic and public-spirited citizens, who would follow the footsteps of their ancestors; but no foolish and visionary idea of an American aristocracy. He had a vision of faith in the American people; but no fatuous belief that the majority was *always* wise and right and the people free from failings; on the contrary, they needed leaders to reason with them, reforms that would take away special temptations and dangers, such as lurked in the spoils system, the restraint of a written constitution and stable laws, interpreted and enforced by an independent judiciary, to prevent haste, violence, or injustice in the exercise of their powers. He had a splendid vision of a great party, acting from pure principle, a vision which he first saw at the Buffalo Free Soil Convention in 1848, which was the beginning of the Republican party; but he did not follow party ties to an extreme. He sacrificed himself as one of the first Independents in politics in his hopeless run against the "regular" candidate of the Republican party for Congress in 1868, Benjamin F. Butler, when Butler stood on a platform of paying the government bonds in greenbacks.

He had a vision of an historic church, with an ancient liturgy consecrated by generations of use and approval, "the united prayers and praises, the common worship, the confessions with the mouth, the anthems and ascriptions, the regular reading of Scriptures, the 'Christian Year' with its returns of solemn observances, the sacraments exalted to their

proper place," all carried on with dignity and reverence, and round which cluster the tenderest associations of each devout Christian; but he had no sympathy with those who would restrict the mercies of God to the few within the Church of England and its American branch, who held special views. While he had "no doubt the Almighty has every variety of instruments working in every variety of ways to secure the well-being of his creatures,"[1] neither did extreme ritual please, nor the one-man service satisfy him.

No doubt Mr. Dana's life was, on the whole, a disappointment to him; but he kept up the same pluck with which, as a boy, he sprang past the hesitating crew of the Pilgrim, and, with John "the Swede," lay out on the bowsprit in snow, hail, and sleet off Cape Horn, diving beneath the great masses of water and holding on for life, till they furled the jib of their little 190-ton brig. The pathos of his life did not degenerate into sadness. He never for a moment let himself become a man with a grievance, no, not even on the loss of the English mission in 1876, so well told in the Life, nor at the "law's delay" before the master's report ended in his favor the Beach Lawrence suit, which had charged him with plagiarism, nor at the smallness of his professional income at times. The letters from Rome, even to the last, were full of humor and animation. The late W. W. Story, the sculptor, described to me a dinner which he gave to a party of American friends in Rome on Christmas Eve, 1881, four days before my father's last and fatal illness. Mr. Story said he had never seen surpassed the wit and brilliancy with which Mr. Dana led the con-

[1] From the Journal of 1844.

versation that evening. Of the same dinner, my father wrote in a letter that he had "never enjoyed such a company more."

Well did Mr. Adams finish the Biography with a letter from Mr. Dana's old partner, the oracle of cultivated Boston, Mr. Francis Edward Parker, written shortly after my father's death, in which is this sentence: —

"Buffeted as he had been for more than twenty years, disappointed in every high ambition of his life, fallen on evil times and evil chances, how bravely he kept his courage!"

II

JOURNAL ENTRIES OF CONVERSATIONS WITH "UNCLE EDMUND"

EDMUND TROWBRIDGE DANA. *Born*, 1779. *Died*, 1859. Harvard, 1799.

"He is the last of those who connected my youth with Europe and art, and the great men and great events of fifty years ago." (Journal of R. H. Dana, Jr., 1859.)

CALLED at Uncle Edmund's last evening [Dec. 6, 1851]. He was very entertaining. Talked about his friend Arthur Maynard Walter and their good times together in London. He said he hardly knew which Walter preferred, the Theatre or the House of Commons. He enjoyed a front seat in the gallery as much as in the pit, and rubbed his hands when the house filled as much as when the curtain rose. He described a debate he heard on the bill for a levy *en masse*, when Bonaparte was at Boulogne. Pitt, Fox, Sheridan, Canning, and Windham spoke. Fox, he said, had a long back, was corpulent, with a narrow upper part and wide lower part to his head, heavy-looking, but with fine eyes. His manner was entirely without graces, and his utterance very rapid, but he was full of illustration and very interesting. Pitt, he says, had a less original mind than Fox, and less variety, but his manner was very impressive, his voice full and melodious, his utterance slow and emphatic, with a certainty and copiousness of speech which made

Edm^d T. Dennis.

you perfectly certain that he would not fail or become embarrassed or confused. His arrangement was methodical, and he made every subject clear. His moral character gave him great weight, and he was considered independent and disinterested. Sheridan looked and acted like a theatrical manager, full of flourish and graces. He was particularly severe on the late administration (Pitt's, for Addington was then premier), and Pitt replied. Sheridan had not spoken for a long time, and Pitt congratulated him on his recovery of his speech, and said he had been bottled up so long that he came out with a bounce. The next day there was a caricature, entitled "Uncorking Sherry," representing Pitt in a wine vault, each bottle being a likeness of a member, and Pitt with a towel and a bottle under his arm, drawing the cork, the bottle being Sheridan.

Sir William Pulteney, who was then a very old man and the largest landholder in England except the Duke of Bedford, attacked Pitt's administration, and said he had wasted the public money, that the war was wrong, and our allies had taken our money and deserted us. Pitt replied: "I may have spent the public money unfortunately, possibly unwisely, but not corruptly or selfishly. The men who sustained that war did it for the public good, not for personal profit." And pointing his long finger at Sir William, said, "I — never — elbowed — a — tenth — Scotch — cousin into office," etc., etc. Sir William arose in a rage and made a furious, incoherent reply.

Canning had lately been married, and spoke in a white waistcoat and new buckskin gloves. Uncle E. said he saw the dust fly from them as Canning struck his hands together as he arose and before he began.

Uncle E. was in the gallery when the famous interlude occurred that over-set the gravity of all but the solemn Speaker. There was a long interval of silence, with nothing whatever to do, while the House was awaiting some report. It became tedious and rather embarrassing. At last, a man called out from the gallery, "Mr. Speaker! give us a song!" No one could fully appreciate this who did not know the preternatural gravity of Abbott and the intense dignity of the Speaker in those days. The whole house and galleries broke out with laughter, but the Speaker rapped and sent up the officers to arrest the delinquent. Uncle saw the man who did it, and when the officers came into the gallery, this man pointed towards a respectable, middle-aged Quaker, and the officers took the poor innocent out, neck and heels, and carried [him] before the grand assembly. He protested his innocence, and the mistake was so ludicrously apparent, that the House got into another fit of laughter, and the whole thing was dropped.

In a call on Uncle Edmund [Jan., 1854], he told me another anecdote of Washington, which he had from Grandfather. During the visit at Valley Forge,[1] at the time when the cider was produced, a New England gentleman at the table told a story which took the fancy of Washington mightily. He lay back in his chair, completely overcome with laughter, and spread his handkerchief over his face. In a few moments, he withdrew his kerchief, and appeared the

[1] Hon. Francis Dana, grandfather of R. H. Dana, Jr., visited Washington at Valley Forge in 1779, having been appointed by the Continental Congress chairman of the committee on the conduct of the war, with instructions to proceed to Valley Forge and to report.

grave man again; but in half an hour afterwards, this story suddenly came over him and he fell back in his chair again, fairly convulsed with laughter, and it was some time before he recovered his composure.

This is to be remembered, because it is wrongly said that Washington never laughed.

He also said that when he was in Virginia, in the Randolph family, he heard an anecdote of Marshall's visit to Mount Vernon. M. was an absent and rather negligent man. He was riding out to Mount Vernon with a party of gentlemen, on horseback, in the fashion of that day, with saddle-bags. When within a mile of the house, they alighted and opened their bags and made some change in their dress. Marshall, it seems, at the last tavern, had, in absence of mind, put over his horse's back the pair of saddle-bags that happened to be nearest to him, and had thus exchanged his for those of a plain farmer going to market; and when the other gentlemen took from their bags, coats, vests, and cravats, Marshall drew out two long squashes, a pumpkin, and some ears of corn. This threw the whole company into a fit of laughter. Just at this moment, Washington drove up, and saluted them, and inquired into the cause of the sport, and when they told him in broken language interrupted with bursts of laughter, pointing to Marshall and his bags, Washington got off his horse and leaned up against him, hardly able to stand for laughter.

NOTE. Substantially the latter story is told in the Life of Judge Jeremiah Smith, and repeated by Mr. Owen Wister in his "Seven Ages of Washington" (p. 94). There are some differences in detail. In the Life of Judge Smith, it is stated that it was a portmanteau instead of saddle-bags, that it belonged to a peddler instead of a farmer, and that Washington "rolled on the ground in his laughter" instead of leaned up against

his horse. The story as it appears in Judge Smith's Life was told by the Hon. Joseph Lewis, for thirty years a member of Congress, and who was called by Jefferson "residuary legatee of federalism in Virginia," to Mr. Mason. Mr. Mason told it to Judge Smith, who told it to a lady, who in turn wrote it down the evening after, and years later gave this written account to Mr. Morrison, Judge Smith's biographer.

That the stories differ in detail is good proof of substantial accuracy. Too much agreement in detail from different witnesses savors of "cooked-up" if not manufactured evidence, or at least as coming pretty directly from one common source. Note, for example, the differences in the accounts of the same incidents in the Gospels. The main point in these two accounts of this incident of Washington's life is that Washington laughed, and laughed uproariously, at Marshall's plight.

III

THE BIBLE IN SCHOOLS

[Mr. Dana's argument was in defense of a school committee of a Maine town, that had refused a child permission to attend the local public schools, on the ground that the child refused to be present when the English version of the Bible was being read. The father, a Roman Catholic, was a citizen of the town and a taxpayer, and he brought suit against the committee.

The defense was that members of a school committee were public officers, that the law and constitution of the State of Maine gave these officers discretion as to what should be read and studied in the schools under them, that the law was clear that "a public officer, exercising a discretion, judicial in its character, cast upon him by law, is not liable to private action for damages unless he acts in bad faith or from malice." Mr. Dana then maintained that, as the Bible had always been read in the public schools of Maine, as the teachers omitted those passages in the Bible in which the translation was contested by the Roman Catholics, and as there was no evidence of special bad faith or malice, the members of the school committee were not liable in damages to the father.

So much of the argument as regarded the constitution and statutes of Maine at the time (which have since been altered as to the reading of the Bible in the public schools), and the general doctrine maintained by Mr. Dana as to the personal liability of public officers, above stated, I have omitted, and include in this collection only the portion relating to the Bible itself. Mr. Dana suggested that the real remedy for the father, and others who agreed with him, was to appeal to the legislature to change the law, and not to the courts to get damages under existing law.

Mr. Dana's argument was published and widely distributed

by religious societies, and attracted much attention in the press of the country at the time.]

It may be said that, in executing the power conferred on us by the statutes, we have gone to an unreasonable length, and so far violated the common rights of the plaintiffs, as to make our course unconstitutional. Not conceding that this question is open to the plaintiffs, I take pleasure in meeting it freely and frankly. This is, of all others, the point on which my clients, supported by a unanimous vote of the late town meeting at Ellsworth, desire to meet their opponents. I take the ground, then, that

[The Bible] has been used in the public schools of Maine since she has been a state, and while a part of Massachusetts, from the beginning. It is not required as an act of religious worship, nor is there any allegation or pretense that doctrinal passages have been selected, or that it has in any way been used as a means of conveying instructions or impressions favorable to the peculiar tenets of any sect or denomination of Christians, and unfavorable to those of others, or that the passages in which the two translations differ have ever been read in the school. The defendants do not put their case upon the ground that they have a right to compel the reading of the Bible as a means of teaching the principles and facts of a revealed religion, in which many, as Jews, Mohommedans, and skeptics of all shades, do not believe; still less, the reading of this particular version, to which Roman Catholics, and other denominations of Christians, may object. The objection is to the use of the book at all. The Bible is a collection of books, sixty-six in number, the work of different writers, on various subjects, written at very remote

periods of time, first called THE BIBLE, THE BOOK, by St. John Chrysostom at Constantinople, in the fifth century. In this collection there are portions historical, portions purely narrative, portions poetical and imaginative, portions conveying by precept and parable moral lessons. As to all these portions, there is no contest on the point of translation. Indeed, there are only some half-dozen places in the whole collection in which the Douay Bible makes a dogmatic and doctrinal issue with the common English Bible. And, forsooth, this entire book, the noblest monument of style, of thought, of beauty, of sublimity, of moral teaching, of pathetic narrative, the richest treasury of household words, of familiar phrases, of popular illustrations and associations, that any language has ever possessed, is not to be read in schools, because the parents differ in opinion as to the translation of Μετανοήσατε. The contested passages have never been, so far as appears, read in the school, but the entire book, the whole sixty-six books, narrative, parable, history, moral law, psalms and spiritual songs, prophecy, all are to be banished, because somewhere, in some epistle, in a place never read in school, "repent" is not rendered "do penance"! Need I ask your Honors if our act is unreasonable? Is not the objection far more unreasonable?

What can these defendants do? They are obliged by law, they have no option, to see to it that the principles of morality and all the virtues shall be taught in the schools. They are to "take diligent care and exert their best endeavors" that these principles be impressed on the minds of the children and youth. The public-school system was intended to provide, as Chief Justice Shaw said, in *Sherman* v.

Charlestown, "a system of moral training as well as seminaries of learning." How can principles of morality be taught except on the basis of religion? A system of morality, not founded on religion, is not morality, but only an enlightened self-interest. Whately says that the maxim "honesty is the best policy" is a true maxim, but that he who acts upon that maxim only, is not an honest man. So is it with what is called morality, divorced from religion.

But our opponents may say that they do not object to the Bible, but to the translation. We cannot read the original in the schools. This is the common English Bible, which has always been used. It is not a "*Protestant* Bible." Great portions of the translations were made by men in the bosom of the General Church, before the Reformation, by Wickliffe, Tyndale, Coverdale, and Matthew. Testimony to its accuracy has been borne by learned men of the Roman Church. Leddes calls it "of all versions the most excellent for accuracy, fidelity and the strictest attention to the letter of the Text"; and Selden calls it "the best version in the world." As a well of pure English undefiled, as a fountain of pure idiomatic English, it has not its equal in the world. It was fortunately — may we not, without presumption, say providentially — translated at a time when the English language was in its purest state. It has done more to *anchor* the English language in the state it then was, than all other books together. The fact that so many millions of each succeeding generation, in all parts of the world where the English language is used, read the same great lessons in the same words, not only keeps the language anchored where it was in its best state, but it preserves its universality, and

frees it from all material provincialisms and *patois*, so that the same words, phrases, and idioms are used in London, New York, San Francisco, Australia, China, and India. To preserve this unity and steadfastness, the Book of Common Prayer has done much, Shakespeare, Milton, and Bunyan have done much, but the English Bible has done tenfold more than they all.

From the common English Bible, too, we derive our household words, our phrases and illustrations, the familiar speech of the people. Our associations are with its narratives, its parables, its histories and its biographies. If a man knew the Bible in its original Greek and Hebrew by heart, and did not know the common English version, he would be ignorant of the speech of the people. In sermons, in public speeches, from the pulpit, the bar, and the platform, would come allusions, references, quotations, — that exquisite electrifying by conductors, by which the heart of a whole people is touched by a word, a phrase, in itself nothing, but everything in its power of conducting, — and all this would be to him an unknown world. No greater wrong, intellectually, could be inflicted on the children of a school, ay, even on the Roman Catholic children, than to bring them up in ignorance of the English Bible. As well might a master instruct his pupil in Latin, and send him to spend his days among scholars, and keep him in ignorance of the words of Virgil and Horace and Cicero and Terence and Tacitus. As a preparation for life, an acquaintance with the common English Bible is indispensable.

The Douay Bible, on the other hand, was translated on the Continent, by men of English origin,

it is true, but who, banished from England by the Protestant persecutions, were not Englishmen in speech, in literature, in association, or in habit. The English ecclesiastics of the Roman Church, even to this day, in style and speech, as in habit and feeling, are un-English. Their literature, their training, their associations, are Continental. Much more so was it then, when England was closed against them. Their translation suffered accordingly. Where it does not agree with the common Bible, it is comparatively a piece of awkward, unidiomatic English. Even where its style may have been as good originally, the language has settled upon our basis, and not upon theirs. Even among Romanists themselves, it does not furnish the household words, the popular phrases, the illustrations and associations known to the people and cherished by their orators and scholars. One of those who has forsaken the communion of the English Church has expressed himself in deeply touching tones of lamentation over all which, in forsaking our translation, he feels himself to have forgotten and lost. These are his words: —

"Who will not say that the uncommon beauty and marvelous English of the Protestant Bible is not one of the great strongholds of heresy in this country? It lives on the ear, like a music that can never be forgotten, like the sound of church bells, which the convert hardly knows how he can forego. Its felicities often seem to be almost things rather than mere words. It is part of the national mind, and the anchor of national seriousness. . . . The memory of the dead passes into it. The potent traditions of childhood are stereotyped in its verses. The power of all the griefs and trials of a man is hidden beneath its

words. It is the representative of his best moments, and all that there has been about him of soft and gentle, and pure and penitent and good, speaks to him forever out of his English Bible. . . . It is his sacred thing, which doubt has never dimmed, and controversy never soiled. In the length and breadth of the land there is not a Protestant with one spark of religiousness about him, whose spiritual biography is not in his Saxon Bible."

Throwing dogmatic theology out of the question, can any one doubt that the real question here is, not whether each child shall choose its version, but whether the Bible shall be read at all? There are various translations. The Romanist thinks μετανοέω wrongly translated. The Unitarian thinks there are mistranslations and interpolations favoring the doctrine of the Trinity. The Baptist thinks that βαπτίζω should be translated *immerse*. And all of these have their translations. But all have heretofore agreed that the common English Bible should be read in the schools. If one is to insist on his version, another will on his. Confusion and scandal will be introduced, and few school committees or teachers will trouble themselves to enforce such a motley system as that. Besides, if there is a conscience against reading a dangerous book, will there not be equally a conscience against hearing it read? But if there is a conscience in the Papists against hearing μετανοέω called "repent," will there not be a conscience in the Protestant against hearing it called "do penance"? No, may it please your Honors, until a uniform translation can be agreed upon, carefully avoiding controverted passages, as we have done, the Bible will not be read in the schools at all. And I feel that I am pleading

here, to-day, for the Bible in the schools, and not on any question of option or choice in translations. If the Bible is not read, where so well can "the principles of morality and all the virtues" be taught? "How infinitely superior," says Maurice, "is a gospel of facts to a gospel of notions!" How infinitely superior to abstract ethics are the teachings of the narratives and parables of the Bible! What has ever taken such hold on the human heart, and so influenced human action! The story of Jacob and Esau, the unequaled narrative of Joseph and his brethren, Abraham and Isaac, the pathetic and romantic story of Saul, the death of Absalom, Naaman the Syrian, the old prophet, the wild, dramatic, poetical histories of Elijah and Elisha, the captivities of the Jews, the episode of Ruth, unsurpassed for simple beauty and pathos, and time would fail me to tell of Daniel, Isaiah, Samuel, Eli, and the glorious company of the apostles, the goodly fellowship of the prophets, and the noble army of martyrs! Where can a lesson of fraternity and equality be struck so deeply into the heart of a child as by the parable of Lazarus and Dives? How can the true nature and distinction of charity be better expounded than by the parables of the widow who cast her mite into the treasury, and the woman with the alabaster box of precious ointment? Can the prodigal son, the unjust steward, the lost sheep, ever be forgotten? Has not the narrative of the humble birth, the painful life, the ignominious death of Our Lord, wrought an effect on the world greater than any and all lives ever wrought before? — even on those who doubt the miracles, and do not believe in the Mystery of the Holy Incarnation, and the Glorious Resurrection and Ascension!

Remember, too, we entreat you, that it is at the school alone, that many of these children can read or hear these noble teachings. If the Book is closed to them there, it is open to them nowhere else.

Nor would I omit to refer to the reading of the Bible as a part of the education of the fancy and imagination. Whatever slight may be thrown upon these faculties by men calling themselves practical men, they are powerful agents in the human system, which no man can neglect or abuse with impunity. Preoccupy, preoccupy the minds of the young with the tender, the beautiful, the rhythmical, the magnificent, the sublime, which God in his bounty, and wisdom too, has poured out so profusely into the minds of his evangelists and prophets! Nowhere can be found such varieties of the beautiful and sublime, the magnificent and simple, the tender and terrific. And all this is brought to our doors, and offered to our daily eye. If the mind of the youth, girl and boy, is not preoccupied by what is moral, virtuous, and religious, the world is ready to attack the fancy and imagination with all the splendors and seductions of sense and sin. Their minds will have food for the imagination and fancy, and if they are not led to the Psalms, and Isaiah, and Job, and the Apocalypse, and the narratives and parables, they will find it in Shelley, Byron, Rousseau, and George Sand, and the feebler and more debased novels of the modern press of France.

Following then the guidance of the statute, and acting in good faith, with no sectarian object alleged or offered to be proved against us, we trust we have made no unreasonable use of authority, in declining to remit the requirement of reading the common Bible.

IV

SPEECH ON THE JUDICIARY; MASSACHUSETTS CONSTITUTIONAL CONVENTION OF 1853

[In the Biography of Mr. Dana, Mr. Adams says of the Constitutional Convention: "Among its members were many of the principal Massachusetts public characters of the time, including Charles Sumner, Rufus Choate, Henry L. Dawes, Robert Rantoul, Henry Wilson, Sidney Bartlett, Benjamin F. Butler, and both the Marcus Mortons, the father who had been governor, and the son who was subsequently chief justice. The convention was presided over by N. P. Banks. Though it was Dana's first appearance in a deliberative body, he at once came to the front. Indeed, there was no man in the convention who rose more rapidly or into greater prominence as a debater than did Dana."

This speech is the most celebrated of Mr. Dana's in the convention, and has been reprinted several times when the question of the appointment and tenure of judges has come up in other states. Of this speech, Rufus Choate, who was present and heard it, said, "It has been magnificent. It is philosophical, affecting, brilliant, logical, everything."

As matters stood then in Massachusetts, the judges were appointed by the governor and council for life. The issue, as Mr. Dana puts it in his journal at the time, is as follows: "At the committee, Governor Morton, Chairman, reported it inexpedient to make any change in the appointment or tenure of judges. Wilson moved an amendment to limit the term to ten years, they being all nominated by the governor. Dr. Hooker moved to amend that by making them elective by the people for terms of seven years. On these together came the debate."

In the early days, all the judges of the thirteen states were

appointed substantially in the same manner as in Massachusetts; but gradually in the fifties most of the states changed this method, usually with a view of "diminishing executive patronage." As it stands to-day (1910) in Massachusetts, Delaware, Maine, New Hampshire, and for the United States federal courts and the courts of the territories and the District of Columbia, as in England, all the judges are appointed by the chief executive. In Connecticut, Mississippi, and New Jersey, the judges of the highest court are appointed by the governor, — subject to confirmation by the senate in Mississippi and New Jersey, and by the legislature in Connecticut. In Rhode Island, South Carolina, Virginia and Vermont, the judges of the highest court are elected by the two houses of the legislature in joint convention. All other state judges are elected by the people. The terms of office vary from life-tenure in the federal courts, Massachusetts, New Hampshire, and Rhode Island, through periods varying from twenty-one years in Pennsylvania to two years in Vermont. The usual terms are six years for the highest courts and four years for the lower courts. Therefore, it is only in Massachusetts and New Hampshire, and in the federal courts, that the judges are both appointed by the executive and hold office for life.[1]

The attempt to take the patronage out of the hands of the executive has only transferred the patronage to the party machines; so that in New York, for example, the judicial candidates are subject to large assessments for party purposes, usually equivalent to a whole year's salary, by the dominant party of the judicial district.[2] The state bar associations in many states, for example, in New York, have been active in suggesting nominations and courageous in openly opposing bad ones, and this alone has kept the bench as efficient as it is under the elective system.[3]

[1] See *Constitutions of the United States*, Frederic J. Stimson (1908), book iii, section 654.

[2] *American Law Review*, vol. xxii, p. 766.

[3] For examples of the subserviency of judges to the ruling powers in politics under an elective judiciary system, see "The Beast and the Jun-

The New York State Bar Association has a standing committee "On the Selection for Judicial Office" with representation from each of the nine judicial districts. In Pennsylvania, on the authority of the Hon. William H. Hornblower, of New York, when addressing the State Bar Association of Massachusetts, no judge can be nominated by the predominant party unless he is approved of by the great railroad of the state. After years of experimenting with other methods in other states, almost every eminent lawyer throughout the country says that the Massachusetts system, for which Mr. Dana spoke, is far the best.

Mr. Dana's speech had the effect of defeating the proposition of electing the judges; but the proposition for appointment by the governor and council for a term of years was adopted by the convention. It was this latter proposition which was the chief cause of attack on the Constitution proposed by the convention, and led to its defeat by a majority of about 6000 in a total popular vote of 125,000.]

Mr. President: I suppose the Convention will agree with me, without argument, that the subject which we are now upon is one of more enduring interest, and more universal concernment, than any that has been before us. It often happens, I may say it usually happens, that those subjects which are followed by the most serious consequences are not those which attract at the moment the greatest attention. They come often, like the kingdom of Heaven itself, without observation. So it would be if we should make this great fundamental change in our Constitution without full consideration.

Why, Mr. President, we propose to change one of the great organic departments of the government. The government of Massachusetts is divided into three departments, the legislative, the executive,

gle," by Ben B. Lindsey, of Denver, Colorado, in *Everybody's Magazine*, 1909–10.

and the judicial. The feature which most characterizes the judicial department is the manner in which it obtains and holds its power, and that we propose to change essentially. A system which has existed in England from the birth of liberty to the present time; a system which has existed in Massachusetts from the origin of the state to this hour; a system which has existed in our national government from the beginning; a system which exists in nearly all New England, and in almost all of the states of the Union; a system under which our judiciary has grown up, and under which every man in the United States of America has grown into manhood, — for those changes which have been made have not yet reared a generation, — that system you threaten to subvert. And why? I ask, why?

It was said here when we came together, and it met the approbation of the Convention, and it has since been repeated frequently by judicious men, that we should make no changes unless there was some abuse. Is it not a fundamental maxim of America that no change should be made until you find an existing evil to be remedied? After achieving our independence, though smarting under the tyranny of England, almost hating the very name and sight of an Englishman, we yet adopted a Constitution very like that of England, more like it than any other that ever existed. Why? Because it was formed out of institutions which stood here. I take the liberty to say that the American system is this: a system which recognizes existing institutions; a system of adaptation; a system of reforming abuses. The American system is not to speculate, not to theorize, not to make experiments in government, but to take

things as we find them, and adapt ourselves to them; to recognize the state of society and then make reforms where there are evils to be reformed. Now I ask how, this being our philosophy, do you propose to treat the judicial department? In the first place, is there any abuse existing? Has any man heard of an abuse? I have not heard of it. Has it been said in this Commonwealth that the judicial department has encroached upon the executive? I have never heard it. Has it been said that the judiciary has encroached upon the legislative department? Has it been said that the judicial department is oppressing the people? Nobody has ever whispered it. Has there been a petition to the legislature to change the Constitution in that particular? Petitions on other subjects have been presented; but I do not know of a single instance where a petition has been presented to either branch of the legislature, asking them to change the judiciary department. Is there a gentleman in this Convention who knows of an instance? Is there any indication of a popular wish that this should be done? You may read articles in the newspapers written by one man; but have we any indication that the public wishes any change here? I have looked in vain for any indication of the kind.

As regards offices, two things were proposed to be done: to elect certain officers, not being judges, and to diminish and not increase the power and patronage of the executive. We have, then, the voice of a majority of the legislature in 1852, and the voice of two of the great parties in 1853, in favor of this Convention; and I look in vain for the slightest indication of any intention to change the tenure of the judicial department. I do not wonder, therefore,

that my friend from Natick (Mr. Wilson) said yesterday that he could not vote for an elective judiciary without an appearance of something like bad faith. He told this Convention, and he told them truly, that by his addresses and speeches, and by the one hundred and fifty letters — I sympathize with him — which he had written to all parts of the Commonwealth on the subject of this Convention, he was so committed against an elective judiciary that he could not sustain it here. But he does not stand alone. If there is any gentleman of prominence enough to be noticed, who has gone into one town of Massachusetts, and presented the case of this Convention, and included in the issue an elective judiciary, I should like to know who and where he is. Every gentleman to whom I have spoken has told me that he has done no such thing, but quite the contrary, — that he has studiously avoided raising that issue.

Let us recollect the history of this Convention. In 1851 the proposition for a Convention was rejected by a majority of some four thousand, and it was very doubtful whether it would be adopted in 1852. It was therefore necessary to conciliate all persons. I do not wish to state it upon my own knowledge, but I put it to the honor of every man, whether this question of a Convention was not put to the people last November upon an understanding that the judiciary should not be changed; whether there were not thousands of votes obtained throughout the state for this Convention, which would not have been given if it had been understood that an attack was to be made upon the judiciary system? I confess that is not precisely the appearance with

which I should wish to see so great a change auspicated.

But I do not confine myself to the subject of an elective judiciary, for there are two propositions: the one is to make it elective, and the other is to limit the tenure of office.

The twenty-ninth article of the Bill of Rights says: —

"It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is *therefore* not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well."

Now, I say, the amendment of the gentleman from Natick (Mr. Wilson) [1] is fundamental in its character; because it changes a provision which has existed since 1780, and which, since 1780, we have declared to be essential to the security of the rights of the people and of every citizen. He proposes to place the judicial department more or less under the control and patronage of the executive.

Now, Sir, did it ever happen that such fundamental changes were made by the representatives without some notice of a desire upon the part of the people that they should be made? Do such changes come

[1] For the appointment of the judges of the Supreme Judicial Court for terms of ten years, and of the justices of the Superior Court for terms of seven years.

from the people with no note of preparation, no petition, no resolution, no speech, no public meeting, no signature, no address, with no man daring to open his mouth in a public meeting and speak for them? Was there so great a public demand for the change, such a rush of public sentiment, calling for the change, and yet five months ago the boldest dare not advocate it before the people?

Now, Sir, I am not particularly incredulous. My temperament rather inclines me to superstition than to skepticism, but it would require greater credulity than mine to believe that there is such a demand. If there be, the secrecy of it is one of the miracles of the nineteenth century. It is very difficult to believe that, if such is the fact, even my friend from Natick, who feels the popular pulse better than most of us, should not have felt a single throb last November, nor a single throb last February, and yet that the public is now, with a fevered excitement, calling for this great change. I cannot believe it.

Why, Mr. President, what is the nature of the amendment proposed? I have said it was fundamental in its character, and to be sure it is. The judicial department, as it exists here, is a peculiarity of republican institutions. They have a judiciary in England, but they have it under very different circumstances from ours in the United States. The judiciary of England has no control over the acts of parliament. They have no right to pass upon any act of parliament and compare it with the Constitution. They have no constitution there except as an idea, — they have no written or legal constitution. But in this country the judiciary passes upon the validity of the acts of the legislature. It is a coördi-

nate as well as independent department of the government. Yet, even in England, where they have not the same motive for making it independent, they have guarded it in every possible way.

You know, Mr. President, that up to the time of the Revolution, in 1688, the judges were dependent upon the crown for their appointment and for their tenure. The crown removed a judge whenever it pleased, and therefore, the judges being dependent upon the crown, the people could not have as fair and impartial a tribunal as the lot of humanity would admit. After the Revolution, a clause was introduced into the Bill of Rights that the judges should hold their offices so long as they behaved themselves well — not a life-tenure, for it is not the same thing, but so long as they behaved themselves well. They were liable to be removed by impeachment for misconduct official, or by the address of parliament for misconduct unofficial, or for any other cause. They were made responsible in an eminent degree, but they were made independent. They, however, went out upon what is technically called the "demise of the crown": that is, when the king died. This is very much such a rule as the gentleman from Natick proposes, that upon the demise of the executive, which is once a year, one or more judges shall be placed at the mercy of the crown. He provides that six judges shall go out in ten years, which, allowing for deaths, resignations, etc., would make about one a year, so that one judge of your supreme court, every year, will be at the mercy of the crown. Now in England they thought that was wrong. It left still a high degree of independence to the judiciary. As long as the king lived, the judges were absolutely independent of him.

The judge had his salary, he had his office, and he held them entirely independent of the will of the king. But, then, each judge would feel that it might be that the king would die during his term of office, in which case, for one moment his office would be at the mercy of the crown. It might not be, and again it might be, that the king would die during his term of office. To prevent this chance affecting his impartiality, when George III ascended the throne, at his majesty's own suggestion, a law was passed providing that the judge's commission should survive the demise of the crown, so that in no case could the commission of the judge be placed at the mercy of the crown.

Mr. Butler,[1] of Lowell (*interrupting*). I desire to ask the gentleman a single question. Was not the reason for the adoption of the law in England, to which he has just alluded, because upon the death of the king some time would elapse in the coronation of his successor, and in starting him in his government, in which, unless some such provision was made, there might be a failure in the administration of justice?

Mr. Dana. No, sir; that was not the reason. The reason given by the king was in these words, because "the independence of the judges is essential to the impartial administration of justice, best for the security of the liberties and rights of my subjects, and most conducive to the honor of the crown."

Now, I want the people of Massachusetts to-day to be as magnanimous as that. We have the power — the people of Massachusetts have the power — to

[1] Benjamin F. Butler.

elect their judges every month or every year, if they choose, but I want them to come forward and show no less magnanimity than was shown by George III. I want them to recognize and act upon the principle that the "independence of the judiciary is essential to the impartial administration of justice, best for the security of the liberties and rights of the citizens, and most conducive to the honor of the *state*." Therefore let us surrender, as a people, that prerogative. Let us put upon us this SELF-RESTRAINT. There is no greater virtue in a free people than the willingness to exercise self-restraint.

When gentlemen tell me they are not afraid to trust the people, — and that is the favorite cry here: trust the people! trust the people! — I must say to them, that is not the issue. The question is, Will not the people who have got the power impose upon themselves some self-restraint? Is not that essential to republican government? Cicero once said that the Athenian Republic could no more exist without the Areopagus than the world could exist without the providence of God. Now, sir, a constitutional government can no more exist without a power to assert the supremacy of the Constitution than the world can exist without the providence of God.

Sir, what is a Constitution? Why are we here, in a Convention, to revise one? Why are we taking the time and money of the Commonwealth, and our own, to make a Constitution? Is it not enough to have judges, legislatures, and governors? The legislature is elected by the people, and why not trust the people? Why have a Constitution at all? Why not trust the people? I put it to those gentlemen, who ask me why I will not trust the people to elect our judges,

to tell me why they do not trust the people to make our laws? You do not do it. The most radical man in this Convention would not trust the people to make the laws; but by our own will we impose upon ourselves a restraint. In the exercise of judgment, prompted by humanity and a sense of justice, we say we will make no laws except within the range and limit of that Constitution. And, further than that, we not only take care to say that we do not intend to do it, but we take care to provide against any possibility of our doing it. We provide a tribunal and give it the power of deciding, when we have passed a law, whether that law is in accordance with the Constitution or not. That is what the people do in making a Constitution; and when it is made, when our labors go out to the people and are ratified by them, the people take care that the Constitution shall not be changed except through a laborious, complex, and difficult process.

The legislature comes together every year, elected by the people, and makes laws. The government executes those laws. But notwithstanding all that, the poorest man in the Commonwealth — one man alone against the whole people of Massachusetts — can set those laws at defiance if they are not made in pursuance of the Constitution. The poorest woman, the alien, the infant in its cradle, is protected against the will of the majority of the people of Massachusetts. The foreigner, whoever he may be, barbarian, Scythian, bond or free, may assert and maintain a constitutional right against the will of the majority of the people of Massachusetts.

Now I ask if it is not the feature that distinguishes our republican government, that an individual has

some rights against the powers that be — that the minority have some rights against the majority — that one man has rights which he may assert against the people? That is the great and honored distinction, and how are you to preserve it? It is not enough to say that it shall be preserved. There must be a power to preserve. That power is the judiciary. Every act passed by the legislature must undergo the scrutiny of that tribunal, and if it is not in pursuance of that higher law of the Constitution, it must be set aside. And for that reason, chiefly, I wish to have that judiciary made independent. Does not the essential theory of our government require it? It must be independent of the executive, otherwise he will execute the laws as he pleases. It must be independent of the legislature, otherwise they will make such laws as they please. I have a right to demand that the governor shall not execute such laws as he pleases, but only such as the Constitution allows. I have a right to say that the majority of the people, upon sudden popular impulse, shall not do just what they choose to do, but only what the Constitution allows. If the majority of the people of Massachusetts, by any sudden caprice or passion, should insist upon taking my life or liberty or my property, without due process of law, I wish to be protected against it.

Mr. President: I can protect myself against one man, alone. The majority can always protect itself, but a single man needs to be protected against the multitude. The minority needs protection against the majority. And how can that be had, unless you establish a tribunal above the mere will of the majority? If you constitute the supreme court as that tribunal, how can it accomplish that purpose unless

you make it independent, not only of the executive, but of the legislature and of the temporary will of the majority of the people.

I have heard it said, and I think it has been said by some one upon this floor, that our ancestors, John Adams, John Hancock, and those who made the Constitution of 1780, blindly followed the English precedent, and adopted an independent judiciary as they found it in England, where it was made independent to prevent the encroachments of the crown, and that they had sought to make it independent here, where the same reason does not exist. Now, sir, I undertake to say, not upon my own judgment alone, but upon the judgment of the soundest men in this republic whoever have written or spoken upon this subject, that an independent judiciary is more important in a republic than it is in a monarchy. Sir, I repeat, without fear of intelligent contradiction, that an independent judiciary is more important in a republic than in a monarchy. And why? In a monarchy, you may always appeal from the sovereign to the people. In a monarchy, the power is lodged with the sovereign, and you may always appeal from him to the people, even if the judiciary is false. But I ask you, in this country, where the people are sovereign, to whom is a man to appeal from the people? Where does an appeal lie, this side of Heaven, from the majority of the people? Suppose a popular majority carry through the legislature a law which infringes upon the rights of an individual: I ask any gentleman to tell me where that man's appeal lies against the will of the popular majority? Sir, it lies nowhere unless we can have a judiciary independent of the changes of a popular majority. We can have no pro-

tection for the Constitution unless we make independent our guardian, the judiciary, which is to say whether a law is constitutional or not, and say whether the executive executes that law constitutionally or not. If we go from hence, not leaving behind us an independent judiciary, our labor in this Convention is in vain.

Having spoken of the history of this institution in England, I wish to call the attention of the Convention, one moment, to the history of the institution in America. In 1780 our ancestors adopted their State Constitution, in which they declared it was essential that the judges should hold their offices as long as they behaved themselves well. I wish to know if John Adams and James Bowdoin and John Hancock, who made the Constitution of 1780, with halters about their necks, followed blindly the English precedent? I wish to know if they did not feel, as keenly as we do to-day, that they were exempt from English precedents? They did understand that matter fully. They knew that in a republic there was no appeal from the sudden action of the sovereign people, unless to a judiciary; whereas in a monarchy there is an appeal from the sovereign to the people. They knew that we had a Constitution which the judiciary must pass upon; whereas in a monarchy they have no constitution for any judiciary to pass upon. For these two reasons, they saw that it was even more important to have an independent judiciary in a republic than in a monarchy. Such is the language of Chief Justice Marshall, of Story, Kent, Hamilton, Jay, and Madison.

When the Constitution of the United States was formed, the resolution giving the judges a tenure dur-

ing good behavior passed by an unanimous vote. As much as they differed on all other subjects, when they came to the question of an independent judiciary and the good-behavior tenure, there was an unanimous vote of the Convention in its favor. That system has continued from that time to the present day. Such, too, is the Constitution of New Hampshire, of Connecticut, and of many other states of the Union. In Rhode Island, it is substantially the same. I grant you that the experiment of an elective judiciary, for short terms, is in the course of trial in several states. It has not yet been tried, for you cannot try an experiment of this sort until a whole generation has grown up under it. That has not been done. We have grown up under an independent judiciary. Our noble institutions — the security of life, liberty, and property here — have been acquired under an independent judiciary. The experiment of a *de*pendent judiciary has not been tried through one generation, or anything like it. It has been tried to some extent in New York and Maryland. I think the gentleman from Natick (Mr. Wilson) was quite right in saying that judicious persons from New York had advised us not to try the experiment of an elective judiciary in Massachusetts.

I hold in my hands a letter from an eminent lawyer, in which he says: "It is short of the truth to say that their united influence (election and short terms) has brought our judiciary into decline and decay." I have another letter, from one of the most distinguished men of the United States, resident in Maryland, who says: "It is generally admitted, in this state, I believe, that the change in our system has altogether disappointed the promises of its authors, and that if

it could now come before the voters of the state, as an isolated question, it would be rejected by an immense majority."

There are gentlemen in this Convention who have been in Maryland within the year past, and who can bear testimony, I know, to the correctness of this statement. I saw an article in the New York "Evening Post," the other day, in favor of an elective judiciary, which spoke volumes of warning to us. The writer was in favor of the elective judiciary as a matter of theory, but at the close of the article he advised the people of Massachusetts to be careful not to allow the election of judges to come at the same time with the election of the other officers, saying that that had been a fatal mistake in New York, and that the consequence had been that the judiciary had fallen into the political cauldron. That admission is inestimable. The result is admitted. The judiciary is in the political cauldron. The reasons assigned, I doubt. I do not believe that the judiciary has fallen into the political cauldron because it happens to be chosen on a particular day of the year. I believe it is the inevitable tendency of things, certainly in a state like New York, and will be the tendency of things almost everywhere. You recollect that, in New York, when the elective judiciary first went into operation the system worked very well. The first election was made irrespective of parties. All parties came forward and nominated a mixed ticket. Nearly all the old judges were reëlected, and everybody was delighted. The next year it was not quite so well managed; the next year less so; and now the system has fallen helplessly into the great cistern — and the well is deep and there is nothing to draw with. The reason assigned is not

sufficient, because, for the first two years, although elected on the same day with other officers, the judges were kept clear of all political connection. The march of political parties is irresistible, and office after office has fallen before that march. Although I am yet young, I can remember the time when the removal of postmasters by General Jackson was considered an enormity. I can remember when the removal of custom-house officers was considered an enormity. But the work of removal from office has gone on increasing, until, at last, every executive officer falls before the march of political parties. The spoils belong to the victors. The thirst for blood has come on, and is not to be slaked. The leviathan is not so tamed. Human nature is not to be thwarted by changing the day of the year upon which you are to elect your officers. All officers that parties can control fall before them. How were the trustees of Harvard College to be chosen by the legislature? The first year they were chosen irrespective of parties; but the very next year the dominant party met in caucus, nominated an entire ticket, and carried it through. In New York, the "Evening Post" says that judges have fallen into the political mill. They beg in New York that we shall not elect our judges on the seventh day of November, for fear the same thing will happen here. I say, make it surer than that. Let us not choose them at all, and so we *must* be safe.

It may be said by some persons, Why should it not fall into the political mill? I think sound reasons can be given why it should not. The law must be independent of the changes of the popular will, because this same venerable Constitution, some of which, I trust, will remain, with or without its rust, says: "In

the government of this Commonwealth the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them, *to the end it may be a government of laws and not of men.*"

I have heard arguments made on this floor upon the assumption that this is a government of men, and not of laws. But our Constitution says it is a government of laws, and not of men. I have heard gentlemen speak here, under these sacred auspices, as though whatever a majority chose to do at any time was the law of the land. If so, we do not want any Constitution. The Constitution is designed for the protection of individuals and minorities against majorities, and therefore it is that the judiciary must not be made dependent upon the popular will. One party and another comes up, and then comes the third party, that sweeps the board. But these changes must not affect the organic law. One reason why they would affect the organic law I think to be this — that you would inevitably elect party judges. That has been done, and it will be done again. There is another danger I apprehend far more than this, and which has not been often adverted to. Take, for instance, the case of the "Maine Law," as it is familiarly called. Suppose the judges of the supreme court were equally divided as to the constitutionality of that law. One of the three goes out of office at the end of this year, and the people of Massachusetts are to pass upon his reëlection. If he is reëlected that law perishes, but if another man, of a different opinion, is elected, that

law survives. Earnest men will say, at the polls: "We admit that Judge Doe is a very good man, a very capable, and a very honest man, but you know that he believes that law unconstitutional. You know the terrible consequences of intemperance, and how it is spreading over this country. You know that it burns up human habitations faster than accident or crime burn up the habitations that the mechanic rears. We can give you a judge just as honest, just as capable, just as learned, whose opinions upon that subject we know to be correct. Now every vote for Judge Doe is a vote for ruin, though he is a good man; and every vote for Judge Roe is a vote for temperance and happiness and salvation." How is that argument to be resisted? It will not be resisted. In times of great popular excitement for a moral cause, or any other cause, it will not be resisted. Take the Fugitive Slave Law. Suppose the court equally divided upon that subject. A new judge is to be elected. Fugitive slave cases will come up before that court for a hearing. I wish to know if the people will not wish to ascertain something about the antecedents of their judges upon that subject. I wish to know whether they will vote in the dark. I tell you nay. The votes will be given for principle, and not for men. Yes, says my friend opposite (Mr. Burlingame), as I see by the nod of his head, he is ready for it now. That is young America. "Principles, and not men," will be the cry. Furthermore, the choice of the people will be considered as an expression of the law. If a majority of the people should vote for that judge, then it would be said that the people had spoken, and that they had instructed the court, and that the court must follow the voice of the people. I do not

know but that the argument which I consider to be conclusive against the change will operate on some minds in its favor; but let me beg every gentleman, before he allows himself to be influenced in that direction, to consider that he is not put here by his Maker to carry out his own will upon the earth. The people of Massachusetts were not put here to carry out their will upon the earth. We were put here to do justice, to protect the weak, to resist the mighty, and to secure to each his right. The democratic doctrine that I know anything about, and that I respect, though I have not enrolled myself under that name, is not that which says that the people may do what they can and will, but that which declares every man equal before the law, and that he should have his right. I ask professed Democrats here, which of these two is the democratic doctrine: that every man may do his will, and that the majority may do whatever they can and will, or that every man, even the humblest, has his rights, and that under the Constitution all men, without distinction of caste, condition, property, or education, are equal, and that they all shall have their due before the law. We can now protect the rights of every man by saying to him, you have a tribunal, and if the multitude pursues you, you can flee to the horns of the altar and lay hold thereon. Although the avenger of blood may pursue you, and the multitude follow hard after you, lay hold for your life on the horns of the altar. We will give you a tribunal which shall protect you until the danger be overpast. That I understand to be the genius of our Constitution, and therefore it is, I say, that the judicial office should not be blown about by every wind of doctrine. Therefore it is that the people, by a

transient vote of the majority, should not settle the law. They may make their law through the legislature, but, with the Constitution in my hand, I can say to the poorest and humblest man, — the poor trembling African, to the foreigner, who has first landed on our shores, and who does not know his way through the streets of the city, and does not know the elements of our constitutional law, — I can say to him: "You have come to a country where no man can oppress you, where the government, where the legislature, and where the people itself cannot oppress you. If a sudden movement of popular opinion should turn against you, and you should become odious, or stand in the way of their will or their interests, you may come to my humble office, and, with a piece of paper no bigger than a man's hand, I can set at defiance a majority of thousands of the people of Massachusetts. I can point to the Constitution. I can go to the tribunal and assert your rights." "Aye," says my client, "you may, but how do I know that that tribunal will assert it?" My answer is: "I admit, a tribunal would be of no use, unless it has power. It has the arm of the executive, it has the whole arm of the State to enforce its decrees." "But," says my poor client, "that is not enough. How do I know they will sustain that Constitution against a popular majority? How do I know they will sustain it against the legislature? Your legislature has passed a law abridging my liberty and taking away my property, and the people are bent upon executing it, and at once. How do I know that your tribunal will stand against it?" I can give but one answer. I can say: "The men who formed this Constitution — wise, noble men — said it was essential

to the preservation of the life and liberty of each man, that he should be tried by a tribunal as impartial and independent, as the lot of humanity will permit. *Therefore* they say, 'The judges should hold their offices, so long as they behave themselves well.'" I say to him, that I admit it is said, that a man who controls the subsistence of a man may control his will; and we have provided that the salaries of these judges cannot be touched while they are in office. I admit that whoever can turn a man out of his office may control his will, — not must control it, but may. Now, I say to the poor trembling suitor: "These men, whom you see before you, hold their offices so long as they behave themselves well; they cannot be removed, nor can they in any way be affected in their persons, property, hopes or fears, for their decision in your case."

But, if I had to say to him, here are these five judges, I hope they will do you justice, I believe they will, and I pray that they may; but I know, that two of them are candidates for reëlection to-morrow, and party excitement runs high, and the feeling is very strong in the community; or if I had to say, that the Convention which had lately been in session had provided that these judges should depend for their reappointment upon the executive, and he should ask me, how is the governor disposed? I must tell him, that the governor agrees in his views with the people. The bill has been passed by the legislature and the governor has signed it, and he is to appoint one judge to-morrow, and the next day he is to recommission another or not, just as he may see fit. Now, I could not say to that man that he had as independent a tribunal as the lot of humanity would permit. I want

to say to him that all the law can do to make the tribunal independent and impartial has been done. I do not say that it will then be impartial. Our judges, now, may not be impartial. They may be governed by social feelings, and to some extent they are. They may be governed by the influence of a clique to which they belong. That may be true; and so it will be under any system. That is human nature. Our Constitution has not said that every man shall be tried by an angelic tribunal; nor that every man shall be tried by a superhuman tribunal; but by a human tribunal, as impartial as the lot of humanity will permit. I cannot warrant judges against personal, social, and party feelings; but for that very reason, I do not want to add another and a certain operation of a power over his subsistence or his office.

And when this man has stood before our tribunal without fear, as far as a man can be without fear before his fellow men, and when he has gone away with justice done to him against the popular will; when that tribunal, standing higher than anything this side heaven, making the most noble exhibition that humanity can make, — protecting the right of a single man against power, — when that has been done, I turn to my grateful client and say: "Now, I wish you to acknowledge that the old Commonwealth of Massachusetts deserves some gratitude for a *self-imposed restraint.* When the people of Massachusetts might have made a law which would have walked right over you; when the people of Massachusetts might have provided that there should be no tribunal and no Constitution, and nothing but the action of the public will; when they might have mocked you with a tribunal dependent upon the will of that very

majority against which you are to be protected; when they might have mocked you with a tribunal dependent upon that very executive against whose enforcement you are to be protected, they have restrained themselves, and said, — *In order that justice may be done to the weakest — in order that in any moment of excitement, in any hour of frenzy or mistake, we may not touch the hair of the head of the humblest man, we will give him a tribunal which shall be independent of the fluctuations of our opinions or passions.*

Having shown, gentlemen, why we should have an independent judiciary, let them point to me one single reason why we should make the change. There is no popular demand for it, and there has been not one single case of complaint. We have the power of impeachment. How many judges have been impeached in this State? Not one, in my day. Has a judge been removed by the legislature? But one, and none in my day. What does that indicate? It indicates that it has not been found necessary. And what does that indication prove? It proves that we have had a tribunal as impartial as the lot of human ity will permit. Our judges, let gentlemen bear in mind, are not irresponsible. They may be impeached; they may be removed by a vote of the legislature. Do gentlemen recollect that, at this moment, it requires no more power to remove a judge of the supreme court, than it does to change a man's name; that, on a vote of the two branches of the legislature, the governor can remove a judge of the supreme court; that a conviction in one tribunal, after impeachment by another, may remove him from all office forever? What more responsibility do gentlemen want? It is not a question of responsibility. It is a

question of dependence. Now I admit, freely, that all these gentlemen who hold that there ought to be no constitution practically; that there ought to be no tribunal independent of the changes of the popular will, — they ought to support an elective judiciary, and the sooner the better, and make them elective not once in ten years, but every year. They cannot stop short of that.

Tyranny is simple. It is as simple as the rule of three. But these complex governments in which liberty exists are not to be made or changed easily. They grow. Institutions, as was said by the gentleman from Marshfield (Mr. Sumner), grow out of men, and are not imposed upon men. Now, this institution has been hundreds of years in growing. We have lived under it to this day and without any complaint. I must take the liberty to say that if this Convention were to destroy this system with no complaint made against it, and should rush out upon the road of experiment, possessed by a mere theory, when there is no abuse to be remedied, it will be the rashest act that a sober community ever committed.

I wish to say to this Convention that the judiciary is the feeblest department of the government, and needs protection. It is the feeblest department of the government. So say Hamilton, and Jay, and Madison; so says Marshall, so says Story, so say Kent and Rawle and all the writers on the Constitution. And is not that perfectly plain? What is the judiciary? It passes upon private questions between man and man. It interprets the laws. The powerful department of the government is that which makes the laws. The legislature holds the purse; the legislature creates offices; the legislature establishes the compensation;

and in the legislature, distinction, conspicuity, and political power are to be acquired. But the judiciary creates no offices; the judiciary fixes no compensation; the judiciary makes no laws. It has merely a voice and a head; it has no arm; it has no purse; it has no will. The legislature has a will, and the executive has an arm; but the judiciary has neither power nor will; it can only pronounce. When it has pronounced, it can only throw itself upon the executive to execute its decrees.

The judiciary is not the popular branch. It does its business in quiet and stillness, and with but little conspicuity. The legislature is the place where all men go who are bound on a course of popular preferment, and who wish to stand high in the popular affections. The judiciary has no strength except in the public confidence and in its own integrity.

Many persons have been prejudiced against the present system of the judiciary because of events which have occurred in our own State within the last three years. Many have sat uneasily under the existing system, for they have thought that the judgments of the court have been construed against what they considered — and I agree with them — the true interpretation of the Constitution on the subject of fugitive slaves.

Now, I take it upon myself to say that I suffered as much in my feelings as any man under those decisions of the Supreme Court of Massachusetts, and of the Circuit Court of the United States. I thought them then, and I think them now, wrong. I say this with diffidence, after decisions in such places. But I can truly say that in my greatest distress there was one drop of comfort left me. I knew that those de-

cisions came from men who were not making them for their judicial lives. I knew that they came from men who were not making them because their offices or salaries depended upon their making them.

I felt that we had a tribunal, not entirely impartial, — I cannot say that, because it was a human tribunal, — but a tribunal for which the law had done all it could do to make it impartial. I knew, and I wonder other gentlemen do not remember, that had those judges been elected, we should have stood no better chance than we did then; for the popular majority was against us. Had these judges known they would be obliged to go through a popular election the next week, I wish to know if we should have argued our causes with any more confidence on that account. No, Sir; the confidence felt in going before these judges was this; and it was of unspeakable comfort to me, that I had a tribunal as independent as the law could make it. When this alarm, this fear — and fear is always cruel and always unjust — was spreading over the country; when political parties and great leaders thought it necessary to take a certain position; when men thought that the Union and the shoe trade, and I do not know how many other things, were in peril, and certain things must be done, I felt, Mr. President, the comfort of knowing that these judges held their offices and their salary, utterly irrespective of these popular determinations. Gentlemen are fond of talking as if the people were always in the right. Now I have not lived long, but it has been my misfortune not always to have thought them in the right; and I submit to gentlemen who have sustained the democratic doctrine in this State through these long years of defeat, up to this day, whether they have always

thought the people right. I ask the Whig party, who have gallantly maintained their position before the nation, — beaten three times out of four, — whether they have thought the people always right. I submit to my own associates whether they have thought the people of the nation, or of this State, always right on the great question of resistance to the spread of slavery and the slave power. No, Sir; this always has been, and always will be the case, that among all the changes of the government, and changes of popular opinion, the public is sometimes unjust. No man has considered his own nature well, without feeling that he has something within him to satisfy him that he ought not to be trusted with arbitrary power.

Is there one man here who in a moment of resentment, in a moment of passion, in a moment of supposed insult, has not thanked God that he was not possessed of arbitrary power? I suppose every man feels the necessity of self-restraint; and if he cannot restrain himself, he thanks God for putting somebody over him who can restrain him. So it is with the good people of Massachusetts. They know that they cannot trust themselves with arbitrary power, and, therefore, they make a Constitution which will restrain them. They know that they can neither trust the legislature nor the executive with arbitrary power, and therefore they make a tribunal to decide whether they have acted in accordance with their general will, and done nothing which it was not their general will should be done. So it is with an individual. He may have a general will to serve God, and a special, temporary will to do wrong when a temptation presents itself; but his desire is that his special and temporary will shall be overruled and restrained, so that his

conduct may conform to his general will. Now the general will of the whole people is expressed in the Constitution; but there may be some act of the legislature, some sudden freak of the executive, contrary to that general will. We, therefore, wish to get such a faithful witness to this our general will, as shall protect every man against the consequences of what we or our servants may do, in a moment of rashness.

I have trespassed very much on the patience of this Convention, and I will now merely say a few words in relation to this matter of reappointment. I have said all that I propose to say now, upon the subject of an elective judiciary, for I do not conceive that on that point we are in any very serious peril in this Convention. Gentlemen may be disposed to say, if we cannot make judges elective, we will make them, in some manner, dependent upon the executive for their term. I wish to ask those gentlemen who are in favor of an elective judiciary, what they have to say to this proposition of the gentleman from Natick. What kind of a proposition is it? In how many states of the Union has the experiment been tried, of having their judges hold office for ten or seven years, and then be reappointable by the executive? There may be some such, but I do not know of any myself. Upon what principle does it rest? I can very well understand upon what principle an elective judiciary rests, but I cannot so easily understand upon what principle you base the doctrine that the judges are to be made dependent upon the executive. Why, Sir, I thought that gentlemen were afraid that the executive had too much power and patronage; and we have, therefore, been stripping the executive of

the power of appointment of numerous minor offices. Yet we are now asked to clothe him with the power, every year, to appoint a judge of the Supreme Court, and to reappoint him at his pleasure. I do not understand how this is carrying out the principle, that "because the power of the executive has increased, and is increasing, it ought, therefore, to be diminished." I ask those gentlemen who stood by the Report and Address of the Free Soil Committee, only nine months ago, — nay, not so much, not nine, less than five months ago, — which declares that the power and patronage of the executive must be diminished, with what face they can come here and advocate the clothing of the executive with this transcendent power, which I do not know that a state in the Union has clothed him with. The executive designates and nominates the judge now, but after he is so nominated and appointed, he is entirely out of its control. I say it is of little consequence who appoints, if the appointment is made by an intelligent body, provided the judges hold by an independent tenure. I cannot see any fatal objection to the judges being elected by the people in the first instance, if they are to be independent of the changes in the public will, and responsible only for misbehavior, although I think a judge is the better for not having been through a political campaign, and not being connected with its issues. I assure every gentleman here, that I will go to the fullest extent to make a judge responsible to the people, if any charge of misconduct can be brought against him. I will consent to anything that is judicious, if your power of impeachment and address does not make them sufficiently responsible. It is the fact of a judge's looking to a reappointment, that

makes the danger. I do not see that the danger is very much affected by the question whether they look to the executive who sits in that chamber, or look to a party caucus that meets somewhere in School Street, or State Street, for their reappointment. Whether, as the fatal day approaches, his friends besiege the doors of the ante-room for a week or a month beforehand, while he is expected to sit all unconscious, on his bench, "as impartial as the lot of humanity admits," or whether they take by the buttonhole the members of the State Central Committees. I cannot see that there is much to choose between them. Gentlemen who suppose that our judges would stand just as they have stood, are mistaken, in my judgment; for the chance of reappointment, or the chance of reelection, will depend very much on their decisions.

The people and the political parties will be governed in that matter by these considerations. The executive will be elected by a party. That party has principles, — I do not mean the low purposes of party, but the great principles of party, — and those men who have got principles are the dangerous men of whom I am afraid. I am not afraid of the rogues; I am not afraid of the camp-followers, who hang about parties; but it is the party that has great principles to carry out, that gets excited and loses its balance, and when the moment of election comes, and the whole community is stirred up, then I am afraid that the calm and quiet retreat of the judiciary will be invaded.

I see that my friend from Fall River (Dr. Hooper) is making out a recipe against me; but I want him to understand that I am only afraid of party principle because it will operate in giving direction to the laws

of the land, whereas the laws of the land should stand far above all such influences as those of party principle. The law should rest upon fundamental principles, should be given out wholly irrespective of the divisions of party. The law is a science. The judges are professors of a science. Their own will must not intervene. The will of popular majorities, unless in the form of laws constitutionally made, should not intervene.

I do beseech gentlemen not to be deluded by the arguments, that if you cannot get an elective judiciary, you must take all that you can get; because, in this case, you have got to take a very different sort of thing from what you wish. What gain is it to popular power, or the popular principle, that the judge holds for ten years, with a transaction at the end of that time between himself and the governor, instead of holding independently during good behavior, averaging thirteen years? You increase the executive power, and create a feeling of dependence and a risk of partiality, for no adequate compensation. The tables show us that the judges' tenures average only thirteen years, allowing for deaths and resignations. The governor would have, in doubtful cases, the control of a majority of the Supreme Court every year. He will appoint a judge every year, and that may turn the majority in close cases. So you will have a supreme court with the majority, in the balanced cases, in the hands of the governor. If there is a new judge to be made, he must find him; if there is a judge to be reappointed, he has to reappoint him or not, at his option. In ordinary cases, I doubt not that judges would be appointed according to their behavior; but, in the highest tribunals, judges would be appointed,

eventually, according to their opinions. They must have their platforms, and they will have their platforms, and we shall have the mortifying exhibition of our judges, or their friends, at the door of that executive chamber, petitioning for reappointments. Now, Sir, I do not want to make them dependent upon the changes of popular elections, either upon one man or a dozen men, I do not think it makes a great deal of difference which. This principle, — I call it a principle, out of respect to my friend from Natick, — this experiment, which, I believe, he is almost the first if not the very first to embark in, is putting the judicial department substantially under the control of the executive department.

Mr. Wilson. I will inform the gentleman that he will find the same thing in Maine and in several other states of this Union.

Mr. Dana. "Several states." That is rather indefinite. There are thirty-one states in the Union, and three makes several! and I am told there are but three out of thirty-one. It is founded upon a violation of principle. Our Constitution says that the departments shall be distinct — no one department "shall *exercise* the power of another." Our ancestors never even dreamed that we would give the head of one department *power over* another. They never supposed that in the course of affairs it would ever happen that one department would be bound, hand and foot, and delivered over to another. They thought it quite enough to provide that one department should not exercise the powers of any other. "The executive shall never exercise legislative or judicial powers, or either of them." But they can do it indirectly, if your judges are to be dependent upon the executive for

reappointment. I maintain, therefore, that if you adopt the experiment of the gentleman from Natick, you will violate the great substantial principle of this government, in relation to these three departments. If you make the judges dependent for their reappointment upon the executive, how can you tell where that dependence begins or where it will end? Gentlemen may say that they will not be influenced; but you cannot tell how far they will be influenced, and the great difficulty is, that the judges themselves cannot always tell whether they are influenced or not. I have no doubt that in such circumstances most judges will pronounce decisions which they believe to be impartial, but they do not know themselves. It is tempting Providence. This self-deception is one of the most subtle and most easily besetting sins incident to humanity. If you make the judges dependent, you will not discover, and they will not discover, what an influence this has upon their inmost thoughts and feelings. If the office were not a desirable one the judge would not have accepted it. Will not this feeling increase and strengthen with the time in which he should hold the office? I submit to every gentleman upon this floor, if, after a man has held an office for ten years, a reappointment is not eminently desirable. Suppose a man takes an appointment at the age of fifty, and holds it until the age of sixty, and then goes back to his profession. You put the salaries so low that a man cannot lay up anything. He goes back to his profession, and he finds himself incapacitated, as it were. His hand is out. Competitors, younger and more energetic, have entered the field and have gathered the business into their garners. His old clients are gone. Imagine such

a man going back into his profession, his head whitened by the snows of threescore winters, competing at the bar with the young and middle-aged, with the advantage of ten years' daily practice on their side. This judicial office is a peculiar one. You cannot get a man to take it as he would an executive or legislative office. The judge must study a long time to qualify himself for its duties; and if he is thrown out, he must begin the world anew on a little chamber practice, for he cannot ordinarily resume the active duties of the profession. Thus, Sir, his office is a desirable one, and he knows it, and his family know it, and his friends know it. Suppose he looks to the governor for reappointment. As the day approaches, his mind naturally looks forward to that time and dwells upon it. As it comes nearer and nearer, it enlarges until it fills the whole horizon. This idea is something which cannot be set at naught. It will have more influence upon some than upon others, but you are bound to remove all such temptations from their path. There is nothing else in the whole range of subjects which we have discussed, whether the plurality system or the majority system, the executive council, the town system of representation, or the district system, upon which you may not experiment more safely than upon this. Do not experiment upon the impartiality of your judges. Do not experiment to see how much temptation they can withstand, with their office and salary on the one hand and conscience on the other!

I ask if anybody has petitioned us that this experiment might be tried? Has anybody complained of anything wrong? Oh! save your judges from this humiliation — save them from temptation! Save

from distressing doubts and suspicions the men who go to them for justice! I cannot conceive of a distress more cruel than that of a client whose life and all is at stake, with a doubt resting upon his mind as to the impartiality of the tribunal. That doubt of the impartiality of the final tribunal will be a doubt that will try all the institutions of this country. Save the client from that doubt! Banish from his mind the constant impression, as he looks over the faces of those five judges: "You, Sir, next year, are to be reappointed by such a party," and "you, Sir, this year, must be reappointed by such a party," and "I am standing upon the very platform which that party has denounced — I hold the opinions which that party is sworn to overthrow!" The first thing that I should wish is, that all the citizens should feel perfectly secure from that doubt; and in the day of our great extremity, if it should ever come, let us be able to thank the old Commonwealth that she has saved us from that distress. You have only to stand where you are, and you secure it. Why not do it? Why venture on this experiment? Who has required it at your hands?

Stand where you all stood in October, 1852, or where the people thought you stood. Stand where you stood in February, 1853, and where the people believed you stood, when they went to the polls, and sent you here. Stand where all three of the political parties stood on the day when the people sent us here. Do not exhibit the spectacle of making this fundamental change, with no call from the people to have it made; with no notice to the people that it was to be attempted, and with no chance for the people to elect men with reference to its being attempted. Stand by it because we have had an independent and

honorable judiciary under it. Stand by it, because no experiment has ever been tried under the other; for no generation has grown up under an elective judiciary. And I say to the gentleman from Natick (Mr. Wilson), and to the gentleman from Fall River (Mr. Hooper), by all means, let it stand until they have agreed what they will substitute in the place of it. I say, make no reform until your institutions need reform, and until you have agreed what reform you will make. Do not exhibit to the world a spectacle, as we shall in Massachusetts, of a convention called to make changes which the popular voice had indicated, taking in hand to make substantial changes of which the people had given no intimation; making change for the sake of change; without any admitted evil to be remedied, and upon a theory about which themselves cannot agree. Sir, the gentleman from Fall River will see the force of the illustration, when I tell him it is bad enough to see two surgeons sitting by the side of a sick man, quarreling between themselves what they will do with him; but to have them seize hold of a man in health, and bind him hand and foot, to try experiments upon him, and not to be able to agree what they shall do to him! that is cruelty as well as folly. And yet, Sir, that is precisely the state of things here.

A Voice. That's a fact.

Let gentlemen lay this to heart. They are not in a position to try this experiment here. Nobody has discussed this project; yet without discussion, gentlemen would force it upon the people. Gentlemen are uneasy. We are coming towards the close of the session, and gentlemen say that we must not delay an hour. But I say to the friends of the Convention,

if they wish to save time, do not save it by rash and rapid work. Save it by letting alone what you have not time to do well. If the people want the change, it can be afterwards made through the legislature. But my word for it, Sir, the people do not want it. I so judge by the symptoms. If there be no symptoms of a desire, I judge that there is no desire.

Sir, we hold our seats here under an implied obligation not to touch the judiciary; not merely, as the gentleman from Natick says, not to make it elective, but not to change the tenure at all. Therefore, I say again, stand by the Constitution until you see a difficulty to remedy, and seeing the difficulty, stand by the Constitution still, until you can agree as to what that remedy should be. Stand by it until the people have called for the change; and when they have called for it, and the evil is apparent, and the remedy agreed upon, I promise to give you my humble aid, but not till then.

V

USURY LAWS

February 14, 1867

[During Mr. Dana's first year in the Massachusetts Legislature, 1867, the repeal of the usury laws of the state became a matter of discussion.

"That this law should be stricken from the statute book had always been tacitly accepted as something hardly within the range of reasonable expectation. It had been handed down from the earliest settlement, was of Biblical origin, and was ordinarily regarded as one of the pillars of civilized society; for without some law fixing a legal rate of interest, it was popularly supposed the borrower would be completely at the control of the lender. When this question came up, Mr. Dana contributed to the debate one of the most admirable presentations of the argument against usury laws which has ever been made. Its effect at the time of its delivery was great, the repealing measure passing the House of Representatives, to the surprise of every one outside the State House, by a majority of 43 in a total vote of 197. When published, the fame of this speech went abroad, and it made a deep impression beyond the limits of Massachusetts. It has since been printed repeatedly, and is still one of the documents in use wherever the question of the repeal of usury laws is under discussion." [1]

There was no organization assisting Mr. Dana at the time. It was the case of the power of one man's single speech. Apart from any need of enlightenment in this Commonwealth, where there is practically no danger of reëstablishing usury laws, the speech is still well worth reading. It holds the attention with as much interest as if the repeal were the question of the hour.

[1] *Biography of R. H. Dana, Jr.*, vol. ii, p. 337.

There is a fascination about it, and many of the principles established and illustrated are fundamental ones in political economy which all should know.

That Mr. Dana's arguments and predictions are amply confirmed by forty-three years of experience is well known in general. Of late years, it has been again and again noted that in Boston, where there is no usury law, rates of interest during a panic were below those of New York, where there is a legal limit. Nor has the New York seven per cent legal limit prevented the exaction and payment of interest at the rate of ten, twelve, twenty-five per cent a year and even more.]

THIS subject, Mr. Speaker, is one of first-class importance. Usury laws had their origin in the beginnings of history. They have been dealt with by moralists, theologians, philosophers, statesmen, and economists, — by church councils, synods, parliaments, royal edicts, and legislatures, from the Law of Moses to the hour of the present debate. They had a noble origin — an origin in kind hearts and religious purposes. They had a common origin with sumptuary laws, and laws regulating the prices of the necessaries of life. One cannot but respect the motives of those who, in ancient times, desired, by strong laws and heavy penalties, to repress luxuriousness of living, and to protect the poor borrower against the rich and potent lender, and the poor consumer of the necessaries of life against the wealthy producer.

Sumptuary laws are no strangers to this country. They were enforced in the early days of New England; but who would think of calling for them, or of permitting them, now?

How has it been with laws regulating the prices of the necessaries of life?

It seemed to philanthropic men that a poor con-

sumer should not be obliged to pay a great price to the rich producer. All are charged to give to the poor; and the rich producer was not to be allowed to compel the poor consumer to pay a high price for the necessaries of life — for bread.

If we go back, I do not know how many centuries, we shall find philanthropic men urging a system of laws which should compel the producer to sell at moderate rates. Nothing could be more humane in intention, nothing more in accordance with the spirit of Christianity. But when they came to put the system into operation, some difficulties showed themselves. For instance, suppose what I call the natural price of a bushel of wheat, that is, the price which, without legislative interference, would be the ruling rate when the producer and consumer were brought together, was ten shillings. But ten shillings is a high price for a poor consumer to pay. The philanthropic legislature says he shall have it at nine shillings, and the rich producer shall sell it at nine shillings. In those days the laws were enforced — and no law should stand that cannot be enforced. Gentlemen can see that if ten shillings was the proper price, and the producer was compelled to sell at nine, he would not go on producing wheat, but would turn his capital and industry in another direction. So the consequence would be that the next year the price of wheat would rise, and the poor consumer be in a worse condition.

Something must be done to increase the supply. The first attempt was to compel the agriculturist by penalties to produce and sell. Immediately it became apparent to all that there was no reason why he should be forced to raise and sell at a losing price, when nobody else was obliged to work in that way.

Then the friends of the poor resorted to a bounty. That seemed reasonable. The natural value is ten shillings, and you wish to sell to the poor at nine; and so you will pay the producer a bounty of one shilling per bushel from the public treasury, that he may sell at nine. Why is not that proper? Two difficulties immediately occur. The first is that you cannot make one law for selling to the rich, and another for selling to the poor. You cannot say to the seller, if a rich man comes to you to buy, charge him ten shillings, and if a poor man comes, sell for nine; for, who is rich, and who is poor? You cannot make a law to benefit the poor alone, so that the rich will not also get the benefit of it in the market, as well as the poor.

Another objection to the bounty was that, as it must be raised by taxation, every man was taxed for a shilling a bushel, that every man might buy a shilling a bushel cheaper. Nay, it was worse than that; for it is known that, what with the expenses of collection and the notorious leakages in all revenues, not more than two thirds of a tax collected reaches its point of destination. So that one shilling and sixpence was levied to save a shilling.

That was the end of the bounty laws, and of all attempts to regulate the price of the necessaries of life. Yet what could be more commendable than an attempt to reduce the price of the necessaries of life? I suppose there is no sane man anywhere now, who would propose to regulate that price by legislation. You would say it is absurd to do so. Mr. Speaker, excuse me, you cannot say it is absurd. It was the faith and belief of centuries; it was the practice of generations; and wise men, men as wise in their day

as we in ours, only they had not the same experience as we, — yet as wise, and certainly as benevolent, — advocated this system. The arguments in support of the system were as urgent and as sincere as those which have been used on this floor against the repeal of the usury laws. It was experience, and the principles deduced from experience alone, which taught men that they could not legislate a cheap market. For there is nothing harder to get out of a man's mind, when he is conscious that he has undertaken a course of conduct from pure and philanthropic motives, than his first convictions. It is easier for a camel to go through the eye of a needle, than for a good man to surrender, to the teachings of experience, a darling system for which he knows he has made sacrifices, and with which he has identified all he has and is.

The next system, in the same category, from which we may draw instruction, is the colonial system. It was this: The mother countries — Great Britain, France, and Spain — established laws requiring their respective colonies to deal solely with them. The consequence was that we could not send to Cuba and get a pound of sugar, but that pound of sugar must go to England and pay duties and pass through the merchant's hands there, and then come here and pass through the merchant's hands, so that we had to pay a great sum for a pound of sugar. Massachusetts could not sell or buy except with the mother country. As an equivalent, it was agreed that the mother country would not buy the products of the colony except from the colonies themselves. It was thought that all this circuity of trade and reduplication of business was a creation of wealth. By and by it came

to be discovered that both countries were paying a heavy taxation, and both obliged to buy in a dear market and sell in a cheap, that each might save a little out of a forced interchange. This system may seem now absurd; but you know we had to fight our War of the Revolution partly because England had a false notion of political economy as to her colonies. Spain has not given up her system yet. Our longer experience has shown the mistake of the colonial system, but generations, wise and prudent in other things, adhered to it and fought for it.

Consider the system of protection, — protection of American manufactures. I can remember when men advocated protection for the sake of protection. Public policy may still lead us to levy duties on imported articles, in order to shelter an infant manufacture until it can take root in the soil. But political economy compels us to be reasonably sure that the article is one which can be profitably made or produced here, after protection is withdrawn. When we have a given amount to raise for the government, and duties on imports are the best mode of raising it, we charge and distribute the duties so as best to counteract foreign protective systems and aid our own industry; but this is secondary and incidental protection. How many statesmen are there now that would raise a surplus revenue for the sake of protection? It is now common knowledge that this revenue, as we fondly call it, is only a tax upon ourselves, one third of which is spent in the collection.

I will now ask the attention of the House to the question more immediately before us; and I hope this introduction has not been without its bearing. I trust we shall have gained something by advanc-

ing in this manner to the examination of our subject.

Mr. Speaker, I will never vote for a bill, in whatever form it comes, the object of which is, or the tendency of which is, to raise the rate of interest on money, by law. I will never vote for a bill the effect of which is to enable the interest on money to rise, if it can be by law kept down for the benefit of the poor borrower. I admit it has been true in times past — I trust it is no longer true — that the borrowing were the feebler class, and the lending the powerful class. If in those times you would have favored either, it should be the borrower. Perhaps in ancient days such laws may have been of some practical use, as a protection to the poor.

I said the usury laws had a noble origin, in religious convictions and in philanthropic motives. Therefore I desire to speak of them with a degree of respect. The Mosaic law has always been supposed to prohibit the receiving of interest for money. All interest was usury. The Mosaic law did not prohibit the taking of usury from strangers, and therefore it was not considered a *malum in se*, but was simply a regulation between the Jews themselves. Gentlemen will see the difference between the state of things then and now. The Jews were a peculiar people, isolated, exclusive, without commerce, without trade, without manufactures, — nothing but the distaff and shuttle under the tent, or two women grinding at a mill. They had no mode of investing capital. Capital consisted in gold, jewels, and raiment, which was laid up in chests, and which they used as they needed. For a man to lend money to his neighbor was very much like a man's now lending a book to his neighbor.

Any of us would be ashamed to charge for lending a book to his neighbor. I have been in countries where the capital of the rich was laid up in iron chests, and they could not invest it. That was the state of things among the Jews, who were brethren, one man's sons. For those reasons they would not take money for their little loans, — mere accommodations between one another.

When Christianity became the religion of Europe, this Jewish system was introduced and insisted upon by the church, in the Judaizing tendencies of those days. I think it no disrespect to say that the ancient church went too far in attempting to fasten the Mosaic policy upon the governments of that period. But I do not think gentlemen will find that the prohibition of interest was due solely to the Mosaic system. It is to be ascribed in part to Christian philanthropy. Borrowers were poor, lenders were rich.

Nor was it the system of Moses alone. What greater name than that of Aristotle? He said money could not produce money, as it was, in its nature, barren. The earth could produce; its products could be consumed; but money produced nothing. Therefore, said the great Aristotle, money ought never to bear rent. Now who do you suppose was the first person that exposed this fallacy? Not one of his contemporaries, nor one of the philosophers of the middle period, but the great reformer, John Calvin, in one of his powerful Latin paragraphs, exploded the fallacy of Aristotle, and relieved mankind from its incumbrance. But how long do you think it had borne sway over the minds of men? Nineteen hundred years! One of the effects of the Reformation was to lessen the influence of these laws and maxims; yet

Christians always took hold of them with great tenderness.

Gradually there came up a great deal of mercantile and manufacturing industry, and a necessity for capital; and the capitalists, instead of locking up their money, put it in a position where it might increase; in other words, they lent it. Gentlemen will see that capital is most called for where there is the most industry. A live country calls for capital, and can pay for it; a dead country cannot. After the discovery of America, capital was in demand, and men were ready to pay interest on it. Then the theologians were obliged to review their teachings. If it had come to this, that money must be had, and men would pay interest on it, ecclesiastical ethics must be revised. It was then noticed that in one of the parables, the man who got ten talents for his ten talents was praised — "Well done, good and faithful servant"; he had lent his money to usurers, and, it would seem, at a high interest. But philanthropy still held on to the system, to this extent: your capitalists may lend money, but they shall not *extort;* they shall not receive more than its fair value. This is a moral law. To-day and here, the rate of legal interest is six per cent; but if, when the market value is five, a person takes six, he is morally as guilty of extortion as if, when the value is six, he should take seven. He would be taking advantage of another's necessities, and receiving more than a fair value for money. The early laws had in view this object, to prevent the powerful lender getting more from the needy borrower than — what? Six per cent? No; there is nothing in nature that points to six per cent, — from getting more than the fair value at the time. I coincide with that entirely.

I agree that if you could pass a law which should not *fix*, but *ascertain* the market value of money every day, that would be right. In early, simple times, the value could be ascertained, nearly. But as business increased, the means for ascertaining the rates failed. It was found at last that fixed legal rates could not be adjusted to the real value of money. Can it be done now? Let any man take up a newspaper and examine it, and he will see that money fluctuates not only week by week and day by day, but hour by hour. You would be obliged to have a commissioner on every curbstone, and a financial clock at the head of State Street, to record the changes by the minute; and then punish men who took excess, as ascertained by the clock!

The usury laws of this day do not stand on the principle of prohibiting extortion, but on that of fixing the market rate of interest by legislation. Having fixed a permanent and purely arbitrary rate, you treat lending at that rate, although it be above the market value, and therefore extortionate, as right; and treat lending above that rate, though below the market value, as wrong.

The rate of interest is governed by laws of trade. It depends upon the demand and the supply; not upon the amount of capital in the country, but the supply for loan. It is sometimes carelessly said that it depends upon the amount of capital in the country. You might as well say that the price of fish in Faneuil Hall Market to-day depends upon the quantity of fish in Massachusetts Bay. The rate of interest depends upon the amount in the market for loan, and upon the character of the demand as well as its amount, because we must look at the security. When

we speak of the market rate of interest, we assume that the security is perfect. If you cannot ascertain the rate of interest upon perfect security, so as to affix to it by legislation a standing rate which shall be its real value, still less can you do so as to all the degrees and kinds of inferior and questionable security. Nevertheless, your legislation has sought to keep interest down to one rate, in all cases alike.

Why, Mr. Speaker, place on this table before us three samples of flour; one superfine, one fair, and one inferior. If, after the old style, you should wish to regulate by law the price of flour, would you compel the merchant to sell all at one rate? Now, place on this table three notes, on which money is to be lent. One has perfectly good security, one inferior, and the third no security at all. Would you compel the capitalist to lend on all at one rate? Certainly not, in justice. Yet that is what you do by your usury laws. If times are such that the best paper must give six per cent, you will not permit the hirer to give or the lender to take more than that on the inferior. This is one of the absurdities of your usury laws. They not only take no account of the market of the world, which moves with the irresistible power of ocean tides, affecting proportionally all securities, good and bad; but they take no account of the quality of the securities offered for sale. If in time of panic a note with perfect security must pay six per cent a month, the lender is permitted to take but one-half per cent a month for the poorest. He must take the same interest on an inferior note for twelve months as on a perfect note for twelve days. If a poor man, in dire need, with poor security, but his best, wishes to borrow, and a better note than his is worth six

per cent, he is not permitted to offer anything above that.

It is time now, Mr. Speaker, that the House took up the question of *practicability*. *Can* you keep down the rate of interest by legislation, if you would? That question must be answered by gentlemen before they have a right to respond aye or no on this matter.

There is a good deal of instruction to be derived from the steady set of events. There has been a uniform tendency toward the abolition of the usury laws for the last eight hundred years, among liberal minds, and advocated upon the most enlightened reasons. Gentlemen who have defended the usury laws on this floor, as special friends of the poor, should be reminded that it has been the friends of the poor, the philanthropists, the statesmen of liberal ideas, who have advocated and carried the reduction or repeal of the usury laws.

In England, during the Regency, in 1818, a report was made by a committee of Parliament, who examined the borrowers and the lenders, and came to the unanimous conclusion that the usury laws ought to be entirely repealed. That report went to the House of Commons, but Parliament was not ready for it. Adam Smith found no excuse for usury laws except on two points, to protect spendthrifts and repress projectors. Toward the close of his life, he read the argument of Jeremy Bentham, and acknowledged himself mistaken on those two points. So the Scotch financier, McCulloch, and Stuart Mill, and other writers of eminence, advocated the repeal of the usury laws. But they could not, at first, carry it through the House of Commons. It was opposed by a large class of persons, but not the same class who have

opposed it here. It lay by ten years; was brought up again, and defeated; lay by ten years more, and in 1839 they went to this extent — they abolished the usury laws on commercial paper that had less than twelve months to run. Then, in 1850, they abolished the usury laws on everything but loans on real estate; and on those, interest could not exceed five per cent. The great landed proprietors of England opposed the repeal, and were the last men to yield their opposition, because they thought the usury laws enabled them to get money at lower rates on mortgage. Here, with us, an opposition comes from a class of small land-owners, on the same grounds. They think they can get money for less, on their farms, if the law is retained.

The law remained in that state about five years, and I think it was in 1855 that England abolished the usury laws altogether, by a bill similar in its features to that which we are acting upon to-day, but as to which I am ashamed to say, the mother country is twelve years in advance of us. Money still continues to be loaned in England at much lower rates than here. It is an open market. Have the poor borrowers ever complained? We read with deep interest, as we ought, all that concerns the middle and lower classes of England; we read of the disabilities under which the poor suffer; and we see the reports of the processions, numbering some twenty thousand, who lower their banners and cheer as they pass the United States Embassy, and sing John Brown, and I would ask if any of them complain because the usury laws have been abolished? Did Richard Cobden, does John Bright or Stuart Mill, demand usury laws? Was it an article in the creed of the Chartists? Look

over the banners in that vast procession the other day in London. There was almost everything else there, but not a word about usury laws. The common people are satisfied that they are better off without them.

Look at Holland. Holland is a free country, a country dear to every lover of liberty. Holland fought for her freedom and religion, against Spain, in those noble wars, for principles so dear to every lover of liberty the world over, recorded with such spirit by our townsman, and — I regret to say — our *late* Minister to the Court of Austria, a Boston boy. Holland has no usury laws. But there are more poor, industrious people in proportion to the population there, than almost anywhere else. What is the rate of interest there? It varies from three to five and a half per cent.

You have a right to respond that this may be a very good thing in England or Holland, but how will it be in Massachusetts? Let us look at the principle. Gentlemen need take into their minds but a single argument. If it were my own argument, I hope I should not be so vain as to call it unanswerable; but it is the argument of all the great writers for the last quarter of a century, — an argument which has shown from principle that the usury laws must be, and from statistics that they are, worse than nothing.

With your leave, I will put the argument thus. Suppose the natural rate of interest to be, here in Massachusetts, seven per cent. By the *natural* rate, I mean the rate it would come to, in the absence of legislative interference, if the borrower and lender came directly together in the market. Now appear the philanthropists, and say that seven per cent is too much for men to pay, and enact laws which pro-

hibit the giving or taking more than six per cent. Suppose there are fifty millions of capital in the market to be loaned, when the usury law goes into operation. What will be the effect of the law? I think we will all at least agree on this, that it will divide the capitalists into three classes: those who will lend at six per cent, those who will not lend at all, unless they get their money's worth, and those who will disobey the statute and take all they can get. I admit there will be a few of the first class, men who will lend at six per cent money that is worth seven. They are men scrupulous about formal laws, although they see no moral wrong in the forbidden act. They are in the habit of investing in loans, and do not like to change their habits, or are too old, or inexperienced, or timid, to put their capital into business. But this class is not large, and is diminishing every year. The second class will not lend at less than the full value, and yet will not take the risks or disrepute of violating a law, nor resort to the circuities and chicanery and middlemen such loans entail. They invest in government securities at 7–20 per cent; or, if they are active and enterprising, turn their capital into business, add their own skill, care, and industry to it, and make twelve per cent and more. The second class takes from the private loan market a large part of the supposed fifty millions, — perhaps a third or a half. The effect of this is to raise the rate; for the supply is lessened, and the demand is not, but becomes the more anxious and eager.

Now, gentlemen will see to what condition such legislation has brought the borrower. He must have his money, or fail. It is no longer the natural rate of seven per cent that he is to give, on perfect secu-

rity, but nine or ten per cent, and he is brought to an inferior class of money-lenders. But this is not all. Another element is forced in. There is insurance to be charged for the risk the lender takes in lending on illegal security; for, if the borrower will not turn against him and refuse to pay the interest, the borrower's assignee in bankruptcy, or his executor, may feel it his duty to do so. Nor is that all. Something is to be charged for the disrepute attending the transaction. But there is a larger addition still. These transactions require secrecy, circuity, transfers of notes, drafts, and fictitious exchanges, and above all, the middlemen, who must be employed, that the real parties may not be known. How much do these middlemen charge? That you never know. No man on earth is so well placed for extortion as the middleman, who holds the secret of both parties in his hand. As you have brought your borrower down to dealing with a less respectable, less responsible class of men, he must bear the consequences. And what rate does the distressed borrower at last pay for that which he could have got openly, like a man, face to face with the lender, at seven per cent, because you thought to force by legislation the market rate below its natural level?

Mr. Speaker, I have been assuming, so far, that the borrower offers satisfactory security. But suppose he does not. An honest but poor man, with a family, is a little behindhand, and must pay a debt, or have his property taken on execution; or an enterprising young man, with health and skill and character, but no capital, wishes to borrow a sum to put with his industry and skill, with a fair hope of profit. Neither of these men can give perfect security. All hangs on

their lives or health. Death, or a long fever, lasting through the season, will leave them penniless; and in all probability, if they are young men, they hold their houses under purchase-money mortgages, and can give no landed security. If theoretically perfect security, driven to middlemen and circuitous transactions, ends in giving ten per cent, where will such borrowers as these be, in such hands? The strong and enterprising young man will give the utmost that his expected profits will allow him to give, without actual loss, for he must work; but the distressed debtor must sell, or let his creditor sell, all he has, to meet the payment of his debt.

This leads me to call the attention of the House to another anomaly of the usury laws. You put the borrower under guardianship, as to money, and limit him to six per cent, whatever the market rate, whatever his need, and whatever his security. But you leave him his own master as to everything else. He must not borrow money at seven per cent, but he may sell the very ground under his feet. He cannot be trusted in the money-market, but the pawnbroker's is open to him. He may sell all he has, to gratify his passions or to meet his necessities, and no one can interfere to save his wife and children, unless he is so far gone as to be no longer *sui juris*. Take the case of the poor, honest debtor. Sickness or misfortune has left him in debt, and a hard creditor, or an institution or trustee that acts by rule, is pressing him to an execution. If he could borrow a thousand dollars, on a year's or three years' loan, he could pay the debt, and have a little with which to begin again. But with his poor security, and the high state of the market, he cannot get the money at six per cent.

You prohibit him from giving seven, even if he must sell the land under his feet, the house over the head of his wife and children, and all their useful or endeared furniture, which they may never get back, and sell it all at a ruinous loss, as is always the case in forced sales,— a loss of at least twenty-five per cent. And this to save him from paying more than six per cent! In forced sales, or sales on execution, it is known that articles seldom realize over two thirds their value, and then there are the taxable costs, and all other expenses to be deducted. The debtor might have saved all this by a loan for a year, more or less, at the market value of his security. What shall we say of such legislation? Is it not preposterous? Is it not discreditable? Is it not a shame upon our intelligence and public spirit and humanity?

But I have not yet presented to you the worst features of your law. I have taken ordinary times, when the natural rate is six or seven per cent on theoretically perfect security. But what shall we say of those times of distress and panic,— of times when all rules and rates fail,— when the strong men bow themselves? The gentleman from Walpole (Mr. Bird) has told us, here in his place as a legislator,— of all others bound to respect the laws,— he has told us that in the crisis of 1857 he paid, once, five per cent a month. He must meet his notes or fail. That was not all. He felt bound in honor to pay his debts, if he could possibly get the money, that others might not fail who depended on him. He had a friend who had the money; it would bring more in the market, but he let Mr. Bird have it at five per cent per month; and Mr. Bird has told us it was the cheapest money he ever borrowed, that he never paid interest so cheerfully, and

that he felt grateful to the lender as a true friend in need. After such a statement as this, — and it is but a sample of what thousands can tell us in every time of distress, — what is your six per cent law good for, as a financial restriction? Its moral aspects I shall have occasion shortly to call your attention to. As soon as money begins to rise with the demand, and failures thicken, capital, proverbially timid, begins to withdraw itself, and as the crisis comes to its height, some will not lend at all, and others only at enormous interest; for it is in fact insurance upon ships on a lee shore. Then the Jews emerge from their alleys, and the curb-stone brokers swarm, and need and fear and distrust and avarice act and react, until the end is a panic. Are your usury laws of any value then, to furnish money at six per cent? They are forgotten or laughed to scorn. The man who cannot borrow can sell, and merchants will sell at prices as ruinous as their loans could possibly be. The usury laws are lost sight of long before the panic is reached. Their effect is felt only in the first stages, when, but for the law, capital would be let at its proper rate. Then the law drives away all who will not lend at the Quixotic rate of six per cent, and gives over all doubtful security to despair. In such times, its effect is to hurry the first steps, and to turn a simple stringency into a distress, and a distress into a panic.

Your laws make no allowance for changes in the state of the market. The British corn laws had a sliding scale. So, in several of the states, there is a scope allowed under the usury laws. In Indiana, Illinois, and Iowa, the rate is between six and ten per cent; in Mississippi and Florida, between six and eight per cent; in Michigan and Wisconsin, between seven and

ten per cent; in Minnesota, between seven and twelve per cent; in Texas, between eight and twelve per cent; while in California there have been no usury laws since 1850, with ten per cent in the absence of a contract. But we adhere to an iron rule, as they do in New York; and an attempt to allow a margin from six to eight per cent found no favor in this House. Members talk as if there were something in nature that pointed to six per cent; when, in fact, the rate is rarely at six per cent. Not only do the rates allowed by law in those states vary from six per cent to twelve, but I hold in my hand a letter from one of our first merchants, whose name would command the respect of this House, as well for his philanthropy and patriotism as for his financial skill, giving the details of the rates at which he has borrowed and lent money for the last five years, on the best security, and the average is nearer eight per cent than seven. I have here also a schedule from the cashier of a bank in State Street, giving the rates charged yesterday for discounts on the best of paper, much of it from New York. It gives the names of parties, the amounts and terms. There is not one at six per cent, indeed none below seven, and varying from seven to seven and three fourths. Gentlemen will see from this how openly their laws are violated, even by the banks; for although these are National Banks, they are, by act of Congress, bound by the several state laws, as to discounts.

While the legal rate in New York is seven per cent, Massachusetts capital will go there; not the small quantities, I admit, for they will not pay for the trouble and risk; but capital held in large masses, on which a small advance insures a large profit. Rhode Island

repealed her usury laws last year; and now, when money rules high at Providence, Boston capital goes there.

There are causes for these different rates, in different states, as in the same states at different times,— causes that are constantly in operation, and too subtle and volatile to be held in the chains of a permanent legislation.

I would now like to call the attention of the House to the moral aspect of this question. The spectacle on this floor the other day was a lesson not to be forgotten. We all knew that the usury laws were but little regarded at any time, and were swept out of sight in times of panic. But when a legislator rose in his place, in the very hall of legislation, and told his brother legislators, with an open brow and clear conscience, that he had paid five per cent a month, and thought it his highest duty to pay it, and esteemed the man who lent him money at that rate his best friend in need, did any of you think the less well of our respected friend? Did even the incongruity of such a declaration from a law-maker suggest itself to your minds? But let me put you another supposition. Imagine, if you can, that the gentleman from Walpole had obeyed the laws against usury, and gone down into bankruptcy, and swept others along with him, who had trusted to his solvency, rather than pay anything over six per cent: would you not have doubted either his sanity or his good faith? But let me put the case to you in a far stronger light. Imagine, if you can, that having taken this money from his friend at the agreed rate, and so saved himself and others from bankruptcy, he had done what the law of Massachusetts tempts him to do, expects him to do, and,

if law is law, I have a right to say, commands him to do; suppose when pay-day came round, he had turned upon his friend, refused to pay him any interest, and deducted three times the excess from the money he had borrowed! It is not possible even to suppose such a thing of him; but suppose it of some imaginary man, some ideal keeper of the law. He could not show his face on 'Change! He could not have been elected to this House, where the very law is made which he had strictly followed!

It is usually said that laws should not stand upon the statute book which have not the moral support of the community, because they lower the dignity of all government, and demoralize the public mind by familiarity with disobedience. But what shall we say of laws which not only the moral sentiment does not support, but which the natural sense of justice, the instinct of honor, actually condemns? In olden times the taking interest above the legal rate was a crime, punished by imprisonment. That penalty could not be enforced, because public sentiment condemned it. We receded so far as to make it a forfeiture of principal and interest. That failed, for the same reason. Men thought it too hard, and would not enforce it. We next receded with our penalties, until we came to the moderate infliction of the loss of all interest on the loan and a deduction from the principal of three times the excess over the legal rate. But this moderate penalty you cannot enforce. Yet it is all you have left; for the transaction is secret and covered by a false statement of the principal sum, or by other means, and unless the borrower turns against the lender and testifies, you can do nothing with the transaction; and the borrower had better pay any

amount of usury than incur the total loss of credit ever afterwards, which would follow his turning upon the lender. Under usury laws the loan must always bear the aspect of legality, and courts and juries render verdicts and judgments on extortionate loans without suspecting it. The poor borrower must suffer in silence, — must bleed to death in secret. But, if there are no prohibitory laws, the rate actually paid is more likely to be known, and public opinion be brought to bear upon the unreasonable lender, and sympathy, if not relief, extended to the borrower.

But in what attitude has this legislation placed our honored Commonwealth? Unable to make usury a crime, she tempts the borrower, by a large pecuniary reward, to commit an act of baseness towards the lender, for which the instincts of the meanest of her citizens will despise him. In the darkest regions of the criminal law, dealing with men of blood and fraud, we tempt one to the betrayal of another, and employ spies, and false colors; for such men are in a state of war against society. We are dealing with moral guilt, universally recognized as such, but even there, we despise the thief that betrays the thief. But there is no element of right or wrong about six per cent or seven per cent. The community recognizes no element of guilt in dealing with money at the market rate, if there be no fraud or extortion. And for fraud, or duress, or gross extortion, or undue advantage taken, a court of equity will afford relief. But the moral sentiment of the "least erected spirits" in the community is above the temptation which your legislation offers them, as the only means of enforcing itself. It is not fit that the jurisprudence of Massachusetts should bear the shame longer.

Let us examine, Mr. Speaker, the reasons — I would rather say the excuses — for maintaining this system. All writers on political economy during the last fifty years, of whom I have information, however much they differ in other things, have agreed in condemning the usury laws. It is true the opponents of our bill have exhumed a single pamphlet, written by the late Mr. Whipple of Rhode Island, and spread it about the House, not without some effect. But do gentlemen know that, though republished some eight or ten years ago, for a special purpose, that pamphlet was written more than thirty years ago, as an article in a law magazine, by a gentleman of the last generation, whose ideas were drawn from the generation before that — before the time of Bentham, McCulloch, Mill, Wayland, and the encyclopædists of Great Britain and America? Mr. Whipple advised Rhode Island to increase the severity of her usury laws, and to fall back upon the Statute of Anne. No doubt he thought that if Rhode Island would only rest her political system on the Charter of Charles II, and her financial system on the Statute of Anne, she would indeed be the model commonwealth of America. But Rhode Island has followed the later and wiser advice of her other eminent citizen, President Wayland, and repealed her usury laws altogether, as have Holland and California. Great Britain, I had the honor to remind you, repealed hers twelve years ago, and any man who would there ask for their reënactment would be considered as insane as if he moved for the restoration of the Heptarchy.

But the facts being all against the continuance of the usury laws, what are the theoretic excuses for their maintenance? It is said that the borrowing class

is the feebler class; that the borrower is at the mercy of the lender and needs protection. I hope I have shown that, if this were true, the usury laws fail to help him, at the only time he needs help, when the rates of interest are high, or his security is poor,— in fact that they make his condition the worse. But, Mr. Speaker, the relations between the borrower and the lender are not now, especially in New England, what they were once in history. The borrower is no longer the trembling suppliant at the threshold of the patrician lender. Who are the borrowers now? The railroad, manufacturing, steamboat, and mining corporations. They are borrowers,— those great corporations that are suspected of controlling the politics of our states and towns. The state and national governments are borrowers. All mercantile enterprises require loans of credit; and the great merchants and manufacturers are borrowers one day and lenders the next. The great builders are borrowers. One of the members from Boston, who called himself a mechanic, spoke warmly for the right of the poor mechanic to get his loan at six per cent. But I find, on inquiry, that that member is a great builder; he builds those large blocks of houses, too costly for you or me, sir, to live in, and sells them for prices that we cannot afford to pay. He buys land and builds his houses upon borrowed money, and sells upon credit secured by mortgage. He fears no usury laws, as a lender; for his extra interest is put into the purchase money; and no doubt he would be glad to cheapen the rate of borrowing, where it is an actual money loan in the market, for there he is a borrower. But, even so, I hope I have shown that his calculations are mistaken. Again, it is not the poor mechanic that is the borrower.

The journeymen the member from Boston employs are not borrowers. Hired laborers in this country seldom are. It is mostly enterprise that borrows, and capital borrowing more capital.

Who are the lenders in this country? I know that great capitalists and banks of discount are large lenders; but men of moderate capital are also lenders, sometimes singly and sometimes by association. But, sir, by a miracle of this century, the poorer classes, the day laborers, the seamstresses and household servants, the newsboys in the streets, have become capitalists, and lend to the rich and great. Formerly the poorer class of laborers, laying up their small sums of five or twenty dollars, too small to lend at interest, hid them away in stockings, or buried them in chimney-corners, and were tempted to spend them because they had them at hand and were gaining nothing from them. A benign Providence put it into the heart and head of some persons, early in this century, to establish a system by which these drops that fell upon the earth only to sink into it, were saved and gathered up into little rills, which flowed together and formed a steady stream of public credit. These, sir, are our savings banks. Some gentleman can perhaps tell me the exact number of tens of millions in the savings banks of Massachusetts to-day. [Mr. Plumer of Boston. — Seventy millions.] These seventy millions, then, sir, constantly in the loan-market, are almost entirely the property of our poorer classes. They form this new element that enters into the changed relations of the borrowing and lending classes in New England. Your usury laws extend to them; and, as the trustees of those banks do not think it just to the poor depositors to lend their money at six per cent,

when they can lawfully get more, they have withdrawn a large share of this seventy millions from the loan-market, and invested it in government securities at over seven per cent, thus diminishing the supply, and necessarily increasing the rate of interest.

It must be remembered, too, that the borrower in the small country town need no longer be subject to the one rich lender of the town. The rapid diffusion of information by railroad, telegraph, post, and especially the daily papers, will carry the rates of the money-market almost daily into the remotest towns of New England. Money will find its level, whether on the flat of State Street, or on the bleak hill of the remote town of Peru, whose representative addressed us yesterday.

The only practical objection to the repeal seemed to me to be the fear that the banks of discount might combine and keep up an artificial rate of interest. I have made careful inquiries on this subject, and am satisfied that there is no more practical danger on that head than the community must always incur in its financial transactions. The banks are numerous. There will be competition among them. And there is not only the competition of private lenders at home, but the competition from abroad. Capital is drawn toward demand. State lines and town lines are disregarded. Loans are made in a few minutes by telegraph; and it will more and more be the case that, when an inadequacy of supply to the demand, or a combination of lenders, has raised the rate of usance, an influx from abroad will bring it to its natural level.

I desire to express my thanks to the House for the kind attention they have given me. My wish has been to satisfy the minds of the doubtful, and if possible to

make converts of opponents. As for myself, sir, I shall vote for the repeal of the usury laws, because I do not think they aid the borrower, but rather bring him to a worse condition than he would be in, in an open market. They have balked the humane purposes that gave them life. I vote for their repeal, because I think them in violation of the immutable laws of trade, and therefore necessarily leading to evil; because they are of no effect when the market-rate is equal to or below the legal rate, and, when it is above, tend to frighten away capital, induce chicanery, circumventions, frauds, and go-betweens, and to introduce the borrower to the worst class of lenders. I vote for their repeal, because they familiarize the community to the sight of a disobedience of law by the best of citizens, and consequently to a severance of law from morals. I vote for their repeal, because the steadily advancing public sentiment, gradually enlightened by generations of experience, no longer believes them politic or just, or regards the breach of them as a crime, an immorality, or even an impropriety. And lastly, sir, I vote for their repeal, because they place our beloved Commonwealth in the undignified position of tempting the borrower to commit the most ignominious of offenses, in the vain effort to prevent that which no one considers to be a crime.

VI

FREE SOIL MEETING, 1848

At Boston

Remarks on taking the Chair at the Free Soil Meeting, at the Tremont Temple, Friday Evening, July 7, 1848.

I thank you for the honor you do me (and it is certainly a gratifying one) by placing me in this position. Before I accept it, and enter upon its duties, it is perhaps but fair that I should be permitted to define it. If in doing this I appear to speak much of myself, I have the apology of believing that I speak the feelings of hundreds, perhaps of thousands, of the young men of the Whig party of Massachusetts. Since the nomination of General Taylor was announced, I have spoken with them constantly, I have met them at the corners of streets, in court rooms, in public conveyances, and I believe I speak their feelings when I speak my own. I believe you will hear from them before many days, or many weeks, are gone by.

I am a Whig — a Whig of the old school; I may say, without affectation, a highly conservative Whig. I voted for Mr. Winthrop last year, and under the same circumstances I should vote for him again. A war declared by the law of the land is a war for you and for me. I have voted for every Whig nomination since 1840, when I cast my first vote. I am in favor of supporting all the compromises of the Constitution, in good faith, as well as in profession.

Why, then, am I here? I understand this to be no meeting for transcendental purposes, or abolition purposes, or politico-moral reform. It is a meeting of those who desire to see if they cannot do better than vote for either Cass or Taylor; to see if the twenty millions of America cannot furnish a better candidate than either of them. You are not assembled in any hostility to the South. There is much to admire in the Southern character; there are some points in which it is superior to our own, as some in which we think it otherwise. We are ready to vote for General Taylor if he owns two hundred thousand slaves instead of two hundred, if he is with us against the extension of slave territory. The "subject of our story" is simply this. Massachusetts has deliberately taken a position in favor of excluding slavery from new territories, leaving each State now in the Union to manage its own slavery. Her legislature has almost unanimously passed resolves to that effect. Her Whig Conventions, in counties, have, almost if not quite without exception, done the same. The Convention at Springfield last autumn *unanimously* passed the resolution I hold in my hand: —

"*Resolved:* — That if the War shall be prosecuted to the final subjugation and dismemberment of Mexico, the Whigs of Massachusetts now declare, and put this declaration of their purpose on record — that Massachusetts will never consent that American territory, however acquired, shall become a part of the American Union, unless on the unalterable condition that 'there shall be neither Slavery nor involuntary servitude therein, otherwise than in the punishment of crime.'"

Now, we are here because we intend to adhere

to this resolution. The dignity of Massachusetts requires her to adhere to it. Not only must we adhere to it in words, but in action, in votes, and at any political hazard.

When General Taylor was nominated, I feared, in common with others, that voting for him would be *an act of indifference*, if not of abandonment, of the Massachusetts platform. I have the honor of personal friendship — they will allow me to say so — with many of the leading Whigs of this city. I conversed with them, told them my objections, asked them, entreated them for some indications, some evidence that General Taylor was with us as to Free Soil. Private conversations are to be kept private, but I may say they were entirely unsatisfactory. The farther I inquired the worse it became. Their public speeches and letters we have a right to examine, and what are they? Silence — dead silence! on the whole subject. Mr. Choate has spoken in Boston, and Mr. Lawrence in Burlington. They have talked upon tariffs, currency, war, internal improvements, cotton, — everything but the new territories. This was not forgetfulness. It weighed heavily on their minds. If they were following the Wilmot Proviso to its grave, they could not have preserved a more respectful silence. Had they been under vows of silence, they could not have kept them more unexceptionably. Now, one of two things is true: there is no escape from it. *Either these gentlemen do not think the Free Soil question of consequence enough to speak upon, or they feel themselves to be in a position where they cannot speak upon it.* With some it is the one, and with some the other; but the one or the other with all. We do not mean to stand in such a position. The South triumphs at the nomination

of General Taylor, and proclaims it as a defeat of the Wilmot Proviso; and the North is silent. The South wants nothing better than silence or indifference at the North. The indications are not to be mistaken. Acquiescence in General Taylor's nomination is to abandon the Free Soil question. At best, it is to give it its chance. It will be so understood. It is so understood now. The men at the South who risk everything else, to defeat the exclusion of slavery from the territories, go for General Taylor, and have so from the first, heart and soul; and if anybody is deceived, it will be the people at the North and not they. They know their man. They feel more sure of him than they do of General Cass. Our politicians are not deceived. Their silence shows they are not.

It is said that Massachusetts will stand alone. Be it so. Let us have a lone star at the North, as well as at the South. She has taken her ground. There are her resolutions, which I have read to you. "Look at her, where she stands — there she will stand forever!" But it will not be so. The indications are that other states will act with us. The race is not to the swift, nor the battle to the strong. This, if I understand it, is an appeal to the reason, the instincts, the great heart of the people. We do not rely on organizations, nor on this man or that man, nor on the bait of office-holding. We have no power to assign parts in the drama of political life. It is an appeal from the politicians and organizations that have failed of their duty, to the right reason and right feeling of the people. I do not say that it will succeed. It is a matter of duty. If it does not, we are but sufferers in a common calamity.

VII

BUFFALO FREE SOIL CONVENTION,[1] 1848

Speech at Faneuil Hall, August 22, 1848

Reporting the Doings of the Buffalo Convention, in Behalf of the Boston Delegation.

Mr. President, Fellow Citizens: The customs of these occasions makes it proper that your delegates should report to you, in Faneuil Hall assembled, the manner in which they have discharged the duties of their trust. We rejoice that we have nothing to tell you but good news, tidings of enthusiasm unparalleled, and of absolute unanimity.

We left our homes a few days before the time appointed for the session, and as we neared the point of attraction, we found ourselves in a great and at every step increasing current of intelligent, earnest men, American citizens, of all political parties, — who, in the eloquent language of Mr. Van Buren's letter, "felt themselves called upon by considerations of the highest moment to suspend rival action, and unite their common energies for the attainment of a common end, an object sacred in sight of Heaven, and due to the memories of the great and just men long since made perfect in its Courts." At Buffalo was assembled a host of men not to be counted by hundreds but by thousands. All day and all night,

[1] See Life, vol. i, pp, 131–144.

the steam engines toiled along the iron tracks, and the steamboats ploughed the waters of those Mediterranean seas, with their pillars of cloud by day and fire by night, bringing up the faithful Israel to this great solemnity. — There were Whigs, who had waited in vain to see their own party take up, in good earnest, the cause of Free Soil. There were Democrats, who had borne long enough the hard yoke of party discipline, and had at length broken the band in sunder and cast its cords from them. There were men of the Liberty party, who had toiled and suffered fifteen years to bring about this result, full of hope themselves, and bearing with them the memories of the martyrs in their cause, the Holleys and Lovejoys who had died before the sight. But magnificent and inspiriting as this spectacle was, there were many causes of apprehension and misgiving. We found that no reference had been had to the suggestion from Columbus, as to the choice of delegates, but that they were chosen in every variety of manner and proportion. Massachusetts, as she usually does, had followed the rule, and so had some other states, but many states had delegates by the hundreds, some towns alone had sent fifties, and the Clay Whigs of New York City had ninety delegates. Could this vast mass, so constituted, be organized into a deliberate, representative assembly! And without that, no one would feel bound by its action. Nor was this all. The Democrats of New York had already nominated their candidate, and so had the Liberty party. Would these parties and their candidates come into the Convention on equal terms with the Whigs, and with each other, and abide its result? Unless this was done, the Whigs could not, with dignity, go into the ballot.

Then, too, our friends of the Taylor and Cass newspapers were particularly attentive to our interests. At first they sympathized with us and were afraid we should be disappointed, so few persons were coming to Buffalo. And then, when the streets of Buffalo were all but impassable, they said that such a vast mass could never be organized. They spoke of plots and bargains, and warned the Whigs against the Democrats, and the Democrats against the Whigs, and they warned us both against the Liberty party, and the Liberty party against both of us. But when we came to look one another in the face, to join councils together, all the apprehensions and suspicions vanished in a moment. A meeting of informal committees from each state was held, and a plan of organization recommended, which was adopted and carried into effect without difficulty. There was to be a mass convention, consisting of all persons who had come up to Buffalo for Free Soil. This was to meet under the tent, in the park. There was to be a select, representative, deliberate assembly, called the "Committee of Conference," to sit with closed doors, and decide upon the main questions, and refer them to the mass convention for ratification. This select convention was to consist of delegates from each state represented, equal in number to three times its electoral vote, namely, six delegates at large, and three for each congressional district; the intention being to allow one from each of the former political parties for each district. It was an interesting and instructive sight to see the masses from each state meet at their headquarters and select their representatives, at large and from each district, fairly from the three former parties, and commit the entire power to this

select representative assembly, without a doubt or suspicion. And I take it upon myself to say that the Committee of Conferees, or Delegates' Convention, as it was more generally called, was divided almost mathematically into three equal parts, representing, in each state and district, the three former parties.— And it is worthy of note, that Mr. Van Buren went into that Convention with only one third of the delegation from his own state professed Democrats, while one third were Whigs, and the other third Liberty party men; and when the roll of that State was called every third man, almost invariably, gave the name of John P. Hale.

On Wednesday morning the mass convention assembled, and on motion of Preston King of New York, Charles Francis Adams of Massachusetts was elected its President. And when Mr. Adams came upon the platform, when the eye of that vast assembly caught the almost preternatural resemblance he bears to his father and grandfather before him, when they saw the simple badge of mourning about his hat, bringing before them the image of his venerated father, and when the reverend gentleman who opened the Convention with prayer asked the blessing of heaven upon its officers, and for the President, that the mantle of the father might fall upon the son, the heart of that great assembly was moved as one man; and from that hour a strong personal interest was created in Mr. Adams, which increased every moment, aided by his gentlemanlike demeanor, the excellent address he made to the assembly, and their confidence in his indomitable resolution and energy, the characteristics of his race.

Soon afterwards, the Convention of Delegates met,

in a small church without galleries, and sat with closed doors, not even admitting a newspaper reporter; for we were determined not to be overawed by cheerings up and hisses down from the galleries, as they were at Philadelphia and Baltimore, and to have no lobby members, and side-aisle members; but each man sat in the seat allotted to him, under an impending sense of personal responsibility. In the proceedings of our Convention, there was one thing in which we differed from both the other conventions. We would not permit the subject of the Presidency to be stirred, we would not suffer a man to speak upon the Presidency, until we had adopted a Platform of Principles. Unlike the Philadelphia Convention, which adopted its candidates first and its principles — never, we would do nothing until our principles were settled and declared. A committee of three from each state was appointed by the mass convention, to report a Platform of Principles, and the record of our Convention reads that we immediately adjourned to such time as this committee should be prepared to report. This committee was composed of one from each political party from each state, appointed by the delegations from the several states. It referred the subject to a sub-committee of seven, fairly composed, who carefully considered the subject for the greater part of the day and night, and agreed upon a platform, unanimously. For its authorship, we are indebted, it was understood, chiefly to Mr. Chase of Ohio and Mr. Butler of New York. The sub-committee reported it to the large committee, which, after discussion and some amendments, accepted it unanimously. It was then reported to both conventions, and adopted, without debate, by acclamation. Every sentence,

every paragraph, was cheered into its legal existence. We did not adopt it, as a person adopts a child. We felt that it was the common mother of us all! We hailed it, and rejoiced that we had it to stand upon; and from that moment we felt that the path was clear and bright before us.

Having avowed our principles, we proceeded to the nominations. And here we determined to know first the exact position of each candidate. We would leave nothing to letters in gentlemen's pockets, but required a distinct statement, and somebody to be responsible for it. We nominated three candidates, Mr. Hale, Judge McLean, and Mr. Van Buren. Mr. Chase of Ohio, a near relative of Judge McLean's, who had his authority, rose and stated that Judge McLean positively refused to be a candidate for either office. His reasons for this, you have seen in his letter. I understand them to be these. He is a judge on the bench of the Supreme Court. By the recent action of the Senate, he felt that he might be called upon, in his judicial capacity, to decide some of the principles laid down in our platform, and to which we should require his assent; and he was not willing, his friends would not permit him, to resign his seat, that Mr. Polk might have an opportunity to put a Northern dough-face in his place. These and other reasons, satisfactory to himself and his friends, induced him to decline the nomination. But, said Mr. Chase,—his feelings are with us. The position of Mr. Van Buren, the turning point of the Convention, was now to be declared, and for that purpose we called upon Mr. Butler.

Mr. Butler responded in a long and able speech, the material part of which was substantially this.

When the Free Soil Democrats of New York, commonly called Barnburners, left the Baltimore Convention, and determined to call a convention at Utica, they offered the nomination for the Presidency to the principal Democratic statesmen at the North. But not a man could be found to accept it. There was no expectation, then, that a national Free Soil party would be formed. The candidate would have everything to endure and nothing to gain, for their utmost hope was to keep alive a Free Soil party in New York as the nucleus of a party which at some future day might be carried forward to success. All other candidates having declined, the mass of the Convention determined to force the nomination upon Mr. Van Buren. This result his son, and other personal friends, endeavored to avert, but the Convention carried it by acclamation. They said they knew enough of Mr. Van Buren to know, that if they could satisfy him that, unless he accepted the nomination, the last hope of a Free Soil Democratic party would fail, and with it perhaps the hope of Free Soil itself in New York, he would not decline. Nor were they deceived. He accepted the nomination. And here let me say, as a Whig, as one nurtured in a dislike and suspicion of Mr. Van Buren, that I do not see how we can deny him the credit of disinterestedness and magnanimity in this act. He had everything to suffer and nothing to gain. He had to sacrifice the friendships of years, the associates of a long life, and to meet the most formidable of all enemies, former political friends. He had to go through the terrible ordeal of a Presidential campaign, without the slightest hope of success. Having thus forced the nomination on Mr. Van Buren, his friends were not a little embarrassed about the Buf-

falo Convention. We would require them to come into it on equal terms, to abide its result. Could they go to Mr. Van Buren and ask him to let them abandon a nomination which they had forced upon him? But their embarrassment was relieved by a letter which Mr. Van Buren wrote, of his own motion, addressed to the New York delegation at Buffalo. In this letter, which you have seen, he says it occurred to him that he might relieve them from embarrassment, and aid in causing the harmonious result of the Convention, by authorizing them to abandon the Utica nomination. He did so, assuring them that as they knew he had accepted it unwillingly, so he should be perfectly content to have another nominated in his place. His friends assumed the responsibility of acting upon this letter, and put Mr. Van Buren fairly upon the Convention, on equal terms with the other candidates, to abide the result of the ballot.

A friend of Mr. Hale then rose, and said that Mr. Van Buren authorized them, if the platform of principles was satisfactory, to abandon his nomination and put him fairly upon the Convention, to serve the cause either as captain, officer, or private.

All embarrassments were now removed, and we had a fair field and two candidates before us, on equal terms, but both Democrats — both Democrats. I confess this was a mortifying moment for a Whig, and especially for a Massachusetts Whig. Where, then, was the great sun of our firmament? Hidden behind a dark and impenetrable cloud. May that sun never go down in a cloud! The monument of freedom which we have reared, his hand has not builded; but, in his own immortal words, may the last rays of his setting sun linger and play about its summit!

Of all the prominent Whig statesmen, there was not one willing to put himself upon our Convention, and abide the issue of our cause, — no, not one. If there is a Whig in Faneuil Hall who doubts about the nomination of Mr. Van Buren, let him name to me a single Whig statesman of the first class, fit to be the head of our party, whom we could have put in nomination, or let him forever after hold his peace.

The Whigs were a fair third of the Convention, and we held the balance of power between Mr. Hale and Mr. Van Buren. And in this connection let me say a word about Mr. Hale. He is a young man, younger, I believe, than any of our present delegation in Congress. He has suddenly risen to an eminence, unexpected to himself and his friends, on account of the manly stand he took on the slavery question in the politics of his own State. He has not had an enlarged experience in public affairs. And I know it to be a fact that Mr. Hale himself was satisfied, from the first, that it was far better for him to abide his time, than to be put forward prematurely for the highest office in the gift of any people. And if Mr. Hale does abide his time, the people will, in due season, give him the proper reward, whatever that reward may be. Mr. Van Buren, on the other hand, has held every variety of civil office, has been President of the United States, and after a most enlarged experience, has had the benefit of eight years of private life, eight years of retrospection, of sober second thought. And although the slavery question is the great question, yet no one can tell what issues the state of foreign affairs, and of our relations at home, may present to the country, during the next Presidential term. We thought, therefore, that, all things considered, Mr. Van Buren was

the stronger and fitter candidate. But there was no plan or concert about voting. When the roll was called, I did not know how a man was going to vote, nor did a man know how I was going to vote. Each man voted on his individual responsibility. I am not obliged to say, but I prefer to say, that I gave my vote for Mr. Van Buren. All but four of the Whig delegates from this State did the same, and those four threw away their votes, on the informal ballot.

We had no actual ballot, but the roll was called and each delegate gave the name of the candidate he preferred, it being announced that this was not binding either on the Convention, or on the delegate voting. Three of the most prominent men of the Liberty party gave the name of Mr. Van Buren, and many of the others who named Mr. Hale did it rather for the purpose of giving Mr. Hale a handsome demonstration, which he deserved, than because they actually desired to have him nominated. Forty-one Whig votes were thrown away, but these would have been given, no doubt, for Mr. Van Buren, on an actual ballot. At the close of the roll, it appeared that the majority was for Mr. Van Buren. Immediately Mr. Joshua Leavitt of this State rose and said he had a word to say in behalf of the Liberty party. He was called to the platform, and in a speech of about twenty minutes, which, under its circumstances, I have never heard surpassed for effect, sketched the history of the Liberty party. He told us what that party had done and suffered to bring about this result. He told us what they had undergone in their feelings and reputations, in their social and private relations, in public attacks and persecutings from city to city — how they had been between the parties as between

the upper and nether mill-stone; but now the time was come for them to deliver up their beloved organization, for which they had sacrificed so much, to sacrifice their favorite candidate to whom they were bound by strong and increasing attachment. There was hardly a dry eye among the Liberty party men in that house. He ended by moving the unanimous nomination of Martin Van Buren. This was seconded by Mr. Lewis of Ohio, in an eloquent and touching speech, and was carried by acclamation, without one dissenting or doubtful voice.

Having settled the question of the Presidency, we proceeded to the Vice-Presidency. It was understood that as the candidate for the Presidency was a Democrat, the candidate for the Vice-Presidency should be a Whig. This shut out Mr. Hale, and his friends made a second sacrifice by withdrawing him from the ballot for that office. As Mr. Van Buren was from the East, it was understood that the nomination for the Vice-Presidency should lie with the West, and we adjourned for an hour and a half to give the Western members opportunity to confer, with the understanding that Ohio, as the principal Western state, should ascertain and declare the opinions of the others. Well, fellow citizens, the members from Ohio met, and they were unanimous for Mr. Adams. They said he was the man, his was the name, for the day and the times. They wished to vindicate the memory of his father, who had contended almost single-handed on the floor of Congress for the right of petition. They knew in Mr. Adams the author of those legislative resolutions which, in spite of the reluctance of some, and the indifference of many, have kept Massachusetts anchored to the cause of Free Soil. They said they

wished to show what they called (I do not use the term) the cotton Whigs of Massachusetts that they appreciated, at the West, the labors of Mr. Adams. The other states consulted, Indiana, Illinois, Michigan, Wisconsin, and Iowa, and they were determined upon Mr. Adams. So were the Pennsylvanians, six and sixty good men and true. A committee from the Ohio delegation united upon Mr. Adams. I saw him immediately afterwards. He was as much affected as surprised by the announcement. He told them it would not do; that the understanding was it should be a Western candidate. No, sir, answered these whole-souled men of the West, the understanding was that it should be a Western nomination! Mr. Adams told them he would have nothing to say about it, that he would refer it entirely to the Massachusetts delegation, and asked them to come to us for an answer. At his request, Mr. Phillips called us together and stated to us his position. He desired Mr. Phillips to say to us that if for any reason we thought it more expedient that the nominee should be a Western man, we should say so to the Ohio gentlemen, and suggested to us that although these gentlemen might have an inclination towards him at Buffalo, their constituents at home might feel differently. He also suggested a loss of influence to himself and others who stood like him, at home.

We considered these things, but we found that the current of feeling had set towards Mr. Adams in a manner that was irresistible. We therefore told the Ohio gentlemen that we should not advocate the claims of Mr. Adams, nor act for him, nor do anything about it, but leave the matter entirely with them; yet, if they chose to come to Massachusetts

for their candidate, and to take Mr. Adams, we were much obliged to them.

When we met, after the adjournment, a venerable gentleman from Ohio, with gray locks, rose and said he had a word to say for Ohio and the West. He told us that they were agreed to nominate Charles Francis Adams of Massachusetts! Never in my life have I heard such an acclamation as burst from that assembly! We think we know something about enthusiasm; but we know nothing about it, here. You should see those Western men spring upon the benches, on the tops of the railings, and throw their hats into the air, ay, to the ceiling's top! For our work was done! We had adopted our platform unanimously, and nominated our candidates unanimously. Our nominations were made known to the mass convention in the tent, and there they were received with no less unanimity and enthusiasm. We heard their shoutings, and they heard our shoutings, and for a time it seemed as though the whole city of Buffalo was going up with one common acclamation.

This great Convention adjourned. But I should do injustice to the spirit that prevailed there, did I not tell you that every morning's sun at Buffalo, as it rose, saw this vast assembly met for offices of prayer and praise. And when we adjourned on Thursday night, it was to meet again on Friday morning to unite in a common thanksgiving to the Disposer of all events, who had enabled us to come to this wise and harmonious conclusion. There is not a spot that the sun shines upon where these events could have happened but in the free states of North America; where so many thousand men, of different political parties, could have met in one place, organized a

representative, deliberative assembly, remained in session three days, adopted a complete set of political principles, and their candidates, with entire unanimity, and dispersed without a single unpleasant occurrence, and all without the aid of the slightest civil force. If there is a man who doubts the capacity of the Anglo-Saxon race of North America for self-government, he should have been at Buffalo and learned this lesson.

When I say that all our proceedings were unanimous, I must allude to a dissatisfaction that existed in one quarter, — I mean among the Taylor and Cass newspapers. They could not understand it! It was past all comprehension! All their hopes and our apprehensions were falsified, and this incredible work was done before their eyes. As soon as they recovered from their surprise, they began to ask,— What charm, what incantations, and what mighty magic, — what medicines potent o'er the blood, had brought us to this state? And they gathered up their suspicions and misgivings and put them in shape, entitling the compound "The way it was done." Now, Mr. President, and gentlemen, there *was* a secret about this business. It is this: There was a *principle* at the bottom of it. Nothing else could have insured this result, in the nature of things and the nature of men. This only is the magic that we used! This, Messrs. Editors, was "the way it was done!" This it is, Mr. Winthrop, that maketh men to be of one mind in an house!

This vast assembly of intelligent, earnest men has dispersed. Where are they now? They are beside our rock-bound or our sandy coast; along the hills and valleys, and in the cities and towns of New England. They are at the South, by the banks of the Potomac

and the Shenandoah; in the cities and villages of the great West, beyond the Falls of St. Anthony and the Sault Sainte Marie. They are beside the domestic hearths and domestic altars of an American people. And with such advocates, such missionaries, such evangelists, sooner or later, we cannot but succeed. I thank you for having permitted me, by your votes, to take a part in this Convention. It is something that a man may remember for life, and his children after him. But my duty for this evening is performed. If the Presidency were our ultimate object, he should see the expediency of a choice between two evils. But the Presidency is only one of the means to an end. The end we aim at is the ultimate success of the Free Soil system. To insure this, we must have an organized demonstration of public sentiment, a means of systematic, continuous, certain, popular action. Never has there been a time, in the history of this country, when each man's vote will tell so much as now. Those who understand that president-making is the ultimate object of parties, think we are mad in voting for a third candidate; but those who see that the end is the ultimate success of a system, must see that we are taking the only course that leads to it. It is not for us who are putting on our harness to boast ourselves as those who put it off. We have a duty to perform. Success in this presidential campaign is not our motive. It is only one of our objects, one of the means to our end. When and in what we shall succeed, we cannot know now; but of this we feel assured — our cause is just — our union is perfect.

VIII

THE GREAT GRAVITATION MEETING

[This parody on the Fugitive Slave Law for the "preservation" of the United States Constitution ("gravitation") with its slavery compromises, was written by Mr. Dana and published November 21, 1851, about fourteen months after the passage of the law.[1]

Mr. Dana, and men of his way of thinking, did not object to a fair and just fugitive slave law under the United States Constitution as it then was. This is clearly shown in Mr. Dana's Manchester, New Hampshire, speech of February 11, 1861, urging every reasonable conciliation with the Southern states just as some had seceded and others were in doubt, and before any act of war. What he did object to was the iniquitous form of this particular Fugitive Slave Law, which antagonized almost every principle of legal procedure established to secure justice.

There are many provisions in this law that are bad enough; such as that the number of commissioners to enforce this law should be enlarged; that they should "hear and determine" such cases "in a summary manner"; that their fee should be ten dollars if they decided for the slavery of the fugitive and only five dollars if they decided in favor of freedom; that they had a right to summon a posse comitatus of all citizens to aid, which all "good citizens" are commanded to obey; that any marshal who shall refuse to act shall be subject to a fine of one thousand dollars to the use of the claimant of the supposed slave; that "should such fugitive escape, with or without the assent of such marshal or his deputy, such marshal shall be liable on his official bond . . . for the benefit of such claimant for the full value of the service or labor of said fugitive"; that any attempt at rescue should be

[1] Fugitive Slave Law, approved by President Fillmore September 18, 1850.

punished by a fine not exceeding one thousand dollars and imprisonment not exceeding six months; that after the fugitive was decreed to the claimant, he could "use such reasonable force and restraint as may be necessary"; and that after such a decree the United States officers, in case a rescue is feared, should remove the fugitive at the expense of the government to the state whence the fugitive had fled.

These and other unusual provisions for regaining property would have been comparatively harmless in and of themselves, were it not for the fact that the whole proceeding was based on a mere affidavit of a claimant or his agent or attorney, made before any officer authorized to administer oaths in the state or territory from which the fugitive was claimed to have escaped. This officer was not obliged to go back of the affidavit and find for himself the truth of the statements. In a small country town, he might be aware of the facts, did he and the claimant and the fugitive slave all live there; but if at a distance from the home of the claimant or if in a busy city, with a large slave mart, the officer's whole knowledge would be based on this affidavit. The fugitive would, of course, not be present, or have any one to represent him, and he would not even be notified of the proceedings.

But the worst is yet to come. The officer makes up a record, based on this *ex parte* affidavit, and by Section 10, this record, in every state of the Union, is made "full and conclusive evidence of the fact of escape, and that service or labor of the person escaping is due to the party in such record mentioned." Not only was there no trial by jury, but there was no *trial* at all. The commissioner was bound by this record, even if he should have reasonable doubts as to the truth of the facts contained in it; and lastly, "in no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence." Dear Reader, please note the word "alleged." It does not mean that after the fugitive is adjudged to the claimant he cannot testify. It is only necessary to "allege" that a man is a fugitive, and in no proceeding can he testify as to whether he is or ever was a slave, or a fugitive, or as to his identity. As Mr. Rhodes points

out in his history,[1] "The mere statement of the provisions of this law is its condemnation"; and he shows how far more just was the slave law of ancient Rome, which presumed a man to be free until he was proved a slave. A colored man, by name Adam Gibson, was, by this "summary process," actually condemned to slavery and delivered to a slave owner, a Mr. William Knight, under mistake. He would never have seen liberty again had it not happened that Mr. Knight was an honorable man, who acknowledged the mistake and set Gibson free.

To feel the horrors of this law, let us suppose a beautiful woman of white race, but of dark complexion, who is, by force of circumstances, let us say, travelling where she is not well known, perhaps in the southern part of the state of Ohio. Some rascal, calling himself a claimant or the agent or attorney of a claimant, could swear out an affidavit across the river in Kentucky before any officer allowed to administer oaths, and get a record describing her. Armed with this, he could either take her himself, or employ United States marshals, who dare not refuse under heavy penalties, to take her before a United States commissioner, who, in his turn, would be precluded by the record, and she, the "alleged" fugitive, could not say a word on her own behalf. Her captor, when she was decreed to him, could take her by "such force and restraint as may be necessary," and all would be done in "a summary manner."

In Mr. Dana's journal,[2] he tells how he had to advise a free colored man, legally free, but who had once been a slave, and who had heard his former master was inquiring as to his whereabouts, that though a free man he had no chance, that there was no way for him, if his old master had a record obtained somewhere in the South, to prove his freedom, nor could any one else prove it for him. No wonder that Mr. Dana, who rarely used strong language, said, "People will never see the damnable character of the tenth section of that act until a few atrocious cases shall have arisen."

This gravitation parody was an attempt to make people see

[1] Rhodes's *History of the United States*, vol. i, p. 186.

[2] *Biography of R. H. Dana, Jr.*, vol. i, pp. 287–288.

it. There had been an answer made to the injustice of the "summary" proceedings of the Fugitive Slave Law. The answer was that the fugitive slave, when carried back to the slave state, might there have a trial by jury as to his status; but what would that trial be worth where, by the law of every slave state, he was unable to testify in court, if he had even a trace of negro blood in his veins, even supposing that he was in reality free, to say nothing of his disabilities as a supposed slave?]

Great Gravitation Meeting

AT

FANEUIL HALL!!

WEBSTER! CHOATE! CASS! AND HALLETT!

GREAT ENTHUSIASM!

[*Specially Reported for the Tribune.*]

[Not by Telegraph.]

BOSTON, *Thursday*, Nov. 21.

THE long-expected meeting to defend and preserve the Law of Gravitation came off last evening, and more than fulfilled the expectations of its friends. The hall was crowded with the anxious but resolute friends of the threatened and periled law, and the utmost unanimity and enthusiasm prevailed.

The Hon. Upland Staple was called to the Chair, and twelve vice-presidents were chosen, among whom, were many of our most prominent merchants and lawyers. The names of Spinning Jenny, Esq., S. Island Cotton, Esq., Hon. Rice Fields, Hon. Increase Profit, and Retained Power, Esq., are a sufficient indication of the character and standing of the officers of the meeting.

The Hon. U. Staple, on taking the chair, expressed his gratification at being selected to take so prominent a part in a meeting in this consecrated spot,

called to preserve from threatened destruction a great and vital law of the universe, a law which the recent act of Congress was intended to preserve. This act, so just and necessary, he said, had been the cause of a fanatical violence, dangerous to the best interests of trade, manufactures, industry, and public order — an opposition which it was the intention of this meeting to *put down, effectually and forever!* (Great applause.) For this purpose, no means had been left untried. The names of those merchants, lawyers, and physicians who had signed the call would be published, and he assured the meeting that the names of those *who had declined to sign it would be published also!* (Cheers and cries of "that's right! that's the talk!") Without further comment, he would introduce to the meeting the Great Expounder of the Law of Gravitation.

Hon. Daniel Webster then came forward, and was received with deafening shouts and cheers. As soon as silence could be obtained, he spoke as follows: —

I am for Gravitation! (Applause.) I have always been for Gravitation! (Renewed applause.) I always shall be for Gravitation! Under the law of Gravitation was I born, under the law of Gravitation have I lived, and by Divine permission, and the leave of certain of our fanatical friends, I expect to die and be buried under the law of Gravitation! (Tremendous sensation.)

No small portion of my life has been devoted — humbly and inconspicuously I admit — to the expounding of this law. (Here the speaker was interrupted by nine cheers for the Great Expounder.) Without Gravitation, what would be our condition? What would move the loom or the plough? Where

would be your commerce, your railroads, your factories, your water-powers, your steam-powers — those great and invaluable privileges for which our ancestors fought and died? Not only would these be lost, but life itself, if held at all, would, in my judgment, not be worth the holding. (Sensation.)

Now, gentlemen, I hold it to be one of the implied powers of Congress to pass laws for the preservation of gravitation. Fanatics may rave and strict constructionists may quibble, but no man whose opinion is worth considering doubts the existence of this right. Then, gentlemen, if the end is allowable, the means to the end are allowable. This, I think, is not new or doubtful logic. (Laughter.) Congress has just passed a law making use of certain of these means to this end. This is the whole of it! And yet certain socialists and fanatics, and school-boys and school-*girls* (laughter) would persuade us that here is something unconstitutional! Have we five senses, Mr. President, or what has happened to us?

Well, fellow citizens, what is this act, — this lawful means to a lawful and transcendently important end? It is just this. It provides that whenever, in the opinion of any person living south of the equator, the gravitation or equilibrium of the earth shall be in danger, he may come to any of our states and take from them any person or persons, who or whose ancestors were born or have lived in the Southern hemisphere, and carry them to the place which they or their ancestors left, at the expense of our government. Can any act of legislation be more simple, more just, or more clearly constitutional? If they can, my short experience and limited capacity do not permit me to see it. I congratulate those who can. (Laughter.)

I grant that no such law exists in the eastern hemisphere. They do not think such a law necessary. I differ from the eastern hemisphere. — (Tremendous applause.) I think such a law necessary. In minor matters, I would not reënact the laws of God. I would trust to the laws of climate, scenery, and physical geography. But in a matter of such infinite moment, I would resort to human aids, and endeavor to coöperate with the laws of the moral and physical universe.

In classical times, Mr. President, there was a set of men known as the *capsizores mundarum.* Their object was to overturn the universe and reconstruct it according to their own theories. This class is not extinct in our own day. The opponents of this act of Congress are *capsizores mundarum.* They seek to disturb the order of the universe, to bring industry to a dead stand, to throw the earth out of its orbit, and send it into the blackness of darkness forever! (Great sensation.) Let all discussion of this act be discouraged, and put down, as we value our lives and the lives of our children to the latest posterity. Let all seditious attempts, under the pretense of testing its validity in the courts, be put down, peaceably if we may, but, if we must, — then — otherwise! (Tremendous applause.)

It is said, I am told, that the act takes away the trial by jury. I apprehend that it does no such thing. (Hear, hear.) The chief facts to be tried are, whether the person seized is or is not a native of the Southern hemisphere, whether the person who seizes him is himself from the Southern hemisphere, and whether Gravitation is in fact in danger. Now there is not a word in the act to prohibit the trial of these questions

by a jury. (Hear, hear.) It is true, the trial is not to be had here. But it may be had elsewhere. And what objection is there to the party having his trial in the place from which he came, his birthplace, his original home, and the home of both the parties to the suit? I can see none. There are objections founded on facts, and objections founded on pretense. I take this to be one of the latter. (Applause.)

But, fellow citizens, it is high time that I gave way for those whose greater powers will enable them to throw more light on this subject. (Go on! go on! — Cheers.) No, gentlemen, my task is done. I end as I began. This act of Congress is the law of the land. In my judgment, every good citizen will acquiesce in it. Those who seek to disturb or repeal it, desire to throw the earth out of its orbit and unmake the universe. (Tremendous sensation.) I am for Gravitation, at all times, under all circumstances, without respect to latitude or longitude, without compromise! (Cheers.) It must be preserved by individual efforts, by each man *as a unit.* I am a unit! A Massachusetts unit. A Faneuil Hall unit. A Marshfield unit. (Cheers.) As for me, my part is taken. Standing here in Faneuil Hall, with Bunker Hill before me, with Lexington and Concord on my left hand, and the Rock of Plymouth on my right, I give my heart and hand for this law. (Tremendous and long-continued applause.)

The Hon. Rufus Choate sprang to the platform, and was greeted as his unbounded popularity deserves. It is impossible to give more than a faint sketch of the brilliancy of his speech. It is reported for us as follows: —

What, fellow citizens? What is it that has filled old Faneuil to the brim to-night — drawn together the

thousands of Boston into this concentration of anxious energy? What is it that gives this one pulsation to this moving mass? What has called you, Mr. President — what has called us all from our firesides, and left a thousand lonely and saddened hearths in our home-loving, curfew-keeping city? (Cheer.)

Nothing, nothing but to give our aid and countenance to that great, vital principle, now in its first peril, since the morning stars sang together — the law of Gravitation! The sight of these thousands wending their way, with the faith and devotion of second infancy, to the cradle of their Liberties (Cheers), and to aid in upholding the law of the Universe, is a spectacle more noble than fleets of mightiest admirals seen beneath the lifted cloud of battle — more sublime than serried ranks of soldiers moving, by tens of thousands, to the music of an unjust glory! (Cheers.)

The Law of Gravitation! What madness — what worse than Worcester or McLean asylum madness — to dream of its suspension, to entertain the flitting shadow of thought of its repeal? Why, let but the last, lingering, lifeless leaf of a decayed December foliage fall from its parent trunk against the law of Gravitation, and there were a discord through the universe not to be healed until the sea shall give up its dead! (Tremendous applause.) In the new Heaven and new earth of the Apocalyptic vision, there may be a new law of Gravitation, or no Gravitation at all; but I respectfully suggest a doubt, a query, whether we had best begin the experiment in the Eighth District quite yet. (Laughter and cheering.)

Congress has passed a law for the sustaining of this principle which has worked pretty well probably for

some myriads of centuries; and our friends are in ecstasies of indignation. All their hopes of confusion, their brightest visions of disorder are dispelled in a moment. What else can Congress do? Congress cannot move the mountains, or take the seas in its hand. It cannot change Mt. Washington for Teneriffe, or the Mississippi for the Ayacucho. Man, man is the great locomotive! If the mountain cannot go to Mahomet, the prophet must go to the mountain. Man is the shifting ballast in the voyage of our planet through infinite space. (Cheers.) If, then, man must be made to preserve the equilibrium of the globe, and the Southern hemisphere has notoriously less land than the Northern, what more just, more humane than to send back, at our own expense, the exiles of the Sunny South? Instead of shouldering our muskets and crying our eyes out over this law, we should shed tears of gratitude at the humanity and equity of its beneficent provisions. Even if, by mistake, a Northern man should be taken, do not half the active young men of New England make themselves new homes the world over? Shall we pity the victim of this law as he floats over the broad Atlantic, with the stars and stripes above him, as he is breathed along to his new home by the gentle trade-winds of the tropics, — as the evening breezes from broad Brazil steal over the moonlit sea to print the first kiss of welcome on his heated forehead! Is he sent to poverty when he gathers diamonds like dewdrops in the genial Brazilian sands? Is he sent to a prison when he throws the lasso and bounds over the broad savannahs of the Amazon and Orinoke? Is it a dungeon he is sunk into while he mounts the Andes, and soars above the clouds, the playmate of the vulture and the condor?

Is he driven to barbarism as he sips his coffee under the piazza of the Castilian? Is he an outcast when the dark eyes of señoritas flash welcome from their half-uplifted mantles? Away with this mock philanthropy, which weeps over the woes of a reinstated exile, and can find no wrongs in the world to redress but his!

But, forsooth, his Southern home is to be closed against him until a jury has said he shall go! Did he wait for a jury when he came away? (Laughter.) By and by it will be unconstitutional for a railroad car or a ferry-boat to start without a jury. But Congress would willingly gratify their idiosyncrasy, their infatuation, for twelve men, if there were the least need of it in the world.

It has been asked to-night, and no man can answer it, why not try the question of nativity and removal at the place where the party was born and from which he came? And there he may have his trial, and welcome. There the jury may be empaneled of his own countrymen, sworn by the bell, book, and candle of his own religion, and his is the verdict of a South American instead of a North American panel. But my word for it, not one in ten of them will ask for their suit. If it takes twelve men to prevent their going back, it will take a thousand to drive them here again. (Applause and laughter.)

But why waste words on this weak and wicked attempt to obstruct the preservation of the earth's equilibrium, the gravitation of all matter; to bring Chaos back again? Our principle is the principle which holds the elements together, our strength is the arm of the universal law!

The distinguished orator sank to his seat amid thunders of applause.

Mr. Webster then again came forward, and said he would read a letter from an eminent patriot and personal friend; a man whom Massachusetts had always delighted to honor, the Hon. Lewis Cass. (Three cheers for Lewis Cass!)

DETROIT, *Tuesday*, Nov. 12.

MY DEAR FRIEND: — Circumstances prevent my attending your great Gravitation Meeting in Boston. — Deeply as I regret the causes which have made these meetings necessary, I rejoice in the spirit of devotion to the laws of God and nature which these causes have developed. When we reflect on the consequences of a repeal or supervision of the law of Gravitation (which a repeal or supervision of the late act of Congress of course involves); when we consider the noise and confusion such an event would doubtless create in the physical world, we hardly know whether most to wonder at or abhor the practices of those who put us in such peril.

If Gravitation is suspended, who can doubt that commerce is suspended also? How, then, can the exiles of Hungary flee from the butcheries of Haynau to the only land in the world where free principles are consistently carried out, to all classes, with no other distinction than that of color? How can the Austrian Ambassador be recalled, or a mission of encouragement be dispatched to down-trodden Hungary? The fund for the Michigan Canal and for our lighthouses will have been wasted. If the results can be traced to our remissness, the cause of free principles will be retarded in Europe. Nor are these the only consequences, for there is great reason to apprehend a general derangement of the physical laws of the earth, resulting in the most serious consequences not only to our own country but to the world, compared with which the banishment of the Court and the family of Louis Philippe, and the defeat of the Democracy in 1848, are matters of trifling moment.

Being called upon for an exposition of my Nicholson Letter to the Nashville Convention, as to the meaning of which there seems to be a strange misapprehension between the two parties

in that body, I am obliged to terminate my communication earlier than I otherwise would have done. I beg you to present my best wishes to the people of Massachusetts, whose best interests I have so long but so unworthily endeavored to subserve, and believe me,

Yours truly, LEWIS CASS.

TO HON. DANIEL WEBSTER.

This letter was received with warm demonstrations of applause.

Hon. B. F. Hallett next addressed the meeting. His remarks were quite extended. At the close of his speech he paid a glowing tribute to the memory of Sir Isaac Newton, who, he had been told, was a distinguished advocate and expounder of Gravitation in England, against the efforts of an insolent landed aristocracy and overgrown monied corporations. He concluded by moving that a subscription be raised, upon the spot, to procure portraits of Sir Isaac Newton, Senator Foote of Mississippi, and the principal orator of the evening, to be hung in Faneuil Hall, surmounted by the American Eagle, and by a streamer hanging from the Eagle's mouth, on which should be printed, in golden letters, the words "Gravitation and Equilibrium."

This proposal was received with applause, and we rejoice to add that the requisite subscription was made on the spot.

The following preamble and resolutions were then adopted: —

Whereas, We regard the interests of the cotton manufactures, the shoe and leather trade, the freighting trade to the South and to Europe, the making of negro cloths, machinery and firearms, as the paramount interests and highest questions for a great

and free people to entertain, as the causes of the formation of our Union and of the Revolution itself, and see that these must be destroyed by any shock to the law of gravitation, or to any law of Congress sustaining the law of gravitation; and

Whereas, The agricultural and farming classes, and all persons living beyond the reach of tide-water, have always been the opponents of gravitation from the first; and

Whereas, It rests with the merchants, traders, and manufactures of the country, living within reach of tide-waters, to sustain the law of gravitation; — therefore

Resolved, That the late act of Congress shall be regarded as a part of the law of nations, a compact among the families of men, sacred, unalterable and irrepealable.

Resolved, That whoever opposes or seeks to repeal or materially alter that law, seeks to destroy the law of gravitation and the equilibrium of the earth, is a foe to the order of the universe and the happiness and prosperity of the human race.

Resolved, That disregarding all former party ties, we will vote for no man, for any State or National office, who is known or suspected to be opposed to the late act of Congress; but will vote for those men only, of whatever party, who are pledged to the policy of preserving it inviolate to us and our posterity.

The meeting adjourned to meet on 'Change at ten o'clock, to-morrow.

IX

ARGUMENT ON BEHALF OF CHARLES G. DAVIS, ESQ., CHARGED WITH AIDING AND ABETTING IN THE ESCAPE OF A FUGITIVE SLAVE CALLED SHADRACH

[This argument is of especial historical interest, as it exhibits the great power of patronage and official position, as well as social prestige, used to deter the defense of fugitive slaves. Shadrach was seized as a fugitive in Boston, February 15, 1851, taken to court for a hearing, and escaped the same day. Mr. Davis, who had been one of the counsel for Shadrach, was accused of aiding in this escape. The case against Mr. Davis was tried before the Hon. B. F. Hallett, United States Commissioner, on February 20 to 24. On February 26, 1851, Mr. Davis was discharged by the Commissioner, who found no case proven against him.]

May it please your Honor: —

Certainly, Mr. Commissioner, we are assembled here, this morning, under extraordinary circumstances. I am not aware that since the foundations of our institutions were laid, since we became an independent people, since the Commonwealth of Massachusetts had an independent existence, — I am not aware that a case similar to this has once arisen. I do not know that ever before in our history a judicial tribunal has sat, even for a preliminary hearing, upon a gentleman of education, a counselor of the law, sworn doubly, as a Justice of the Peace and as a counselor in all the courts, to sustain the Constitution of the United States and the laws made in pursuance thereof,

— a gentleman of property, family, friends, reputation, who has more at stake in the preservation of these institutions than nine in ten of those who charge him with this crime; — who stands charged with an offense (in the construction now attempted to be put upon the statute) of a treasonable character, a treasonable misdemeanor, an attempt to rescue a person from the law by force, an attempt to set up violence against the law of the land.

Therefore it is that this trial attracts this unusual interest. It is not that, so far as this defendant is concerned, the question whether he be bound over here, or whether the District Attorney takes his case directly to the Grand Jury, can make the slightest difference in the world; but because the decision of this tribunal, though only preliminary, will have great effect upon the community, and will be carried throughout the United States. It is because of the political weight attached to it, that such anxiety is felt for the result. For the simple rescue of a prisoner out of the hands of an officer is a thing that occurs in our streets not very unfrequently, and often in other cities. It might have occurred upstairs, and not have attracted a moment's attention.

Who, Mr. Commissioner, is the defendant at the bar? I have said that he is a Justice of the Peace, sworn to sustain the laws, a counselor of this court and of all the courts of the United States in this State, sworn doubly to sustain the laws. He is a gentleman of property and education, whose professional reputation and emolument depend upon sustaining law against force; a man whose ancestors, of the ancient Pilgrim stock of Plymouth, are among those who laid the foundations of the institutions that we enjoy. He

has at this moment so much interest in the way of personal pride, historical recollections, property, in family, reputation, honor, and emolument in these courts — so much at stake as to render it impossible to believe, except on the strongest confirmation, that he should be guilty of the offense charged against him at this moment.

The charge against the defendant involves the meanness of instigating others to an act he dares not commit himself, of putting forward obscure and oppressed men, to dare the dangers and bear the penalties from which he screens himself; meantime holding up his hand and swearing to obey the laws of his country which he is urging others forward to violate.

Since, then, my friend has done me the honor to ask me to appear for him before this tribunal, from among others so much better qualified, I feel that I am placed in circumstances calling for some allowance, some liberty for feeling and expression. We think ourselves happy that in this state trial, this political state trial, we appear before one who has been known through his whole life as not only the advocate of the largest liberty, but the asserter and maintainer of the largest liberty of speech and action, at the bar, in the press, and in the forum, carrying those ideas to an extent to which, I confess, with my comparative conservatism, I have not always seen my way clear to follow. Therefore, I shall look for as large a liberty as the case will allow me, in addressing myself to this court; in bringing forward all considerations, in suggesting all possible motives, in commenting upon all the circumstances that lie about this cause. At the same time I shall expect from the person who sits clothed with the authority of an executive whose will

is as powerful as that of any sovereign in Christendom, except the Czar of the Russias — I shall expect from him no unnecessary interruptions, no extraordinary appeals, no traveling out of the usual course of a simple judicial proceeding.

Why is it that the defendant stands here at this bar a prisoner? How is this extraordinary spectacle to be accounted for? I beg leave to submit that the whole history is simply this. There has been a law passed in the year 1850, by the Congress of the United States, which subjects certain persons, if they be fugitive slaves, or whether they be or not, subjects them to be arrested and brought into court, to have the question of their liberty and that of their seed forever, tried by a so-called judicial tribunal. Those persons are mostly poor. They belong to an oppressed class. They are the poor plebeians, while we are the patricians of our community. They are of all the people in the world those who most need the protection of courts of justice. I think the court will agree with me that if there is a single duty within the range of the duties of a counselor of this court which it is honorable for him to perform, and in the performance of which he ought to have the encouragement of the court, it is when he comes forward voluntarily to offer his services for a man arrested as a fugitive slave. Therefore it is that I think it somewhat unfortunate the District Attorney should have thought it necessary to arrest counsel. If there be a person against whom no intimidation should be used, it is the counsel for a poor, unprotected fugitive from captivity. — The question is, whether a man and his posterity forever, the fruit of his body, shall be slave or free. It is to be decided on legal principles. If there is a case

in the world that calls for legal knowledge and ability, — that calls for counselors to come in and labor without money or price, — it is a case like this. I think it a monstrous thing, unless it be a case beyond doubt, that counsel should have been selected to be proceeded against in this manner.

I take the facts to be these: Mr. Davis, being a counselor of this court, and possessed of no small sympathy for persons in peril of their freedom, when it was known that a person claimed as a fugitive slave was arrested, and in a few hours, perhaps, to be sent into eternal servitude, Mr. Davis steps over to my office and suggests to me that we offer our services as counsel. He leaves his business, which is large, while five courts are in session in this building. He sits here that whole Saturday forenoon by the prisoner, to whom he is recommended by Mr. Morton. He is twice spoken of to Mr. Riley by the prisoner, as one of his counsel. He sits from eleven to two o'clock, absorbed in this case, his feelings necessarily excited (and I should be ashamed of him if they were not excited), but his intellectual powers devoted to the points of law in this case, and your Honor knows that the points are various and new.

By the courtesy of the marshal, the counsel were permitted to remain here, because the marshal had not yet determined where to keep his prisoner. They remained until the time for the prisoner's meal. When the business is over, they leave. Some one must go out first, and somebody must go out last. It is nothing more nor less than the old rule of "The Devil take the hindermost." Mr. List leaves the court-room —Mr. Warren goes out. All the officers are to go to dinner, and the door is to be opened and closed

each time. Dinner is to be brought in. Twenty times that door is to be opened.

In the mean time about that door is collected a small number of persons of the same color with the person then at the bar, very likely, perhaps, to make a rescue, some advising against it, and some for it, with considerable excitement. Mr. Davis slides out of that passageway and goes to his office. Mr. Wright is prevented from going by the crowd. Not a blow is struck. Not the hair of a man's head is injured. The prisoner walks off with his friends, straight out of this Court House, and no more than twenty or thirty persons have done the deed. Three men outside of the door could have prevented the rescue. Mr. Riley did not suspect it. Mr. Warren did not suspect it. Mr. Homer did not suspect it. Mr. Wright did not suspect it. Nobody suspected it. The sudden action of a small body of men, unexpected, and only successful because unexpected, accomplished it. He is out of the reach of the officers in a moment, and there's the end of the whole business. No premeditation! No plan! Counsel knowing nothing about it! Nobody suspecting it, and the whole thing over in one minute!

But, may it please the Commissioner, the law is violated — the outrage is done. This is a case of great political importance, and the deputy marshal thinks it his duty (I think in rather an extraordinary manner), instantly, before any charge is made against him, before any official inquiry is started, to issue a long affidavit, sent post-haste to every newspaper, and hurried on to Washington, — Congress in session, — a delicate question there, — Northern and Southern men arrayed against each other. Then comes an alarm. Then the Executive shrieks out a proclamation.

A standing army is to be ordered to Boston. All good citizens are to be commanded to sustain the laws. The country thinks that mob law is rioting in Boston —that we all go armed to the teeth. The chief magistrate of fifteen millions of people must launch against us the thunders from his mighty hand.

In the mean time, we poor, innocent citizens are just as quiet, just as peaceable, just as confident in our own laws, just as capable of taking care of ourselves on Saturday evening as on Friday morning. Only some frightened innocents, like the goose, the duck and the turkey in the fable, say the sky is falling, and they must go and tell the king!

But we can all see now that there was too much alarm. We begin already to feel the reaction. A state of things has been created over this country entirely unwarranted by the circumstances. And I trust that the Commissioner will be able to say to the country, say to His Excellency the President of the United States, say to the world, that nothing of this sort has occurred; that there has been no preconcerted action; that the marshal cleared his room, and everybody went out peaceably; that nobody expected the rescue; that there was no crowd in the court-room; but the blacks, feeling themselves oppressed and periled by this law, standing at that door, behind which their friend and companion is held a prisoner, rush in, almost without resistance, carry off their prisoner, and not a blow is struck, not a weapon drawn, not a man injured. That is the end of it. There is no need of standing armies in Boston! And, above all, we trust that the Commissioner will be able to say to the world, to the President, and to Congress, that this effort was the unpremeditated, irresistible im-

pulse of a small body of men, acting under the sense and sight of oppression and impending horrid calamities, against the advice of some of their own number; and that no gentleman of education, no counselor of this court sworn to obey the law, has instigated these poor men to its overthrow. Massachusetts is not in a state of civil war, and her most valued citizens are not engaged in overturning the foundations of civil government.

Why should the criminal proceedings of this day have taken place at all? What is the evidence? The learned district attorney thought proper to suggest to the Court that there was further evidence which might be presented in another stage of this proceeding. That, I am sure, fell with as little weight upon the mind of the Commissioner as it would if we, on the other hand, had said, as is the fact, that we have a large amount of evidence that might yet be presented in behalf of Mr. Davis. This is not a game of brag! It is not upon evidence that is not here, but upon evidence that is here, that this case is to be decided. Here has been mortified pride, here has been fear, here has been the dread spectre of executive power, stalking across the scene, appalling the hearts and disabling the judgments of men. Excited men suspect everybody. Every person who ever attended a public meeting is suspected. A political party is to be put under the ban. There is nothing so rash as fear. There is nothing so indiscriminating as fear. There is nothing so cruel as fear, unless it be mortified pride — and here they both concurred.

Instructions come from a distant executive power that knows nothing of the facts. And the fear of that power and patronage is the reason, may it please the

Commissioner, why suddenly, on Saturday or Sunday, before the subject can be examined and the truth ascertained, a warrant is got out against a person of the character and position of Mr. Davis. But when we look at things in their natural light, when there is a calm investigation of the facts, I think the government will see and regret its rashness and delusion.

I understand, may it please the Commissioner, that there is to be a great deal done on this case, of an unusual character. We have been threatened with the reading of newspapers; and public meetings, and political principles are to be charged as treasonable. Yes! political considerations are brought to bear. We cannot tell what limit is to be put to this. And so, not knowing what is before me, with no ordinary rules of procedure to guide me, the Commissioner will allow me to try to anticipate the attacks as well as I can. For having had it intimated that the argument will not follow legal evidence, but extracts from newspapers —

Mr. Lunt. That is very strong. I have offered you everything of that kind that I have to say.

The Commissioner. The gentleman proposes to read, as part of his argument, an article from the newspapers.

Mr. Dana. He proposes to read it as evidence, to affect the mind of the court on the facts. I cannot object to it now. When it is offered, I have no doubt it will be properly met by the Commissioner.

I say, not knowing what is to come upon me, I must take a pretty wide margin. In that view of the case, it will not be improper if I state what I understand to be the true position of Mr. Davis, with reference to the principles involved in this case.

May it please your Honor, we are not subjects of a monarchy, which has put laws upon us that we have no hand in making. I do not hesitate to say, here, that if the act of 1850 had been imposed upon us, a subject people, by a monarchy, we should have rebelled as one man. I do not hesitate to say that if this law had been imposed upon us as a province, by a mother country, without our participation in the act, we should have rebelled as one man.

But we are a republic. We make our own laws. We choose our own lawgivers. We obey the laws we make and we make the laws we obey. This law was constitutionally passed, though not constitutional, we think, in its provisions. It is the law until repealed or judicially abrogated.

Who passed this law? It was passed by the vote of the representative of our own city, whom we sent there by our own votes. It was advocated by our own senator. It was passed by the aid of Northern votes. Where is the remedy? It strikes me that the statement of the case shows where the remedy is. It is in the hands of the people. It is not in standing behind and urging on poor men to put themselves in the cannon's mouth. It is political courage that is wanted. Courage shown in speech, through the pen, and through the ballot-box.

But be it known that all I have said is on the idea that this is a repealable law. If we are to be told that this is a part of the organic law, sunk down deep into national compact, and never to be repealed, — then neither you nor I can answer for the consequences. But now we can say that it is nothing but an act, that may be repealed to-morrow. Take from us that great argument, and what can the defendant and myself

do? What can the defendant say to discourage colored men from the use of force? You take from him his great means of influence. I never have been one of those, and I think the defendant has never been one of those, who would throw out all their strength in denunciations against Southern men born to their institution of slavery, and pass over those Northern men who volunteer to bring this state of things upon us.

But as a citizen, within constitutional limits, addressing his fellow citizens at Faneuil Hall (where I think we have still a right to go), discouraging his fellow citizens from violence, writing in the newspapers and arguing in the courts of law to the same purpose, saying to the poor trembling negro, "I will give you a habeas corpus! I will give you a writ of personal replevin! I will aid in your defense! There is no need of violence!" That is the position of the defendant. If he held any other position, if the defendant had made up his mind that here was a case for revolution, that here was a case for civil war and bloodshed — if I know anything of the spirit of the defendant, he would have exhibited himself in a far different manner. He would have resigned his position as a counselor of this court, with all its profits and honors; he would put himself at the head, instead of urging on from behind a class of ignorant, excited men, against the execution of the laws.

For he knows perfectly well — an educated man as he is, who has studied his logic and metaphysics, and who is not unfamiliar with the principles of the social system — that an intentional, forcible resistance to law is, in its nature, revolution. And I take it, no citizen has the right forcibly to violate the law, unless

he is prepared for revolution. I know that these nice metaphysic rays, as Burke says, piercing into the dense medium of common life, are refracted and distorted from their course. But an educated man, with a disciplined mind, knows that he has no right to encourage others to forcible resistance, unless he is ready to take the risks of bringing upon the community all the consequences of civil war. We talk about a higher law on the subject of resistance to the law. And there is a higher law. But what is it? It is the right to passive submission to penalties, or, it is the active ultimate right of revolution. It is the right our fathers took to themselves, as an ultimate remedy for unsupportable evils. It means war and bloodshed. It is a case altogether out of law. I do not know a man educated to the law that takes any other ground.

I suppose your Honor did not misapprehend my last remark and that no one did. When I said resistance to the law, I did not mean to include resistance for the purpose of raising a constitutional issue. If an unconstitutional tax is levied, you refuse to pay it and raise the constitutional question. This right seems to be lost sight of. Persons seem to think we are to obey statutes and not the Constitution. I understand that the duty to the Constitution is above the duty to the statutes. And therefore I say, by resistance to the law, I mean combined, systematic, forcible resistance to the law for the purpose of overcoming all law, or a particular law in all cases; defying the government to arms, and not for the purpose of raising a constitutional issue. For this is within the power, nay, it is sometimes the duty of a citizen. I do not know a position in which a person does a greater good to his fellow citizens than when he does, as John

Hampden did on the question of ship-money, raise, by refusal to obey, the constitutional issue. And in doing this, he ought to have the approbation of the courts and their ministers, and of every person true to the Constitution and the laws.

At the same time that it is important to maintain all these principles, which are the principles of the defendant, I also think this is a season when we must be very careful that certain opposite doctrines are not carried too far. I think it is a time, this day, when it becomes a judicial tribunal to see to it that this extraordinary combination of executive power and patronage, this alarm and this anxiety at headquarters, does not lead to a violation of private rights and personal liberty. I think there is a pressure brought to bear against the free expression of popular opinion, against the exercise of private judgment — a pressure felt even in the courts of law, intimidating counsel, overawing witnesses, and making the defense of liberty a peril. There is the pressure of fear of political disfranchisement, of social ostracism, which weighs upon this community like a nightmare. We feel it everywhere. We know that we make sacrifices when we act in this cause. We feel that we suffer under it. And if this course is persevered in, I believe that if a man stands at that bar charged with being a fugitive slave, he will find it difficult to obtain counsel in this city of Boston, except from a small body of men peculiarly situated.

I think that two years ago no man could have stood before this bar, with perpetual servitude impending over him, but almost the entire bar would have come forward for his defense. No man would have dared to decline. But because of this pressure of political and

mercantile interests, it is said that Henry Long found it difficult to obtain counsel in New York. His friends sent to Boston to obtain an eminent man here, willing to brave public feeling by acting as a counselor in a case of slavery. I do believe that this danger is to be regarded. For there is, at times, as much servility in democracies as in monarchies. I was struck with the remark made by the Earl of Carlisle, in his late letter, that there is in the United States an absolute submission to the supposed popular opinion of the hour, greater than he ever knew in any other country in the world. This is something in which no American can take pride.

The history of democratic governments shows that they may be as arbitrary as any absolute monarchy. Athens and Paris have, under democratic forms, been the standing illustrations of tyranny and arbitrary rule the world over. Those are free governments in which there is a government of just laws, whether wrought out through a mixed government, as in England, or wrought out as here by the people themselves, and cast into representative forms. And now we see before us the anomaly, the mortifying contradiction, that it is in Great Britain, and not in the republic of the United States, with our venerated Declaration of Independence, that the great principles of Liberty and Fraternity are practically carried out. I do not mean to reflect upon any person or persons south or north of a certain geographical line. Our ancestors have eaten sour grapes, and their children's teeth are set on edge. We are all under the same condemnation. We are all responsible for these laws — for slavery, in some form or other. Our constitutional compact makes us responsible, and we cannot escape from our share of the evil and the wrong.

But I must leave these generalities, and pass to the particular points of this case. This is the first case of its kind that has occurred. The decision in this case by the Commissioner, though not matter of precedent, yet goes to the profession, the press, and into the private records of the country. Therefore we may be excused if we pay some considerable attention to the points of law involved.

In the first place, it should be borne in mind that a fugitive slave is not a criminal.

A few years ago, it was thought in Massachusetts that the pursuing of slaves was criminal. I thank God, it is not yet decided that the escaping from slavery is criminal. It is a mere question of property under this act. This law has recognized certain property in slaves, claimed in a certain manner, in the free States. It is a mere question of property. The Southern man has certain property in his slave. That property we do not here recognize. But if the property escapes, and he pursues it, it is to be recognized in this court. Consequently, when a Southern man comes here and seizes a person as his property, he takes him at his own risk, a risk which every man takes in seizing anything as his property. If he seizes the wrong property, any person who owns it may resist him, or resist his officer armed with a warrant. This has been ruled in various cases.

Your Honor recollects in the 8th Pickering, the case of the Commonwealth *vs.* Kennard. There the writ was placed in the hands of the officer, to go and attach some property of the defendant. He attached certain property which he thought belonged to the defendant. He showed his warrant, but the true owners put him, neck and heels, out of the house.

They were indicted, but the court sustained them in their act.

In a civil action, if the wrong person, the wrong horse, or the wrong slave is taken, then the owner of the property may defend it, or the man seized may defend himself if he chooses. There is a different statute on the subject of interfering with the process of the courts, with judicial processes, under which this respondent is not held to answer. Whenever this respondent is held to answer for resisting judicial processes, then these other questions may be raised. He is now only charged with rescuing property from the owner, or the officer holding for the owner.

The Constitution says that any person *charged* with crime, and escaping, shall be delivered up. But in the case of the fugitive slave, it carefully alters the phraseology. It does not say that any person *charged* with being a fugitive slave shall be surrendered, but any person who *is* a fugitive slave. In the one case, the *charge* is the only material fact, and is proved by record. In the other case, which is a question of property, the fact of property is the foundation of the proceeding. So, in this act of 1850, the sixth section does not provide that any person who *claims* a fugitive slave shall have the right to arrest him, but any person who *is the owner* of a fugitive slave may arrest him. So in the seventh section, the penalty is not inflicted for rescuing a person who is *claimed* as a fugitive slave, but for rescuing a person who *is* a fugitive slave. These provisions are in analogy with the law of property, and of the arrest of persons and property, in all other cases. As bad as this statute is, it is not quite so bad as its friends in this case would make it.

The next consideration is, that it is not necessary that the claim should be made by virtue of legal process. The owner or his agent may arrest the fugitive *with or without process.* The offense is equally committed, and the penalty is the same, whether the rescue is made from the owner without process, or from the officer having process. This fact, with the fact that there is a general statute relating to the offense of obstructing judicial processes, shows that this statute assumes the facts of property and escape to be true, and applies only to cases in which they shall prove to be true.

If this is not so, what is the result? If a man claims another, without process, by putting his hand on his shoulder, though the man may be as free as you or I, if he resists, or his friends aid him in resisting, the offense is committed. A man claimed as a fugitive slave has been rescued or aided in his escape. You cannot refuse to deliver up a colored boy or girl born in your house, of free parents, to any man who knocks at your door and claims the child, with or without a warrant, without incurring the penalties of this act. This monstrous construction can never be admitted. I beseech the Commissioner to reconsider his intimated opinion on this point, and to hold the government to preliminary proof, in the outset, that the person rescued was a slave by the law of Virginia, was the slave of the man who claimed him, and was a fugitive from that state of slavery.

What evidence has there been of any of these facts? There has been no evidence offered that the prisoner was a slave by the law of Virginia! — There has been no evidence offered that he was the slave of Mr. Debree! There has been no evidence offered that he was

a fugitive from a state of slavery! Mr. Riley's return upon the warrant, stating that he had arrested "the within-named Shadrach," was admitted as evidence. I solemnly protested against the reception of the return as evidence in a criminal proceeding between other parties; but it was received, and for a while held to be conclusive. But in answer to my question, Mr. Riley replied that he did not know the man he arrested to be the man named in the warrant. And how could he know it? This nullified the return, and the government had no evidence. The district attorney saw this, and rising in his seat, in a threatening tone, said to Mr. Riley, "I warn you, sir, not to give that testimony!" The testimony was true, and it was admitted by the court. Why was Mr. Riley warned? He was warned for private reasons. It was an official warning, by the agent of the executive to one of its servants.

Mr. Lunt. I deny that it was a private warning. It was public, and for proper reasons.

Mr. Dana. It was for private, or secret reasons, not given, not apparent, — some political or governmental terror, known only to the parties. There is no escape from this. The bar saw it. The audience saw it. It is graven with a pen of iron, and laid up in the rock forever!

All evidence of identity having failed, the government is driven to its last shift. Colonel Thomas is called in, and he testifies that the agent of Mr. Debree said to him, in the court-room, when the prisoner was brought in, "That is my boy!" This is hearsay evidence upon hearsay evidence. It is monstrous! Yet

on this slender thread of illegal testimony hung all the evidence of the facts of identity, slavery, and escape. If it is enough to prove that the man rescued was the man in custody, and upon whom the court was sitting in fact, no one denies it. But if it be necessary to show that the man in custody was the man named in the warrant, or that he was a slave, and a fugitive slave, there has been no competent evidence of any of those facts, and no evidence at all but of one of them.

This man was not rescued from the court. The court had adjourned. The marshal had chosen to make the court-room a slave jail. The offense would have been the same in the eye of the law, if he had been rescued from the hands of the agent having no warrant, in the streets, or in a railroad car.

I have nothing more to submit to the court on the subject of the law applicable to this case. I will now call your Honor's attention to the facts in proof.

To avoid repetition and confusion, I will call your Honor's attention to single points.

1. Mr. Davis was counsel in the case, and acted as such. Mr. Morton, who knew Shadrach, and to whom Shadrach looked for advice, recommended Mr. Davis to him as counsel. Mr. Riley testifies that Shadrach twice pointed out Mr. Davis to him as one of his counsel, when officially inquired of by Mr. Riley. Mr. King and Mr. List, counselors of this court, testify that Mr. Davis sat with, consulted with, and conversed with the counsel who addressed the court, made a prolonged and careful examination of the papers, and was the first who raised the doubt of their sufficiency. Mr. Sawin, an officer, says he acted as counsel. It is proved that he went into the court-

room for the purpose of acting as counsel, and did not leave the room or the bar at all (the government will admit, not for more than a minute or two) until the last moment. What other evidence can there be of counsel's authority? It is seldom if ever in writing, but is proved by acts and recognitions. After such evidence of the acts and recognitions of a hasty and troubled forenoon, including the testimony of two of his own officers, I was amazed at the pertinacity of the prosecuting officer in calling Mr. Curtis to prove that Mr. Davis was not counsel. But Mr. Curtis admitted that he knew nothing of the relations between Shadrach and Mr. Davis, that there are often counsel who do not address the court, and that Mr. Davis might have been of such counsel, for aught he knew. And most of the work of counsel was done after Mr. Curtis left.

I think your Honor will find no difficulty in believing that Mr. Davis acted as counsel for Shadrach, and was in attendance for that purpose.

2. To connect Mr. Davis with the rescue, the government has found it necessary to contend that he left the court-room and returned, shortly before the rescue took place. The only witness to this is Prescott; and how does he stand? Prescott was in the entry before the rescue took place, he heard it debated, he saw it through, he gave no notice to any one, but evidently, from the testimony of Hanscom, he sympathized with the rescuers, and expressed his sympathy in a very unguarded manner for a man who was present, in the midst. All that day and the next, with the vanity of a youth who has been the fortunate spectator of the great event of the day, a fire, a hanging, or a murder, he vaunts his connection and sym-

pathy with the rescue. On the third day come the arrests. He finds the government has learned that he was present. Six months in jail, and a thousand dollars fine, is no trifle to a mechanic's apprentice. He becomes alarmed, and offers himself as State's evidence, and becomes a swift, a terrified, and a blinded witness for the government. He says he was standing in the entry by the recess that leads to the east door and the water-closet. While there, he saw a gentleman come along the entry and go past him into the recess, and he thinks through the east door into the court-room. If this was Mr. Davis, he must have gone through that door, for he was in the room and left it again a minute after. This gentleman he is sure was Mr. Davis, although he did not then know him by name and had only seen him once. Nor was there anything then to call his attention to a casual passer-by.

Now, may it please your Honor, how long and when was Prescott at that post? According to his own testimony, about two minutes before the rescue began, and as soon as he saw the attempt was serious, he left that place for the stairs. Mr. Davis, then, must have entered the east door one or two minutes before he went out of the west door. Now, Mr. Warren, the deputy marshal, testifies that he passed through the entry into this closet just about two minutes before the rescue, and remembers seeing a young white man standing at the corner. To avoid the effect of this evidence, Prescott is recalled and says he remembers also to have seen a man come out at the east door and go into the closet, at this moment. But here the witness made a mistake. He thought that Mr. Warren went through the east door, but Mr. Warren says

that he came along the entry, and had not been in or out of that door. What then is the predicament in which Prescott has involved himself? Three different men must have gone into that recess in the short space of two minutes; two of them, at least, must have been in the closet at the same minute; and the east door must have been opened three times upon a knock from without.

Against this evident mistake or willful perversion, what is the evidence? Mr. Riley and Mr. Warren both say that the east door was fastened on the inside, with strict orders not to have it opened at all; and so strict were they, that they themselves went and came by the west door. No one can be found who opened that door or saw it opened, or saw Mr. Davis go in or out at it, and it is next the marshal's desk, and in plain sight of every one. No one could come in at it, without knocking and having it opened from within. During the half-hour before the rescue, there was no one in the room but the prisoner, the officers, and the counsel. The doors were both in plain sight, the east door locked, and at the west door two officers, between whom every person must pass. Both these officers testify that Mr. Davis did not go out or in to their knowledge. Byrnes, Neale, and Sawin, the other officers, did not see him go, and think he did not leave the room. Mr. Riley is confident he did not leave the room. Mr. Wright found Mr. Davis in the room, half an hour before the rescue, and is sure he did not leave. Not a man in the court-room saw him go or come, or believes that he did so. If Prescott's conjecture is true, Mr. Davis must have gone out past the officers at the west door, returned to the east door, knocked and been admitted by another officer,

—besides the inconsistencies about the men in the closet.

We might well ask, what if this were Mr. Davis? What does it prove? He spoke to no one, except a "good day" to one man, and took no notice of the crowd at the door. But I will not argue this supposition, for it is not true. It was not Mr. Davis. He did not leave the room until he went out for the last time.

Something has been attempted to be made out of Mr. Davis's conversation with the officers in the room. A man engaged in a plot for a rescue would not be likely to expose himself to suspicion by violent remarks to officers. But take the evidence as it stands. At the request of Mr. List, he asked Sawin, whom he knew, if the man next Shadrach was a Southern man. This was proper. The counsel did not wish a man to sit next the prisoner, who might converse with him for the purpose of getting admissions from him. They feared he might be an agent of the claimant. He said privately to Mr. Sawin, whom he had known intimately for years, that this was a dirty business he was engaged in. He did not know Mr. Sawin to be an officer of the court. He knew him as a city constable; and supposed he had let himself out by the day as a catcher of fugitive slaves. I know something of the feelings of Southern gentlemen as to this class of men. They are necessary evils. They use them as we use spies, informers, and deserters in war; they use them, but they despise them. I remember being in one of the chief cities of Virginia, and passing a large, handsome house, when my friend said to me, "There lives perhaps the richest man in our town, but he visits nowhere, nobody notices him. He is looked upon with aversion. He is a dealer in slaves!

He keeps a slave-market, and pursues fugitives!" They look upon this occupation with as much contempt, ay, with more contempt than we seem to now; for there is a higher spirit in their aristocracy than in the ruling classes of our Northern cities at this moment. This was the feeling of Mr. Davis when he spoke to Sawin. This is the feeling of every man of honor. He wished a man whom he knew to be engaged in a more respectable business. I have said the same. I saw a man I knew in court the other day, letting himself by the dollar a day, in slave-catching. I begged him, if he could find any honest mode of getting a living, to abandon it.

THE COMMISSIONER. Did you know him to be engaged in his legal duties?

MR. LUNT. A very improper remark!

MR. DANA. I venture to suggest not. The remark was with reference to the future, and not to the present.

THE COMMISSIONER. I see no distinction between attempting to deter men from executing the law and assisting in violating it.

MR. DANA. I am sorry I cannot see the impropriety of it. Perhaps I have not made myself clearly understood. Mr. Davis expressed his opinion that the man had better be in better business.

THE COMMISSIONER. It was equivalent to saying to the officer that the execution of the law was a mean business.

MR. DANA. That I propose to argue.

THE COMMISSIONER. On that point, the defendant himself intimated, in his cross-examination, that the expression was not used as an observation in general.

On being asked whether the remark was not said with regard to his business, he replied, yes.

Mr. Dana. I did not so understand it. He intended to say this: "Mr. Sawin, you and I are old acquaintances. You are not obliged to do this business. It is mean business. Why do you volunteer in it?" This is what I myself have said, and what every high-minded man must feel.

Mr. Lunt here intimated that Mr. Dana might find himself changing places at the bar, and be a defendant instead of counsel, if he advocated and expressed such sentiments.

Mr. Dana simply bowed to the attorney, and proceeded.

No citizen is bound to an active execution of this law, unless called upon as one of the *posse comitatus*. Did your Honor feel bound to join in the pursuit last Saturday, when the mob passed you at the corner of Court Street? Do you feel bound, of a pleasant evening, to walk about in the neighborhood and see what fugitives you can find and dispose of? Would any compensation tempt you to do it?

On the subject of the conversation with Byrnes, that was considered, of course, very truculent, on the government's evidence. But when explained by Mr. Minns, what is it? The defendant knows that the cause in which he is engaged, by a strange revulsion of public feeling, is unpopular. It is unprofitable, and whatever is unprofitable is unpopular. It is not genteel, and persons doubtful of their gentility ridicule it. Now Mr. Davis being engaged in this unpopular cause, Byrnes makes a remark which Mr. Minns thought was intended to irritate Mr. Davis.

He did not hear the first part, but it ended with "killing the negroes." Mr. Davis felt that it was intended as a taunt to him. He answered him: "Then, on that principle, you ought to have your throats cut." I have no doubt it was a logical conclusion from Mr. Byrnes's premises, and nothing more.

Up to this point, what is the evidence against Mr. Davis? Am I not right in saying, nothing whatever — nothing more than any man would be subject to, who acted as counsel?

The only remaining point is his passing out of the door, and his conduct in the entry. On this point there is but one witness against him, and that is Mr. Byrnes, who, unfortunately, holds the office of deputy marshal. I shall not go into an examination of the evidence as to the reputation of this man. Twelve good men, known to us all, persons likely to know Byrnes's character, have testified that it is and has for years been bad, decidedly bad; and it was not denied by this witness, that the verdict at East Cambridge was rendered on the assumption of his not being worthy of belief. His own witnesses were chiefly casual acquaintances, or the boon companions of his bowling-alley and billiard-room, the retailers of liquors, men who, like him, live by violating the laws by night, which he lives by enforcing in the daytime.

It is clearly proved that there was no suspicion of a rescue, either in the court-room or in the entry, until the instant it took place. Prescott did not suspect it. Mr. Homer, the highly respectable assistant clerk of the Municipal Court, who saw the whole occurrence from the stairway, did not think it would be anything serious. Mr. Warren, the deputy marshal, passe through the group at the door twice, but two or three

minutes before the rescue, and suspected nothing. Five courts were in session, and persons were passing up the stairs and through the passageway to the last moment, and suspected nothing. The officers inside suspected nothing. Their defense against negligence is the defense of Mr. Davis. Mr. Davis knew that Mr. Morton expected to purchase the freedom of Shadrach. He had confidence that the documentary evidence was fatally defective. He was engaged to attend the consultations on the defense, and on the Habeas Corpus, that afternoon. He saw that Mr. Curtis was not disposed to hurry matters, or to deny the prisoner full opportunities for defense. And I will do Mr. Curtis the justice to say that I have no doubt it was his object to exhibit this law to us in its most favorable light; to justify its makers as far as possible. Mr. Davis neither knew, nor suspected, nor thought of a rescue at that door. Every witness says he went out of the door in the usual manner, except Hutchins, and when Hutchins thought he should have gone out in full front, instead of sidewise, your Honor well asked how otherwise could he have gone out, with a crowd against the door, and in the passage? I see that your Honor thinks nothing of that; although in the more jealous eye of the district attorney, it is matter of suspicion. To minds so disposed, there is nothing but is proof of guilt. If Mr. Davis had marched out in full front, it would have been in order to open the door wider, for the conspirators to rush in. Just so in the case of poor Shadrach's coat. Yesterday the district attorney was certain that Mr. Davis, or some one, apprised him of the intended rescue, because he pulled his coat off. Now, when it is proved, by the government's own witnesses, that Shadrach

afterwards put his coat on again, I suppose his putting it on will be just as good proof of the same thing.

Mr. Byrnes thinks he recognized Mr. Davis's voice in the entry, calling out, "Take him out, boys!" But the same cry was uttered several times, and Mr. Homer and Mr. Hutchins, who saw Mr. Davis at the moment, and were outside, say it did not come from him, but from the negroes, and Prescott attributes it to the negroes. Four men were nearer to Mr. Davis than Byrnes was, and all of them exculpate Mr. Davis. And Byrnes is confessedly hard of hearing, and not particularly familiar with Mr. Davis's voice. Moreover his character for truth and veracity is impeached.

Mr. Davis was on or near the platform when Mr. Homer saw him. Mr. Adams met him on the lower floor, by the marshal's office, while the noise was going on upstairs; talked with him two or three minutes, and walked round the building, and saw the crowd go up the street. This proves that Mr. Davis did not linger near the rescuers; nor did he absolutely run away, or fly, as a man would who desired to avoid discovery. On the contrary, he did just as any other person would have done. He stayed long enough to let himself be seen by several persons, but not long enough to be of any aid to the rescuers. Nothing can be clearer of cause for imputation than the conduct of Mr. Davis in the entry and on the stairway.

Such, please your Honor, is all the evidence against the defendant. It is reduced to an exclamation on the staircase, sworn to, not very confidently, by a deaf man, who was too far off to hear well at any rate of hearing, denied by three officers, with good hearing, two of whom were outside, while a dozen voices were calling out the same thing at the same moment; the

moment, too, one of alarm and excitement on the part of the officers. If such evidence is sufficient, who can be safe? Who would dare to act as counsel in any case of public excitement, with a suspicious and angry government watching every motion, served by officers of broken-down reputations?

Please your Honor, I have done with the testimony. On what principles of proof is the judgment to be made up?

The Constitution requires that no person shall be arrested without a warrant supported by oath. The Act of 1789 requires these proceedings to be conformed to proceedings in the state courts. In Massachusetts it has always been required that the complainant shall be first examined on his oath. In this case there has been no examination under oath. Mr. George Lunt has sworn, "so help me God," that Charles Gideon Davis, a counselor of this court, has aided in rescuing the prisoner. Yet, so help him God! he knew nothing about the facts. He has made oath to the form of the statute, and no more.

Mr. Lunt here intervened and said it was the custom for the district attorney to swear to complaints on hearsay evidence.

Mr. Dana. But this is not stated as hearsay. It is sworn to as a fact. Charles G. Davis "*did* rescue," and the above named George Lunt made oath to the *truth of the facts.* As a question of conscience, I leave it with that officer to settle with himself. As a matter of law, as a matter of vital importance to every citizen, as a great question of constitutional law, I earnestly protest against the issuing of warrants on

the mere formal oaths of official persons, representing a party in the proceedings, and utterly ignorant of the facts they swear to. If it be a custom, it is more honored in the breach than in the observance. But I deny that it is the custom. Complaints are sworn to by persons knowing the facts always in the state courts, and in my experience in the federal courts. If the prosecuting officer is obliged to swear to them, for want of other witnesses, he only swears to his information and belief.

In closing my prolonged remarks, let me recapitulate our case. Mr. Davis is not the man to urge others to acts he dares not commit himself. He believes this dreadful statute unconstitutional, a violation of our moral sense, a great breach upon the safeguards of freedom everywhere. Yet he will oppose it legally, by speech, by the pen, and in court. He will not yield to it any voluntary obedience, but he will not use force, or counsel citizens to use force to set aside the laws. He rejoices that Shadrach is free. Every right-minded man rejoices that he is free. Sober second thought teaches him and all of us that violent counsels are weak counsels. Better had it been for the cause of freedom, if, when the marshal called out to shoot the prisoner, some armed minister of the law had shot dead the unarmed, unoffending man! Better had it been for him, and the cause of those like him, if John H. Riley, instead of flying to the window, had plunged that sword to the hilt in the heart of the captive! Better if this temple of justice, which has already been turned into a slave-jail and a slave-market, had also been made the shambles and the grave!

While we uphold the public peace and the dignity of all laws, let us regard with tenderness and consid-

eration that poor class of oppressed men, our negro population, on whom the statute falls with the terrors and blackness of night. When one of their number, by his industry and abilities, has raised himself to the dignity of a place in this bar, it was with mortification I heard him insulted, yesterday, on the stand, by an officer of this court, who pointed him out, in giving his evidence, as "the little darky lawyer." While I rejoiced at the rebuke administered to that officer from the bench, it was with deep regret that I saw the representative of the government lead off the laugh of the audience against him.

Mr. Lunt. This is false.

Mr. Dana. Do you deny you did so? It was seen and noticed by us all. I spoke to you at the time.

Mr. Lunt. I only smiled. I cannot always control my muscles.

Mr. Dana. I am sorry you could not control them on this occasion. It led off and encouraged others, who take their cue from persons in high stations.

The doings of these last few days are now part of history. If there has been a hasty and a needless arrest of a respectable gentleman; if counsel have been intimidated, or witnesses threatened; if liberty of speech and action have been periled; if the dignity and duty of office have been yielded to the unreasonable demands of political agents, and the commands of a misinformed executive, — the inquest of public opinion is to sit upon the whole transaction, and it will be held up to the world. *Proximus ardet Ucalegon!* There are revolutions in the wheel of fortune. There are tides in the affairs of men.

Let us hope that your Honor will be able to set this occurrence in its true light: — a sudden, unexpected, unpremeditated action of a group of excited men, and successful because unexpected. But a sworn counselor of this court, even in the excitement of the rescue of a slave to his freedom, by those of his own flesh and bone, did not forget the duty he owed personally to the court and the law.

X

AGAINST THE RENDITION OF ANTHONY BURNS TO SLAVERY

May 31, 1854.

[An interesting account of Mr. Dana's services in behalf of fugitive slaves and rescuers is given in the Biography.[1]

The speech took four hours and Mr. Dana says in his journal: "My whole brief was on the sides of a piece of small note-paper and consequently I was obliged to write from recollection."

I may repeat here that Mr. Dana refused all pay for his services to fugitive slaves.[2]]

I CONGRATULATE you, sir, that your labors, so anxious and painful, are drawing to a close. I congratu late the Commonwealth of Massachusetts, that at length, in due time, by leave of the marshal of the United States and the district attorney of the United States, first had and obtained therefor, her courts may be reopened, and her judges, suitors and witnesses may pass and repass without being obliged to satisfy hirelings of the United States marshal and bayoneted foreigners, clothed in the uniform of our army and navy, that they have a right to be there. I congratulate the city of Boston, that her peace here is no longer to be in danger. Yet I cannot but admit that while her peace here is in some danger, the peace of all other parts of the city has never been so safe as while the marshal has had posse of specials in this court-

[1] Vol. i, pp. 178–201, and for Anthony Burns case, vol. i, pp. 262–295.

[2] *Biography*, vol. i, pp. 291–294.

house. Why, sir, people have not felt it necessary to lock their doors at night, the brothels are tenanted only by women, fighting dogs and racing horses have been unemployed, and Ann Street and its alleys and cellars show signs of a coming millennium.

I congratulate, too, the government of the United States, that its legal representative can return to his appropriate duties, and that his sedulous presence will no longer be needed here in a private civil suit, for the purpose of intimidation, a purpose which his effort the day before yesterday showed every desire to effect, which, although it did not influence this court in the least, I deeply regret your Honor did not put down at once, and bring to bear upon him the judicial power of this tribunal. I congratulate the marshal of the United States, that the ordinary respectability of his character is no longer to be in danger from the character of the associates he is obliged to call about him. I congratulate the officers of the army and navy, that they can be relieved from this service, which as gentlemen and soldiers surely they despise, and can draw off their non-commissioned officers and privates, both drunk and sober, from this fortified slave-pen, to the custody of the forts and fleets of our country, which have been left in peril, that this great republic might add to its glories the trophies of one more captured slave.

I offer these congratulations in the belief that the decision of your Honor will restore to freedom this man, the prisoner at the bar, whom fraud and violence found a week ago a free man on the soil of Massachusetts. But rather than that your decision should consign him to perpetual bondage, I would say — let this session never break up! Let us sit here to the end of

that man's life, or to the end of ours. But, assured that your Honor will carry through this trial the presumption which you recognized in the outset, that this man is free until he is proved a slave, we look with confidence to a better termination.

Sir Matthew Hale said it was better that nine guilty men should escape than that one innocent man should suffer. This maxim has been approved by all jurists and statesmen from that day to this. It was applied to a case of murder, where one man's life was on one side and the interest of an entire community on the other. How much more should it be applied to a case like this, where on the one side is something dearer than life, and on the other no public interest whatever, but only the value of a few hundred pieces of silver, which the claimant himself, when they were offered to him, refused to receive. It is not by rhetoric, but in human nature, by the judgment of mankind, that liberty is dearer than life. Men of honor set their lives at a pin's fee on point of etiquette. Men peril it for pleasure, for glory, for gain, for curiosity, and throw it away to escape poverty, disgrace, or despair. Men have sought for death, and digged for it as for hid treasure. But when do men seek for slavery, for captivity? I have never been one of those who think human life the highest thing. I believe there are things more sacred than life. Therefore I believe men may sacrifice their own lives, and the community, sometimes the single man, may take the lives of others. Such is the estimation in which it is held by all mankind. No! there are some in my sight now who care nothing for freedom, whose sympathies all go for despotism; but thank God they are few and growing less. Such is the estimate of life compared with free-

dom, which the common opinion of mankind and the common experience of mankind has placed upon it. Here is a question of a few despised pieces of silver on the one hand, and on the other perpetual bondage of a man, from early manhood to an early or late grave, and the bondage of the fruit of his body forever. We have a right, then, to expect from your Honor a strict adherence to the rule that this man is free until he is proved a slave beyond every reasonable doubt, every intelligent abiding misgiving proved by evidence of the strictest character, after a rigid compliance with every form of law which statute, usage, precedent has thrown about the accused as a protection.

We have before us a free man. Colonel Suttle says there was a man in Virginia named Anthony Burns; that that man is a slave by the law of Virginia; that he is *his* slave, owing service and labor to *him;* that he escaped from Virginia into this State, and that the prisoner at the bar is that Anthony Burns. He says all this. Let him prove it *all!* Let him fail in one point, let him fall short the width of a spider's thread, in the proof of all his horrid category, and the man goes free.

Granted that all he says about his slave in Virginia be true — is this the man?

On the point of personal identity, the most frequent, the most extraordinary, the most notorious, and sometimes the most fatal mistakes have been made in all ages. One of the earliest and most pathetic narratives of Holy Writ is that of the patriarch, cautious, anxious, crying again and again, "Art thou my very son Esau?" and, by a fatal error, reversing a birthright, with consequences to be felt to the end of time. You know, sir, — they are matters of common knowledge, — that a mother has taken to her bosom

a stranger for an only son, a few years absent at sea. Whole families and whole villages have been deceived and perplexed in the form and face of one they have known from a child. You have found it difficult to recognize your own classmates, at the age of three or four and twenty, who left you in their sophomore year. Brothers have mistaken brothers. We have the Comedy of Errors. Let us have no Tragedy of Errors, here! The first case under this statute, the case of Gibson, in Philadelphia, was a mistake. He was sworn to, and the commissioner was perfectly satisfied, and sent him to Maryland. Against the will of the claimant, from the humanity of the marshal, who had his doubts, and would not leave the man at the state line, but went with him to the threshold of the door of the master's house, the mistake was discovered before it was too late. In the late case of Freeman, in Indiana, the claimant himself was present, and the testimony was entirely satisfactory, and he was remanded; but it turned out a mistake, and he has recovered, I am told, two thousand dollars in damages. These are the mistakes discovered. But who can tell over to you the undiscovered mistakes? the numbers who have been hurried off, by some accidental resemblance of scars or cuts, or height, and fallen as drops, undistinguishable, into the black ocean of slavery?

Make a mistake here, and it will probably be irremediable. The man they seek has never lived under Colonel Suttle's roof since he was a boy. He has always been leased out. The man you send away would be sold. He would never see the light of a Virginia sun. He would be sold at the first block, to perish after his few years of unwonted service, on the cotton-fields or sugar-fields of Louisiana and Arkansas. Let

us have, then, no chance for a mistake, no doubt, no misgiving!

What, then, is the evidence? They have but one witness, and one piece of paper. The paper cannot identify, and the proof of identity hangs on the testimony of one man. It all hangs by one thread. That man is Mr. Brent. Of him, neither you nor I, sir, know anything. He tells us he is engaged in the grocery business, and lives in Richmond, Virginia. Beyond this, we know nothing, good or bad. He knew Burns when a boy, running about at Colonel Suttle's, too young to labor. He next hired him himself, in 1846 and 1847. This was seven years ago. He says Burns is now twenty-three or twenty-four years of age. He was then sixteen or seventeen years old; he is now a matured man.

Since that time he has leased him, as agent for Colonel Suttle, but does not seem to have been brought in close contact with him, or to have done more than occasionally meet him in the streets. The record they bring here describes only a dark complexioned man. The prisoner at the bar is a full-blooded negro. Dark complexions are not uncommon here, and more common in Virginia. The record does not show to which of the great primal divisions of the human race the fugitive belongs. It might as well have omitted the sex of the fugitive. It says he has a scar on one of his cheeks. The prisoner has, on his right cheek, a brand or burn nearly as wide as the palm of a man's hand. It says he has a scar on his right hand. A scar! The prisoner's right hand is broken, and a bone stands out from the back of it, a hump an inch high, and it hangs almost useless from the wrist, with a huge scar or gash covering half its surface. Now, sir, this broken hand,

this hump of bone in the midst, is the most noticeable thing possible in the identifying of a slave. His right hand is the chief property his master has in him. It is the chief point of observation and recollection. If that hand has lost its cunning or its power, no man hears it so soon and remembers it so well as the master. Now, it is extraordinary, sir, that neither the record nor Mr. Brent say anything about the most noticeable thing in the man. Nowhere in Mr. Brent's testimony does he allude to it, but only speaks of a cut. The truth is, please your Honor, one of two things is certain here. If Mr. Brent does know intimately Anthony Burns, of Richmond, and has described him as fully as he can, the prisoner is not the man. Anthony Burns was missing, and Mr. Brent hurried down to Alexandria to tell Colonel Suttle. The record is made up, which is probably still only Mr. Brent on paper. Mr. Brent comes here with Colonel Suttle, as his friend. Emissaries are sent out with the description in their hand, and they find a negro, with a huge brand on his cheek and a broken and cut hand, and that is near enough for catchers, paid by the job, to a "dark complexioned man," with "a scar on the cheek and on the right hand." Mr. Brent knows, and does not swear otherwise, that the Anthony Burns he means had only a scar or cut, and he distinctly said "no other mark." But still he swears to the man. Identification is matter of opinion. Opinion is influenced by the temper, and motive, and frame of mind. Remember, sir, the state of political excitement at this moment. Remember the state of feeling between North and South; the contest between the slave power and the free power. Remember that this case is made a state issue by Virginia, a national question by the executive. Reflect

that every reading man in Virginia, with all the pride of the Old Dominion aroused in him, is turning his eyes to the result of this issue. No man could be more liable to bias than a Virginian, testifying in Massachusetts, at this moment, on such an issue, with every powerful and controlling motive on earth enlisted for success.

Take the other supposition, which may be the true one, that Mr. Brent does not know Anthony Burns particularly well. He goes down to Alexandria to tell Colonel Suttle that he has escaped. The record is made up there, as best they can. Mr. Brent did not go there as a witness to identify, and does the best he can. He does not recollect whether he is a negro or mulatto, or of what shade, so he calls him "dark complexioned," and he can speak only of a scar, he does not know on which cheek, and of a scar on the hand. Beyond this, he is uncertain. If this is so, your Honor can have no satisfying description of Anthony Burns, the slave of Colonel Suttle, if such a person there be.

But there is, fortunately, one fact, of which Mr. Brent is sure. He knows that he saw this Anthony Burns in Richmond, Virginia, on the 20th day of March last, and that he disappeared from there on the 24th. To this fact, he testifies unequivocally. After all the evidence is put in on our side to show that the prisoner was in Boston on the 1st and 5th of March, he does not go back to the stand to correct an error, or to say that he may have been mistaken, or that he meant only to say that it was *about* the 20th and 24th. He persists in his positive testimony, and I have no doubt he is right and honest in doing so. He did see Anthony Burns in Richmond, Virginia, on the 20th day of March, and Anthony Burns was first missing from

there on the 24th. But the prisoner was in Boston, earning an honest livelihood by the work of his hands, through the entire month of March, from the first day forward. Of this your Honor cannot, on the proofs, entertain a reasonable doubt.

William Jones, a colored man well known in this city, who works for the city, and for the Mattapan Company, and for others, and entirely unimpeached, testifies that on the first day of March he met the prisoner in Washington Street. He knows the man. He tells you of all the places he went to with him to find work for him to do. He received him into his house as a boarder on that day. On the 5th day of March they began working together at the Mattapan Works, in South Boston, cleaning windows and whitewashing, and worked for five or six days. Then, on the 18th, they worked at the City Building. Then Burns left him for another employ. Jones cannot be mistaken as to the identity. The only question would be as to the truth of his story. It is a truth or it is a pure and sheer fabrication. I saw at once, and every one must have felt, that the story so full of details, with such minuteness of dates and names and places, must either stand impregnable or be shattered to pieces. The fullest test had been tried. The other side has had a day in which to follow up the points of Jones's diary, and discover his errors and falsehoods. But he is corroborated in every point.

He came into the room and recognized him at once, and the prisoner recognized the witness. His testimony corroborates Jones in another particular. Jones says he remembers the dates from the fact of a dispute between him and the prisoner, which led him to ask Mr. Russell to enter the dates of the prisoner's coming

to his house in his pocket-book, as Jones himself does not write. This pocket-book was produced by Jones, and Mr. Russell, who made the entries, was sworn by us and has been here.

Mr. Whittemore is a member of the City Council, and was one of the Directors of the Mattapan Company. He made a journey to the West, from which he returned on the 8th day of March. On that day or the next, he went to the works, where his counting-room is. The prisoner and Jones were cleaning the windows of the counting-room. He noticed the peculiar condition of his hand, and the mark on his cheek. He is sure of the man and of the date. He heard at the armory of the Pulaski Guards, of which he is lieutenant, of Jones's testimony, and said to himself and others, "I shall know *that man*," and came here to see. As soon as he saw him, he knew him.

Now, sir, Mr. Whittemore, in answer to a question from me, whether he was under the odium of being either a Free Soiler or an Abolitionist, said that he was a Hunker Whig. The counsel thought this an irrelevant question. I told him I thought it vital. Not that the political relations of Mr. Whittemore could affect your Honor's mind, but that it shows he has no bias on our side. Moreover, I am anxious not only that your Honor should believe our evidence, but that the public should justify you in so doing. And there is no fear but that the press and the public mind will be perfectly at ease if it knows that your Honor's judgment is founded even in part, in a fugitive-slave case, in favor of the fugitive, on the testimony of a man who has such a *status illæsæ existimationis*, as a Hunker Whig, who is eke a train-band captain in a corps under arms!

Jones says that they went to work every day at seven o'clock. Mr. Culver, the foreman, and Mr. Putnam, a machinist, and Mr. Gilman, the teamster, of the works, say that the hour of work was changed to half after six on the first of April. They also are quite sure, from the course of the work and their general recollection, that it was done early in March. Mr. Gilman has an additional recollection that it was a few days after pay day, which was March 1. Mr. Putnam has a memorandum which shows that he began his own work there on the 3d or 4th day of March, and he says Jones began cleaning the windows a few days after.

Then Mr. Brown, one of the city police, now on duty, testifies that on entering the court-room, he recognized the prisoner at once. He has no doubt of him. He first saw him at the Mattapan Works cleaning windows with Jones. He himself left off his work there on the 20th of March, as his memorandum and recollection show. About ten days before he left off he changed his work to a new building in which there were no windows. The windows were cleaned in the old building and of course before the 10th of March. His attention was called to the man at the time. He spoke to him, and asked him to wash a certain window.

This is the testimony as to the Mattapan Works. Is it not conclusive? It is clear that the work was done there by Jones and a colored man from the 5th to the 10th of March. Jones worked there at no other time. This man was the prisoner. On a question of identity, numbers are everything. One man may mistake, by accident, by design or bias. His sight may be poor, his observation imperfect, his opportunities slight, his recollection of faces not vivid. But if six or eight men

agree on identity, the evidence has more than six or eight times the force of one man's opinion. Each man has his own mode and means and habits of observation and recollection. One observes one thing, and another another thing. One makes this combination and association, and another that. One sees him in one light or expression, or position, or action, and another in another. One remembers a look, another a tone, another the gait, another the gesture. Now if a considerable number of these independent observers combine upon the same man, the chances of mistake are lessened to an indefinite degree. What other man could answer so many conditions, presented in so various ways?

On the point of the time and place, too, each of those witnesses is an independent observer. These are not links in one chain, each depending on another. They are separate rays, from separate sources, settling on one point.

Here we have the testimony of Mr. Favor, whom I know you have noticed as a respectable man, who remembers Jones bringing the prisoner to his shop, in Lincoln Street, to find work, very early in March; and Stephen Maddox, a tailor, says that Jones brought the prisoner to his shop to find work. He remembers telling him that he should have no work for him for two months, as his outdoor work, cleaning, etc., did not begin so as to require help before the first of May. This is the natural observation, and it is as natural he should remember it. A poor man was applying for work. He was obliged to put him off, and, to show his sincerity, he explained to him the course of his work. He was obliged to sentence him to disappointment and delay for two months. He remembered it. It would

be remembered by a kindly man, under such circumstances.

The attempt at contradiction as to the City Buildings fails. Mr. Gould confirms Jones's account that he worked there on the 18th or 17th of March. He does not recollect the prisoner being with him; but he admits that he was there only twice a day, and Jones said that the prisoner was there only an hour or so, to help him a little without pay.

Mr. Brent puts his case resolutely and unequivocally on the ground that the man he means was in Richmond up to the 20th. We have proved that the prisoner was here on the 1st and 5th and 10th and 18th. This is inconsistent with the claimant's case. This witness does not pretend a mistake or doubt. They cannot pretend one in argument, because he has been in court all the while, and is not recalled.

If we had the burden of proof, should we not have met it? How much more then are we entitled to prevail, where we have only to shake the claimant's case by showing that it is left in reasonable doubt?

Whatever confidence I may have in this position, I must not peril the cause of my client by any overweening confidence in my own judgment. I must therefore call your Honor's attention to the other points of our defense.

Assume now, for the purpose of further inquiry, that all our testimony is thrown out, and let the case rest on their evidence alone. It is incumbent on them to show that the prisoner owes service and labor to Colonel Suttle, by the laws of Virginia, and that he escaped from that State into Massachusetts.

Does he owe service and labor to Colonel Suttle?

The claimant, perhaps, will say that the record is

conclusive on the facts of slavery and escape, and that the only point open is that of identity. That is so if he adopts the proper mode of proceeding to make it so. Section 10 of the Fugitive Slave Law provides a certain mode of proceeding, anomalous, in violation of all rules of common law, common right and common reason, a proceeding that has not its precedent, so far as I can learn, in the legislation of any Christian nation, therefore to be strictly construed, and not to be availed of unless strictly followed. It provides that the questions of slavery and escape shall be tried, *ex parte*, in the State from which the man escaped, and not in the State where he is found. The hearing and judgment are to be there and not here. This judgment, being authenticated, is to be produced here, and the commissioner here has only jurisdiction to inquire whether the person arrested is the person named in the judgment. He cannot go into the matters there decided, but only see if the record fits the man.

Section 6 of the statute provides an entirely different proceeding. It authorizes the court here to try the questions of slavery and escape, as well as identity, and requires them to be tried by evidence taken here, or certified from the State from which he escaped, or both. It is not pretended that this transcript of a record is such evidence. Now, which proceeding are we under? Doubtless under that provided in the sixth section. The claimant introduces Mr. Brent, and by him offers evidence to prove the fact of slavery, the title of Colonel Suttle, and the escape. He goes fully into these points. This was not offered as a mode of proving identity. The identity was proved first, and then the other evidence was put in. It was professedly to prove title and escape. Parts of it were objected to

as not competent to prove those points, and advocated as competent for that purpose, and on no other ground, and ruled in or ruled out on that ground. They introduced evidence tending to show that a certain negro woman was a slave of Colonel Suttle's and that that woman was the mother of Burns, and that his brothers and sisters are slaves, and they introduced evidence tending to show an escape, in the same manner. After that, they offered the record and we objected to it, and it was received *de bene esse*, and its admissibility is now to be decided upon.

We say that the two proceedings cannot be combined. The jurisdiction and duties of the magistrate are different in the two cases. The rights of parties are different. It is evident that the statute makes them different proceedings and not merely different proofs, for they are not merely put into separate sections, but each section contains a repetition of the foundation of a proceeding, its progress, the decision and execution, and each provides for the receiving of evidence of identity. There is a different form of certificate required in the two cases. On the face of the statute they are two proceedings. You cannot combine *scire facias* on a record with a count in assumpsit, proving the original debt by parol. You cannot, on the *voir dire*, examine the party himself, and prove his interest by other evidence also.

Even if the record can be combined with parol proof, it can hardly be contended that it is conclusive against the proof the claimant himself puts with it. When the statute says it is conclusive, it means that the defendant is not admitted to contradict it by proof. But if the claimant introduces proof which overthrows its allegations, can he contend that it is

conclusive? If he proves that the right to the certificate is in Millspaugh, and not in Colonel Suttle, can he fall back on his record and claim a certificate for Colonel Suttle? If he proves that the man did not escape, can he fall back on his record and claim a certificate for an escaped fugitive?

I pray your Honor, earnestly, to confine this record — the venomous beast that carries the poison to life and liberty and hope in its fang — to confine it in the straitest limits. It deserves a blow at the hand of every man who meets it.

If your Honor considers the record as admissible, in other respects, and conclusive if admitted, we have objections to offer to it from the nature of its contents and form.

In the first place, it does not purport to be a "record of the matters proved." It is all in the way of recital. It says, "On the application of Charles F. Suttle, who this day appeared and made satisfactory proof that, etc., it is ordered that the matters so proved and set forth be entered on the records of this court," and there it ends. Well, have they entered the facts on the record? If so, I should like to see the entry. Where is the transcript of that record? All we have here is the porch to the building, with a superscription reciting what is to be found within. We are entitled to the building and its contents.

In the next place, the record does not, as I have already once observed, set forth a description of the person "with such convenient certainty as may be." It does not tell you whether he is a negro, a mulatto, a white, or an Indian. The rest of the description would be full enough, if it fitted the prisoner at the bar. That goes, to be sure, to the point of identity. But let

me remind you, sir, here, that a scar is not a large brand, and that a scar is no adequate description of the state or appearance of that man's hand.

The record is also objectionable, because it does not allege that he escaped into another state. Unless he has escaped *into another state*, the *casus fœderis* does not arise. And how is your Honor to know that he did escape into another state? The only evidence you can legally receive is on the point of identity. If you proceed strictly by the record, you are without evidence of one great fact necessary to call into action the constitutional powers.

We have great confidence, please your Honor, that the record will be excluded on one or more of these points; or that, if admitted, we may control it by the claimant's own testimony.

Does he then, by the claimant's own evidence, owe to Colonel Suttle service and labor?

Their evidence shows conclusively that he does not. Mr. Brent tells us that Colonel Suttle made a lease of him to a Mr. Millspaugh of Richmond, in January last, and that he was in the service of Mr. Millspaugh when he disappeared. It is the ordinary case of a lease of a chattel. The lessee has the temporary property and control. The reversioner has no right to interfere with the possession or direction of the chattel during the lease. This proceeding has always been defended, by those who hold it to be constitutional, on the ground that it merely secures and affects the temporary control of the slave, and does not affect the general property. It is not a judgment *in rem*. There is no decree affecting title. If this is so, there can be no pretense of a right on the part of the reversioner to the certificate prayed for here. A little consideration makes this

clear. The claimant says he has escaped without leave, and asks for power to reduce him into possession and under control again — into his own possession and under his own control. Now, Mr. Millspaugh has the sole right of possession and control. Mr. Millspaugh may allow him to come to Massachusetts and stay here until the end of the lease, if he chooses. Colonel Suttle has nothing to say about it. If Mr. Millspaugh does not return him to Colonel Suttle at the end of his lease, he is liable to Colonel Suttle on his bond, which Mr. Brent tells us is given in these cases. Suppose your Honor should grant the certificate, and Colonel Suttle should take the man to Mr. Millspaugh, Mr. Millspaugh would say to him, "Why are you carrying my man about the country? I have not asked or desired you to do any such thing."

"But," says Colonel Suttle, "I have a certificate from a commissioner in Boston certifying that he is now owing me service and labor, and authorizing me to take and carry him off."

"Then the commissioner did not know that I had a lease of him."

"Yes, he did. Mr. Brent let that out. It came very near upsetting our case. But we got our certificate, somehow or other, notwithstanding."

But no such answer will be given to any certificate to be issued by your Honor. On the contrary, when Colonel Suttle goes back to Virginia and tells Mr. Millspaugh that he was refused the certificate, Mr. Millspaugh will say to him: "To be sure you were. Did you not know law enough to know, you and Brent together, that you had no right to the possession and control of the man I have hired on a lease? Did you suppose the Boston commissioners would have so

little regard for this species of property in Virginia as to give it away to the first comer?"

Besides this lease, leaving only a reversion in Colonel Suttle, the reversion itself is mortgaged. Mr. Brent told us, in his simplicity, thinking he was all the time proving prodigious acts of ownership, that Colonel Suttle mortgaged Burns, with other property, to one Towlson. This mortgage has never been paid or discharged, so far as we know. The evidence leaves it standing. Even if the reversioner could otherwise have this certificate, he cannot here, for there is a mortgage. A mortgage of a chattel passes the legal property, so that the mortgagor cannot maintain trover for its conversion. (Holmes *vs.* Bell, 3 Cush.)

There is greater need for adhering to this rule as to the right of present possession and control in this proceeding than in ordinary actions, for an *escape* is an essential element in the claimant's case. To constitute an escape, the fugitive must have gone away against the will of the person having a right to say whether he shall go or come. This person is the lessee. As Colonel Suttle could not authorize Burns to leave Virginia, so neither could he forbid his leaving it. He has simply nothing to say about it. He cannot authorize him to stay in Massachusetts, nor can he compel him to go away. He may say that if he cannot, his reversion is good for nothing. That is the case with all leases of chattels. He should think of that when he parts with his property. He does provide for it. He takes a bond. If the man is not returned to him at the end of his lease, let him look to his bond! Let him not come here, to Massachusetts, disturb the peace of the nation, exasperate the feelings of our people to the point of insurrection by this revolting spectacle, sum-

mon in the army and navy to keep down by bayonets the great instincts of a great people, haul to prison our young men of education and character, and persecute them even unto strange cities, and cause the blood of a man to be shed. Let him look to his bond! If he must peril life, disturb peace, outrage feelings, and exasperate temper from one end of the Union to the other, let him do it for something that belongs to him, not for a mortgaged reversion in a man. Let him look to his bond!

Mr. Millspaugh, who alone has the right, if any one, to institute these proceedings, has done nothing about them. They do not produce even his affidavit.

In the next place, setting aside the difficulty about the lease, and the mortgage, and the identity, has the man ever escaped? He is said to have escaped from the control and possession of Mr. Millspaugh. How do we know that? The only evidence is that of Mr. Brent, and what does Mr. Brent know about it? He only knows that he was in Richmond on the 20th, and was missing on the 24th. He does not even say that he has ever spoken to Mr. Millspaugh about it, or that Mr. Millspaugh was at home, or has complained about it. Mr. Millspaugh may have given him leave, or may not care whether he is away or not. There is no evidence of an escape. There is only evidence that he is missing. He was there. Now (for the argument, grant it) he is here. What of it? Did he come away of his own will, and against the will of Mr. Millspaugh? Unless both these concur, there is no escape. There is no evidence on either point, except the evidence of the prisoner, which they have put in. Mr. Brent says that, on the night of the arrest, Colonel Suttle asked the prisoner how he came here. He replied that he was at

work on board a vessel, became tired and fell asleep, and was brought off in the vessel. As they have put in this evidence, they are bound by it. This shows there was no escape, for it is the only evidence at all bearing upon the character of his act. Taking this to be true, as the claimants must, there is no *escape*. In Aves's case, 18 Pickering, 193, and Sims's case, 7 Cushing, 285, it has been decided that the *escape* is the *casus fœderis* under the Constitution. No matter how the slave got here, if he did not voluntarily escape against his master's will, unless both these elements concur, he cannot be taken back. Therefore the slave was held free, in a case where he and his master were both sent here by a superior power, in a public vessel. (Referred to in Sims's case.)

If there was any doubt about this matter of escape, the point should be determined against the claimant, because he has failed to produce proof within his power which would settle the matter. He has not produced the only man beside the fugitive who knows whether he did escape or not. If he could not produce him in person, if there be a judge or a justice of the peace in the Old Dominion, he could have brought his affidavit. He has had time to procure it since this trial began. He does not ask for a delay that he may procure it.

The only evidence, in this conflict, which can aid your Honor's judgment, is the evidence of the admission of the prisoner, made to Colonel Suttle, on the night of the arrest. He was arrested suddenly, on a false pretense, coming home at nightfall from his day's work, and hurried into custody, among strange men, in a strange place, and suddenly, whether claimed rightfully or claimed wrongfully, he saw he was claimed as a slave, and his condition burst upon him

in a flood of terror. This was at night. You saw him, sir, the next day, and you remember the state he was then in. You remember his stupefied and terrified condition. You remember his hesitation, his timid glance about the room, even when looking in the mild face of justice. How little your kind words reassured him. Sir, the day after the arrest you felt obliged to put off his trial two days, because he was not in a condition to know or decide what he would do.

Now, you are called upon to decide his fate upon evidence of a few words, merely mumblings of assent or dissent, perhaps mere movings of the head, one way or the other, construed by Mr. Brent into assent or dissent, to questions put to him by Colonel Suttle, put to him at the moment the terrors of his situation first broke upon him. That you have them correctly, you rely on the recollections of one man, and that man testifying under incalculable bias. If he has misapprehended or misrepresented the prisoner in one respect, he may in another. In one respect we know he has. He testifies that when Colonel Suttle asked him if he wished to go back, he understood him to say he did. This we know is not true. The prisoner has denied it in every form. If he was willing to go back, why did they not send to Coffin Pitts's shop, and tell the prisoner that Colonel Suttle was at the Revere House, and would give him an opportunity to return? No, sir, they lurked about the thievish corners of the streets, and measured his height and his scars to see if he answered to the record, and seized him by fraud and violence, six men of them, and hurried him into bonds and imprisonment. Some one hundred hired men, armed, keep him in this room, where once Story sat in judgment — now a slave-pen. One hundred and fifty

bayonets of the regulars, and fifteen hundred of the militia keep him without. If all that we see about us is necessary to keep a man who is willing to go back, pray, sir, what shall we see when they shall get hold of a man who is not willing to go back?

I regret, extremely, that you did not, sir, adopt the rule that in the trial of an issue of freedom, the admissions of the alleged slave, made to the man who claims him, while in custody, during the trial, should not be received. That ruling would have been sustained by reason, and humanity, and precedent. Failing that, I hoped the facts of this case would show enough of intimidation to throw out the evidence. At least, they show enough to deprive it of all weight. I have reminded you of his condition the next morning. What must it have been there? One of his keepers, True, says he was that night a good deal intimidated. Who intimidated him? Do you recollect the significant words of Colonel Suttle, "I make *no compromises* with you! I make you no promises and no threats." This means: It is according to the course you take now that you will be treated when I get you back. If you put me to no trouble and expense, it will be few stripes or no stripes. If you do, it will be many stripes. Was ever man more distinctly told it would be better for him if he acquiesced in everything, yielded everything, assented to everything? That is what those words, uttered in a tone, no doubt, that he well understood, conveyed to his mind. But I am wasting words. I know that your Honor will give little or no weight to testimony so liable, at all times, to misconception, misrecollection, perversion, and, in this case, so cruel to use against such a person under such circumstances.

You recognized, sir, in the beginning, the presump-

tion of freedom. Hold to it now, sir, as to the sheet-anchor of your peace of mind as well as of his safety. If you commit a mistake in favor of the man, a pecuniary value, not great, is put at hazard. If against him, a free man is made a slave forever. If you have, on the evidence or on the law, the doubt of a reasoning and reasonable mind, an intelligent misgiving, then, sir, I implore you, in view of the cruel character of this law, in view of the dreadful consequences of a mistake, send him not away, with that tormenting doubt on your mind. It may turn to a torturing certainty. The eyes of many millions are upon you, sir. You are to do an act which will hold its place in the history of America, in the history of the progress of the human race. May your judgment be for liberty and not for slavery, for happiness and not for wretchedness; for hope and not for despair; and may the blessing of Him that is ready to perish come upon you.

XI

THE "GRASP OF WAR" SPEECH[1]

JUNE 21, 1865.

[There are two points in this speech of special interest: one the theory by which our government could dictate terms for the restoration of the states lately in secession and at war; and the other, Mr. Dana's opinion that the voting franchise should be granted the freedmen on property and educational qualifications.

As to the first point, Mr. Dana's speech is plain enough, that the federal government in times of peace had no right to control the domestic regulations of the various states on such subjects as slavery, education, and the right to vote or testify; that the constitutions of the various states forming the Southern Confederacy, before, during, and at the end of the war, recognized slavery and discriminated against persons of color; that a great war had been carried on, the main issues of which were slavery and union; and that the Confederate States were still in the "grasp of war."

But there is one subject, which was very familiar and well known to Mr. Dana's hearers at the time, but is not so well understood now, and that is, the main doctrine of the war-powers under the United States Constitution. Therefore let me state that there is one principle recognized in the construction of that Constitution, and that is, that where that instrument is silent or doubtful, we must consider the principles of jurisprudence existing at the time of its adoption, and the law of national self-preservation within those principles. The Constitution had no provision as to what would happen if a number of the states should secede,

[1] Delivered at a meeting held in Faneuil Hall, Boston, to consider the subject of "Re-organization of the Rebel States." Reprinted from an original report.

wrongfully form a *de facto* nation and wage war against the federal government on important issues. In the absence, then, of such a provision, Mr. Dana invoked the recognized principles as applied to war. These, Mr. Dana claimed, gave the successful party the right to enforce the issues on which the war was fought as against the defeated power, as long as it was within the "grasp of war."

While Mr. Dana set forth the principles by which the issue of the Civil War could constitutionally be established, it by no means follows that he approved the extremes to which the principles were carried out, and the "carpet-bag" government which followed. He was quite disgusted with these. As an illustration, the only estrangement between Mr. Dana and his life-long friend, Charles Sumner, arose because Mr. Dana opposed Sumner's extreme reconstruction views. He had differed from Mr. Sumner's policies during the Free Soil movement before the war; but that did not prevent Mr. Sumner from calling at our house and talking with my father and entertaining us children nearly every Sunday after his two o'clock dinner at Longfellow's. Their differences on the reconstruction policies, however, were such that Sumner broke off social relations with my father until duringthe last year or two before Sumner died.

I would also call attention to a popular belief, with which Mr. Dana had to contend, not only in this speech, but in the early days of the war in the Prize Causes. Some people in the North thought it necessary, in order to be consistent in our view that states had no right to secede, and to maintain that the Southern Confederacy should not be recognized by foreign nations as an independent sovereignty, to minimize the war into a local, insurrectionary movement. Even President Lincoln and Secretary of State Seward felt this in some of the early proclamations and diplomatic correspondence. After the decision of the United States Supreme Court, unanimously sustaining the war-powers in the way of blockade, prize and capture of enemies' property at sea, in the war against the Confederacy, many prominent persons[1] claimed that that decision went a great way towards admitting the right of the states to secede, and recognizing their

[1] See *The Law Magazine*, London, November, 1863.

independence. To counteract these views, Mr. Dana, in 1864, published a pamphlet called "Enemy's Territory and Alien Enemies — What the Supreme Court decided in the Prize Causes."[1] How persistent was this popular belief which Mr. Dana tried to counteract appears in the Biography, where, speaking of this "Grasp of War" speech, Mr. Adams says: —

"Dana's mind was naturally subtle. He was always ready to devise some ingenious, logical process for avoiding either horn of the dilemma, just as, in 'the Prize Cases,' he showed the Supreme Court how the United States could at the same time be carrying on a war, with all the rights incident to war, so far as the Southern Confederacy was concerned; and yet, so far as foreign powers and neutrality were involved, it was no war at all, but only a local insurrectionary movement. But when the issue was decided in the field, — when Lee had surrendered at Appomattox, and Davis was a prisoner at Fortress Monroe, — the 'local insurrectionary movement' hypothesis was quietly though somewhat contemptuously relegated to the receptacle of things for which no further use exists. Reconstruction then became a question of practical politics, and the provisions of the Constitution had to be curiously scanned and construed anew. The war-power admitted of the desired development, and Mr. Dana was again equal to the occasion."

Even practising lawyers entertained this popular opinion. Mr. Thornton K. Lothrop wrote a letter on the subject of Mr. Dana's argument, which is published in the Biography. Though associated with Mr. Dana at the time of the Prize Causes, Mr. Lothrop says he had not "taken any professional part in these cases." He wrote from Europe, "with no opportunity of consulting . . . papers or any books," after a lapse of twenty-seven years. In this letter, he expressed the idea that Mr. Dana was performing (the simile is my own) in the arena before the Supreme Court the difficult task of riding with one foot on the war-power horse and the other on a "citizens-in-arms" pony going the other way. Had Mr. Lothrop had an opportunity to study the briefs, and the opinion of the court, he would have

[1] Published with this collection.

found that Mr. Dana was sitting squarely on the war-horse alone, and that it was his opponents who were exhibiting the "citizens-in-arms" pony. Mr. Dana never felt that it was necessary so to minimize the war.

It was his opponents, not he, that claimed there was "no war but only a local, insurrectionary movement," a mere "conflict with citizens in rebellion."

As to the danger that calling the conflict "a great war" might lead to the recognition of the independence by foreign countries, how was it in our dealings with the Spanish colonies in America, in revolt against Spain? As long as Spain was carrying on a vigorous and effective war, it was our general policy to remain neutral. Only after long periods of a mere theoretical, ineffective, paper war, in which Spain had practically abandoned active attempts at coercion, did we recognize their independence.

It is true that, during the first month or two of the Civil War, Mr. Dana hoped, with many others, that it would end in sixty days; but thereafter, that there was a war, and a "large war," formed the chief contention of Mr. Dana in the Prize Causes. These causes arose out of captures at sea, that were made within the first few months after the firing on Fort Sumter. In Mr. Dana's argument before Judge Sprague, and later before the United States Supreme Court, all within the first two years of the war, his whole contention for the right of coercion by way of blockade, prize, and capture of enemy's property at sea, was based upon the argument that there was a war, and a large war, and on the existence of a *de facto*, though not *de jure*, sovereign power, and not mere citizens in rebellion, with which we were carrying on the war, and boldly claimed that both sides had the status and rights of belligerents. The very arguments, and even the phrases and descriptions used in the "Grasp of War" speech in 1865, follow closely those made in the Prize arguments in 1861–63, and in the "Enemy's Territory" pamphlet of 1864.

In order to show that I correctly state Mr. Dana's view as to there being a war in the early days, in which he was consistent to the end, let me turn to his brief in the Prize Causes. There Mr. Dana says (page 13): —

"They [the Confederates] attacked the forts, troops and ships of the sovereign [i. e., federal] government by sea and land, and fighting on the scale of a '*large war*' is going on."

(The italics are my own.)

His brief had shown what were the war-powers in a war between independent nations. Having established these, he puts the heading for the fourth section of his brief as follows: —

"In civil or domestic war, it is competent for the sovereign to exercise belligerent powers."

He also says: —

"War is the exercise of force by bodies political, or bodies assuming to be bodies political, against each other, for the purpose of coercion."

Then he states, in his brief, the facts as they existed, as follows: —

"Millions of the sovereign's [the Confederacy's] subjects unite in the establishment of a new government over a portion of the territory [of the United States] . . . They organize a sovereign state over all this territory, not as a temporary expedient, but for a permanency, and claim jurisdiction of *right* over all the inhabitants of the territory. Their government has all the functions of a state, judicial, executive and legislative, and they claim recognition as a sovereign by other powers. They establish this government *de facto* over the territory, and claim it *de jure*. They treat all resistance to it by inhabitants as treason. They treat all attempts by force of arms to put down this government and re-establish the old sovereignty as acts of war. They declare that war exists between them as one sovereignty, the parent state as another. They raise armies and navies, establish a conscription over all the inhabitants, issue letters of marque, and establish prize courts. . . . Foreign nations recognize this state of things as war, and concede to each of the powers engaged in it the right of belligerents."

Again, he states the object of war is "coercion of the power you are engaged with"; and says (page 12), —

"These circumstances show the doctrine of 'enemy's property' is applicable to domestic or civil wars."

Considering the objections to this, he says (page 18), —

"The objections really amount to this, that *war powers can never be exercised in civil wars in any stage except by the rebels.*"

Nowhere in this brief, nowhere in the opinion of the Supreme Court, which latter would be read over the civilized world, was there any attempt to minimize the war so far as foreign countries and neutrality were involved. There was no need of it. He not only persuaded the Supreme Court that there was a war, "but," to quote from the opinion, "it is not necessary, to constitute a war, that both parties should be acknowledged as independent nations or sovereign states"; [1] and again, "It is not necessary that the independence of the revolting province or state should be acknowledged in order to constitute a party belligerent in the war." [2]

Again, in a political speech at Providence, Rhode Island, March 25, 1863, Mr. Dana said, "We are at war — in a war of immense proportions."

These same contentions, repeatedly made, of an actual and *great war* against a *de facto*, though revolutionary, government, which gave us the right of prize, blockade, and capture of enemy's territory during the war, after the war, Mr. Dana contends in this "Grasp of War" speech, gave us the right to impose conditions upon those states which had voluntarily submitted their issues to the arbitrament of war; and so, from the first year of active conflict to the reconstruction period, Mr. Dana's position was a consistent one of asserting a *large war*. His argument was consistent with the facts. He convinced the entire Supreme Court, some of whom were democrats in sympathy with state supremacy, and who were not likely to be carried away by mere "subtlety" of argument. The Supreme Court, dealing with the argument of Mr. Dana's opponents, that it "is not a war but is an insurrection," [3] says they "cannot ask a court to affect a technical ignorance of the existence of a war, which all the world acknowledges to be the greatest civil war known in the history of

[1] Prize Causes, 2 Black, 666.

[2] Prize Causes, 2 Black, 669.

[3] Quoted from the opinion of the court in the above case.

the human race, and thus cripple the arm of government and paralyze its power by subtle definitions and ingenuous sophisms." It seems to me that Mr. Dana had "his feet on earth." His argument, in the Prize Causes, in his "Enemy's Territory" and in his "Grasp of War" speech, was to reduce confusion of mind to simple, fundamental principles of jurisprudence, based upon existing facts.

In the Prize arguments, he went into the philosophy of war, showed its meaning and powers, and explained the technical and somewhat misleading definitions of the law of prize in the light of that philosophy. In his "Grasp of War" speech he had no need for a waste paper receptacle for anything he had previously affirmed. Before publication this note to the "Grasp of War" speech was submitted to Mr. Adams, who said he had no definite statements of Mr. Dana's in mind, but assumed that he had held the views of Lincoln, Seward, and others, of the necessity of maintaining before the European powers the local insurrection theory, which later had to be discarded. It was to Mr. Dana's credit that he was the first boldly to assert the existence of a great war, and the real safety and true policy of so doing. If Mr. Dana's "Grasp of War" doctrine is not correct, then it is hard to see why all the constitutions of the Southern States adopted under coercion which must otherwise have been illegal are not theoretically, at least, invalid, and perhaps also the 13th and 14th Amendments to the United States Constitution.

As the entire Supreme Court had declared that it was the opponents of Mr. Dana in the Prize Causes whose arguments were "subtle," I would have nothing further to say on this subject, did it not furnish me a text for emphasizing once more Mr. Dana's power of original thought. I can see him now, short (he was only five feet seven inches in height), erect, with square, broad shoulders, a graceful figure, with small hands and feet, curling hair and elastic step, walking up and down the room, his head a little to one side, his eyes slightly raised, thinking out some problem, or developing the arguments in its support. One frequent form of problem arose when the accepted definitions of common or international law needed recasting or differentiation,

to meet some new state of facts. Even the statute, or codified law, with its confinement to set language, would often need construction when applied to cases which the language did not fit. When such a problem arose, he set himself to thinking out the reasons that underlay the definitions. I heard him once say of an eminent lawyer and judge, whom in other respects he admired, that this man seemed to think that legal truths are in set phrases, and that, with these as premises, he would, by logical process, work out the conclusions as applied to new sets of facts, and if the conclusions led to injustice, then so much the worse for justice; the logic must stand. To minds that think of legal problems as thus fettered to phrases, Mr. Dana's idea that the legal reasons and principles were the masters and the phrases the slaves, and Mr. Dana's ways of arguing would seem like subtle juggling with the law. Yet, as in science, the law has had constant need of rewording, and it is only as so recast by great minds into language more fitting new conditions, that our plastic common and international law can grow more and more nearly towards perfect justice. I believe Mr. Dana's mind was eminently one of such high mastery, and that perhaps no instance better illustrates this than his dealing with the Prize Causes and the Reconstruction problems.

On the question of the franchise to the freedmen on education and property qualifications, the speech itself only leads up to that point, and prepares the mind for the definite statements of the address. The address[1] was drawn by Mr. Dana as chairman of the committee to prepare the same. This speaks of the disabilities of those in the South with a "traceable thread of African descent," which "no achievements in war or peace, no acquisitions of property, no education, no mental power or culture, no merits, can overcome." Again, the address says, "We do not ask that the nation shall insist on an unconditioned, universal suffrage"; and later, "We declare it to be our belief that if the nation admits a rebel state to its full functions, with a constitution which does not secure to the freedmen the right of suffrage in such manner as to be impartial and not based in principle upon color, and as to be reasonably attainable by intelligence and character

[1] The parts not covered by Mr. Dana's speech are printed just after it.

. . . with the right to be educated, to acquire homesteads, and to testify in court, the nation will be recreant to its duty to itself and to them, and it will incur, and will deserve to incur, danger and reproach proportioned to the magnitude of its responsibility."

Mr. Dana also makes a clear distinction between "social equality," which he disclaims, and political privileges, a distinction now becoming better understood. He says: —

"The present question is one of political justice and safety, and not of social equality. When the free man of color, educated in the common schools, deposits a vote which he can write himself, gives a deposition which he can read and sign, and pays a tax on the homestead he has bought, the law forces no comparisons between his intellectual, moral, physical, and social condition and that of the white citizen, of whatever race or nation, who lives, votes, and testifies by his side."

It is now so generally believed that a property and educational qualification would have been wisest and most humane for both the late master and the late slave, that we must recur to the arguments that prevailed at that time, to see how strong they were. It was then said that, unless universal manhood suffrage were given the negroes, they would be unable to secure education or to acquire property, and would be in danger of being reduced to a condition of peonage, even should the Southern States in their constitutions grant all the rights which we urged. The arguments for this universal colored suffrage were based upon the assumption that their conditions were those of the men of America of 1776. These latter were educated in the principles of liberty and trained in the exercise of self-government in town-meeting and colonial legislature, and were men of education, the majority of whom were freeholders. They could skillfully strike and ward with the weapons of franchise, though with all their skill they sometimes erred; but with the poor freedmen, who knew nothing of the true principles of liberty, and were wholly unskilled in the use of the sharp weapons that wound the clumsy user, it was a totally different proposition.

As a matter of history, when given the ballot, and when in control, instead of voting money for their education, their representa-

tives voted money for salaries for themselves and their friends, for railroad grants, and for almost everything but the best interests of the colored race, apart from the few who got special benefits, and the colored voters were misled by unscrupulous politicians. The results are all too well known, and now it is generally admitted by the colored people themselves, and urged by their truest friends, that their great hope is in education, manual and, for the most part, rudimentary, in morality, usefulness in the community, and in the acquisition of property by honest work. The progress of the race in these respects has recently been as great as was their retrogression when exercising universal suffrage.

It is interesting to note that Abraham Lincoln, March 13, 1864, had somewhat the same idea of limited suffrage. He then said, "I hereby suggest . . . whether some of the colored people might not be let in [to the elective franchise], as for instance the very intelligent, and especially those who have fought gallantly in our ranks."

Governor Orr of South Carolina, one of the Southern leaders, approved of an amendment to the Constitution of North Carolina, which had been proposed, allowing colored men to vote who could read and write, or who had property worth $250; and intelligent white Southerners in North Carolina, Alabama, Florida, Mississippi, Texas, and Arkansas formed the same programme;[1] but other counsels prevailed.

Let me say that the word "rebel" in this speech was not used in ill will, but because, from the standpoint of those who did not believe in the right of secession, the Southern States in 1865 were in "rebellion" as our colonies were in 1775.]

"Grasp of War" Speech

Mr. President, — It was hoped by those who have summoned us together this morning that a voice

[1] See Rhodes, *History of the United States*, vol. vi, p. 28, and also references in index under "Negro Franchise."

might go out from Faneuil Hall, to which the people of the United States would listen, as in times past.

We deprecate, especially, anything like political agitation of the questions before us; but a calm consideration of them by the people is a duty and a necessity. For, Mr. President and fellow citizens, the questions pressing upon this country are the most vast and momentous that have ever presented themselves for solution by a free people.

We wish to know, I suppose, first, What are our powers? That is the first question — what are our just powers? Second — What ought we to do? Third — How ought we to do it? With your leave, I propose to attempt an answer to these three questions.

What are our just powers? Well, my friends, that depends upon the answer to one question — Have we been at war, or have we not? In what have we been engaged for the last four years? — has it been a war, or has it been something else and other than war? I take it upon myself to assert, that we have been in a condition of public and perfect war. It has been no mere suppression, by municipal powers, of an insurrection for the redress of grievances. It has been a perfect public war. The government has a right to exercise, at its discretion, every belligerent power. [Applause.] We are not bound to exercise them; the enemy cannot compel us to do it; but, at our discretion, we may exercise every belligerent power. Do you doubt it? Does any man doubt it? [Voices — "No."]

I will tell you why you must not doubt it. In the first place, the Supreme Court of the United States has, by an unanimous decision, held that we are in a public war, and that the government can exercise every belligerent power. The court differed as to the

time when we entered upon such a war, and whether recognition of war by Congress was necessary, but that we came to a war at last, was their unanimous decision. The Prize Courts, like the Temple of Janus, are closed in peace and open only in war. The Prize Courts have been thrown open, and every prize that has been condemned in this country has been condemned upon the principle of a public war. Congress gave us no rules for municipal condemnation, but left the Prize Courts to the rules which govern public international war. We have condemned the prizes upon the same rules, and no other, than those by which we condemned them in the war with Great Britain in 1812. This course of the Prize Courts has been sustained by the Supreme Court, acted upon by the Executive, and recognized by Congress. The statutes, too, have called it a war, in terms. The soldiers who are enlisted — what are they enlisted for? Why, they are enlisted "for the war," are they not? How is it at this moment? Is not the Executive holding those states by military occupation? Are we not holding them in the grasp of war? You cannot justify the great acts of our government for the last three years upon any other principle than the existence of war. You look in vain in the municipal rules of a constitution to find authority for what we are doing now. You might as well look into the Constitution to find rules for sinking the Alabama in the British Channel, — to find rules for taking Richmond. You might as well look there to find rules for lighting General Grant's cigar. [Laughter.] No; we stand upon the ground of war, and we exercise the powers of war.

Now, my fellow citizens, what are those powers and rights? What is a WAR? War is not an attempt to kill,

to destroy; but it is *coercion for a purpose.* When a nation goes into war, she does it to secure an end, and the war does not cease until the end is secured. A boxing-match, a trial of strength or skill, is over when one party stops. A war is over when its purpose is secured. It is a fatal mistake to hold that this war is over, because the fighting has ceased. [Applause.] This war is not over. We are in the attitude and in the *status* of war to-day. There is the solution of this question. Why, suppose a man has attacked your life, my friend, in the highway, at night, armed, and after a death-struggle, you get him down — what then? When he says he has done fighting, are you obliged to release him? Can you not hold him until you have got some security against his weapons? [Applause.] Can you not hold him until you have searched him, and taken his weapons from him? Are you obliged to let him up to begin a new fight for your life? The same principle governs war between nations. When one nation has conquered another, in a war, the victorious nation does not retreat from the country and give up possession of it, because the fighting has ceased. No; it holds the conquered enemy in the grasp of war until it has secured whatever it has a right to require. [Applause.] I put that proposition fearlessly — *The conquering party may hold the other in the grasp of war until it has secured whatever it has a right to require.*

But what have we a right to require? We have no right to require our conquered foe to adopt all our notions, our opinions, our systems, however much we may be attached to them, however good we may think them; but we have a right to require whatever the public safety and public faith make necessary. [Applause.] That is the proposition. Then, we come to

this: *We have a right to hold the rebels in the grasp of war until we have obtained whatever the public safety and the public faith require.* [Applause, and cries of "good."] Is not that a solid foundation to stand upon? Will it not bear examination? and are we not upon it to-day?

I take up my next question. We have settled what our just powers are. Need I ask an audience, in Faneuil Hall, what it is that the public safety and the public faith demand? Is there a man here who doubts? In the progress of this war, we found it necessary to proclaim the emancipation of every slave. [Applause.] On the first day of January, 1863, Abraham Lincoln, of blessed memory, declared the emancipation of every slave. It was a military act, not a civil act. Military acts depend upon military power, and the measure of military power is the length of the military arm. That proclamation of the first of January did not emancipate the slaves, but the military arm emancipated them, as it was stretched forth, and made bare. [Applause.] District after district, region after region, state after state, have been brought within the grasp of the military arm, until at last, to-day, the whole rebel territory lies within and beneath the military arm. [Loud applause.] Therefore, in state after state, region after region, the slaves have been emancipated, until at last, over the whole country, every slave is emancipated. [Renewed applause.] I would undertake to maintain, before any impartial neutral tribunal in Christendom, the proposition that we have to-day an adequate military occupation of the whole rebel country, sufficient to effect the emancipation of every slave, by admitted laws of war. Whatever differences of opinion there may have been as to the *man-*

ner in which the proclamation operated, there is no doubt left as to the result; because we have all the ground the slaves have stood upon within our military occupation.

The slaves are emancipated. In form, this is true. But the public faith stands pledged to them, that they and their posterity forever shall have a complete and perfect freedom. [Prolonged applause.] Not merely our safety; no, the PUBLIC FAITH is pledged that every man, woman, and child of them, and their posterity forever, shall have a complete and perfect freedom. [Applause.] Do you mean to "palter with them in a double sense"? Are you willing that the great republic shall cheat these poor negroes, "keeping the word of promise to the ear, and breaking it to the hope"? Then, *how* shall we secure to them a complete and perfect freedom? The constitution of every slave state is cemented in slavery. Their statute-books are full of slavery. It is the corner-stone of every rebel state. If you allow them to come back at once, without condition, into the exercise of all their state functions, what guaranty have you for the complete freedom of the men you have emancipated? There must, therefore, not merely be an emancipation of the actual, living slaves, but there must be an abolition of the slave system. [Applause.] Every state must have the abolition of slavery in its constitution, or else we must have the amendment of the Constitution ratified by three fourths of the states. Yes, that little railroad-ridden republic, New Jersey, must be shamed into adopting the amendment to the Constitution. [Applause.] New Jersey, whose vote, seventy years ago, alone prevented the adoption of Jefferson's great ordinance, making subsequently acquired territories

free, and which now stands alone among the free states against this proposition of amendment, must be shamed into its adoption. [Renewed applause.] Louisiana will adopt it before her; Kentucky, perhaps, may adopt it before her. They may come into the kingdom, when the children of the kingdom shut themselves out. [Applause.]

But, my fellow citizens, is that enough? Is it enough that we have emancipation and abolition upon the statute-books? In some states of society, I should say yes. In ancient times, when the slaves were of the same race with their masters, when the slaves were poets, orators, scholars, ministers of state, merchants, and the mothers of kings, — if they were emancipated, nature came to their aid, and they reached an equality with their masters. Their children became patricians. But, my friends, this is a slavery of race; it is a slavery which those white people have been taught, for thirty years, is a divine institution. I ask you, has the Southern heart been fired for thirty years for nothing? Have these doctrines been sown, and no fruit reaped? Have they been taught that the negro is not fit for freedom, have they believed that, and are they converted in a day? Besides all that, they look upon the negro as the cause of their defeat and humiliation. I am afraid there is a feeling of hatred toward the negro at the South to-day which has never existed before.

What are their laws? Why, their laws, many of them, do not allow a free negro to live in their states. When we emancipated the slaves, did we mean they should be banished — is that it? [Voices — "No."] Is that keeping public faith with them? And yet their laws declare so, and may declare it again.

That is not all! By their laws a black man cannot

testify in court; by their laws he cannot hold land; by their laws he cannot vote. Now, we have got to choose between two results. With these four millions of negroes, either you must have four millions of disfranchised, disarmed, untaught, landless, thriftless, non-producing, non-consuming, degraded men, or else you must have four millions of land-holding, industrious, arms-bearing, and voting population. [Loud applause.] Choose between these two! Which will you have? It has got to be decided pretty soon which you will have. The corner-stone of those institutions will not be slavery, in name, but their institutions will be built upon the mud-sills of a debased negro population. Is that public safety? Is it public faith? Are those republican ideas or republican institutions? Some of these negroes have shed their blood for us upon the public faith. Ah! there are negro parents whose children have fallen in battle; there are children who lost fathers, and wives who lost husbands, in our cause. Our covenant with the freedman is sealed in blood! It bears the image and superscription of the republic! Their freedom is a tribute which we must pay, not only to Cæsar, but to God! [Applause.]

We have a right to require, my friends, that the freedmen of the South shall have the right to hold land. [Applause.] Have we not? We have a right to require that they shall be allowed to testify in the state courts. [Applause.] Have we not? We have a right to demand that they shall bear arms as soldiers in the militia. [Applause.] Have we not? We have a right to demand that there shall be an impartial ballot. [Great applause.]

Now, my friends, let us be frank with one another. On what ground are we going to put our demand for

the ballot for freedmen? Some persons may say that they will put it upon the ground that every human being has an absolute and unconditional right to vote. There never was any such doctrine! We do not mean, now, to allow about one half the South to vote. [Applause.] Why not? Why, the public safety does not admit of it. [Applause.] We put the condition of loyalty on every vote. [Applause.] How have we done in this state? Half the people in this state are excluded from the ballot, — the better half we are fond of calling them; no woman votes. We prescribe conditions for the men, — whatever conditions society sees fit; conditions of age; conditions of residence; conditions of tax-paying; and lately we have added, by a large popular majority, the further high condition, that they shall have intelligence enough to read and write. [Applause.] Of course there is no such doctrine as that every human being has a right to vote. Society must settle the right to a vote upon this principle — "The greatest good of the greatest number" must decide it. The greatest good of society must decide it. On what ground, then, do we put it? We put it upon the ground that the public safety and the public faith require that there shall be no distinction of color. [Applause.] That is the ground upon which it can stand.

To introduce the free negroes to the voting franchise is a revolution. *If we do not secure that now, in the time of revolution, it can never be secured, except by a new revolution.* [Loud applause.] Do you want, some years hence, to see a new revolution? — the poor, oppressed, degraded black man, bearing patiently his oppression, until he can endure it no longer, rising with arms for his rights — do you want to see that?

[Voices — "No."] Do you want to see them submit forever, and *not* rise for their rights? [Voices — "No."] No, neither, you say. Well, my friends, who cry "no," if either of those things happens, it is our fault. If they never get their rights, or get them by a new revolution, it will be, in either event, our fault. Do you wish to have that blame rest upon you? [Voices — "No."] No? Then "Now's the day, and now's the hour." [Loud applause.] They are in a condition of transition; a condition of revolution; seize the opportunity and make it thorough! [Renewed and hearty applause.]

This, then, fellow citizens, is what we have a right to demand. Now comes my third question — How do you propose to accomplish it? We know our powers, we know what we want to do, — how do we propose to do it? First, the right to bear arms, fortunately, does not depend upon the decision of any state. That is a matter which, under the Constitution, depends upon the acts of Congress. Congress makes the militia, and Congress must see to it that the emancipated slaves have the privilege, the dignity, and the power of an arms-bearing population. But the right to acquire a homestead, the right to testify in courts, the right to vote, by the Constitution, depend, not only in spirit, but in the letter, upon the state constitutions. The right to vote in national elections depends on state constitutions. What are you going to do about it?

You find the answer in my first proposition. We are in a state of war. We are exercising war powers. We hold each state in the grasp of war until the state does what we have a right to require of her. [Applause.] Do you say this is coercion? Certainly it is. War is

coercion, and this is part of the war. We have a military occupation. What is the effect of that? I appeal to the learned in the law of nations; I appeal to an authority that has spoken to you words of wisdom this morning [turning to Professor Parsons], whether it is not a principle of war that when the conquering party has a military occupation of the country, the political relations of its citizens are suspended thereby? That is true: *suspended;* I do not say *destroyed.*

Let no man say that I overlook the distinction between a civil or domestic war and a war between recognized nations. My duties and studies and thoughts have kept my attention upon that. We have not been putting down an insurrection of professed citizens. We have fought against an empire unlawfully established within the limits of this republic — a completed *de facto* government, perfected in all its parts; and if we had not destroyed it by war, it would have remained and stood a completed government. It stood or fell, on the issues of war. Nothing but war has destroyed it.

This *de facto* empire had possession of that whole country. Why, from the Potomac to the Rio Grande, we had not one fort; not one arsenal; not a court-house nor a custom-house, nor a light-house, nor a post-office, nor a single magistrate, nor a spot on which he could stand. They had forts, arsenals, light-houses, custom-houses, courts, post-offices, magistrates, and were in complete possession. It happened — it *happened* — that those people preserved their state lines — did not obliterate them; but they might have done so. It happened that they did not change their constitutions, but they might have done it. They might have resolved themselves into a consolidated republic, or a

monarchy. They did as they chose. Under such circumstances, if the parent government is not strong enough to hold possession of the country, and a hostile, *de facto* government is established upon it, the parent government proportionately loses its claims to allegiance, for the time. Certainly it does — not absolutely, but for the time.

What follows from all this? from a war fought over the continent and over every ocean, — their privateers vexing our commerce at the antipodes; we fighting the battles of the republic in the mouth of the British Channel [applause]; and over this whole vast republic, south of the Potomac and the Ohio,

> "Every turf beneath your feet
> Has been a soldier's sepulchre."

If such a war leaves this people just as they were before; if no corresponding rights and powers have accrued to us, then I say it has been the most vast and bloody and cruel nullity that the world ever saw. It is not so. We have a right now and a duty to execute those powers which belong to the condition of war. The political relations of these people to their state governments are suspended. Military occupation exists, and the republic governs them by powers derived from war. You look in vain to the Constitution to point out what shall be done. The war is constitutional; but the consequences, powers and duties, arise out of *the nature of things*. The Constitution may distribute functions, but all the powers which the President or Congress hold, or both, and are exercising, are derived from the condition of war.

I ask, again, how shall we obtain what we have a right to acquire? The changes we require are changes of their constitutions, are they not? The changes must

be fundamental. The people are remitted to their original powers. They must meet in conventions and form constitutions, and those constitutions must be satisfactory to the republic. [Loud applause.]

I desire at this point to say a word with reference to President Johnson and his course, to which I ask your special attention. When President Johnson called the people of North Carolina and one or two other states together, he did not call the blacks as well as the whites to the ballot. That was a question of process, which requires great discretion and wisdom. The President and his Cabinet knew a great deal more about the details, and means, and probable results, than we do. I believe President Johnson has the same end in view that we have here to-day. [Applause.] He has his own mode of reaching it. Some may ask, Why did he not ask the blacks to vote? I know nothing, personally, of his reasons; but I can easily see that two embarrassments might well beset him. They occur to us all, at once.

The people of those states are to vote for the purpose of making their organic law. President Johnson holds them by military power. Is it not a very serious thing, in a republican government, to dictate from the cannon's mouth the organic law for a great people? I do not ask what we have a right to do — that is not the question. The question is, What ought we to do? I do not wonder that a man educated in republican principles hesitates to dictate, as military superior, who should vote in determining the organic law of a people. He took the voters as they stood before the war; he put the test of loyalty to them; he took securities against them; he went no further. That we may well suppose was one of his reasons.

We can easily suppose another. Take the whole black population. Shall I say to you, my friends, to-day, for the first time, that slavery is a beneficent, effective educational system? If I say it, will you believe it? Will you think me sane? Have we not all said, and thought, and fought because we believed that slavery degraded and brutalized its victims? If a man requires us to say that the four millions of slaves have not been debased and brutalized by slavery, he requires us to unsay all we have said and believed and fought for and prayed for, the last thirty years. Slavery has degraded the negroes. It has kept them ignorant and debased. It has not, thank God, destroyed them. The germ of moral and intellectual life has survived; and we mean to see to it that they are built up into a self-governing, voting, intelligent population. [Applause.] They are not that to-day. They will become so quicker than you think. They do not need half the care nor half the patronage we used to think they did. And the ballot is a part of our educating and elevating process.

There are various courses, all seeming to lead to one point. From these, President Johnson has chosen to make an experimental, tentative trial of one. On a question of means and processes, he has declined to clothe the negroes, by an exercise of military power, with the right to vote. True, he has by military power applied a test of loyalty to the voters. But that is a very mild and a necessary exercise of military power. No man, I believe, questions the necessity and fitness of that act. But it is a far different thing to speak a whole nation of voters into existence — not for temporary, but for permanent and fundamental objects — by a stroke of his pen, or rather, I should say, by

the uplifted sword. His rule has not been to interfere as far as he could, but to accomplish his ends with the least possible interference.

One step further. Suppose the states do not do what we require — what then? I have not heard that question answered yet. Suppose President Johnson's experiment in North Carolina and Mississippi fails, and the white men are determined to keep the black men down — what then? Mr. President, I hope we shall never be called upon to answer, practically, that question. It remits us to an ultimate, and, you may say, a fearful proposition. But if we come to it, though I desire to consider myself the humblest of the persons here, I, for one, am prepared with an answer. I believe that if you come to the ultimate right of the thing, the ultimate law of the case, it is this: that this war — no, not the war, *the victory in the war* — places, not the person, not the life, not the private property of the rebels — they are governed by other considerations and rules — I do not speak of them — *but the political systems of the rebel states, at the discretion of the republic.* [Great applause.] Secession does not do this. Treason does not do this. The existence of civil war does not do this. It is the necessary result of conquest, with military occupation, in a war of such dimensions, such a character, and such consequences as this.

You say that it is a fearful proposition. But be not alarmed. Most political action is discretionary, — all that is fundamental and organic is so. Discretion has its laws, and even its necessities. Still, I know it is a fearful proposition. But is not war a fearful fact? If this is a fearful theory, is it not the legitimate fruit of a terrific fact, the war? If they have sown the wind,

must they not expect to reap the whirlwind? War, my friends, is an appeal from the force of law to the law of force. I declare it a proposition that does not admit of doubt in wars between nations, that when a conqueror has obtained military possession of his enemy's country, it is in his discretion whether he shall permit the political institutions to go on and treat with them, or shall obliterate them and annex the country to his own dominions. That is the law of war between nations. Is it applicable to us? I think it is. [Applause.] I think, if you come to the ultimate right of the thing, we may, if we choose, take the position that *their political institutions are at the discretion of the republic.*

When a man accepts a challenge to a duel, what does he put at stake? He puts his life at stake, does he not? And is it not childish, after the fatal shot is fired, to exclaim, "Oh, death and widowhood and orphanage are fearful things!" They were all involved in that accepted challenge. When a nation allows itself to be at war, or when a people make war, they put at stake their national existence. [Applause.] That result seldom follows, because the nation that is getting the worst of the contest makes its peace in time; because the conquering nation does not always desire to incorporate hostile subjects in its dominions; because neutral nations intervene. The conqueror must choose between two courses — to permit the political institutions, the body politic, to go on, and treat with it, or obliterate it. We have destroyed and obliterated their central government. Its existence was treason. As to their states, we mean to adhere to the first course. We mean to say the states shall remain, with new constitutions, new systems. We do not mean to

exercise sovereign civil jurisdiction over them in our Congress. Fellow citizens, it is not merely out of tenderness to them; it would be the most dangerous possible course for us. Our system is a planetary system; each planet revolving round its orbit, and all round a common sun. This system is held together by a balance of powers — centripetal and centrifugal forces. We have established a wise balance of forces. Let not that balance be destroyed. If we should undertake to exercise sovereign civil jurisdiction over those states, it would be as great a peril to our system as it would be a hardship upon them. We must not, we will not undertake it, except as the last resort of the thinking and the good — as the ultimate final remedy, when all others have failed.

I know, fellow citizens, it is much more popular to stir up the feelings of a public audience by violent language than it is to repress them; but on this subject we must think wisely. We have never been willing to try the experiment of a consolidated democratic republic. Our system is a system of states, with central power; and in that system is our safety. [Applause.] State rights, I maintain; State sovereignty we have destroyed. [Applause.] Therefore, although I say that, if we are driven to the last resort, we may adopt this final remedy; yet wisdom, humanity, regard for democratic principles, common discretion, require that we should follow the course we are now following. Let the states make their own constitutions, but the constitutions must be satisfactory to the Republic [applause], and — ending as I began — by a power which I think is beyond question, the Republic holds them in the grasp of war until they have made such constitutions. [Loud applause.]

The Faneuil Hall Address

[*Omitting portions that appear in almost the same language in Mr. Dana's speech.*]

To the People of the United States: —

In pursuance of the custom of the American people to confer freely with one another in times of civil emergency, and the example of our own ancestors to speak to their fellow citizens from this place, we have been commissioned by the citizens this day assembled in Faneuil Hall to address you upon the state of public affairs.

We claim no peculiar right to be heard, even by reason of the sacredness of the spot from which we speak; but the greatness of the exigency, the critical questions your representatives in Congress will soon be required to meet, and the singular unanimity which appears among the patriotic people in this portion of our land, lead us to hope for your attention and consideration.

To remove obstructions which we know may be artfully thrown in the way, we wish to say to you in advance — as matter of honor between citizens — that this meeting and this address have not been prompted by any organization, or by any purpose of party or personal politics. They are the spontaneous expression of the convictions of men in earnest, who have differed much in times past, and may be separated again in their political action, but who are forced to a common opinion on the present exigency of affairs.

. . . . . .

It may be fairly said that three ideas had complete possession of Southern society, — Slavery, Aristo-

cracy, and State Supremacy. Upon these, they carried on their political warfare, until 1860. On these, they founded their empire in 1861. On these, and for these, they have waged against the Republic for four years a war of stupendous proportions.

That we may understand the character of this antagonistic force, with which we have now to deal politically, we ask you to remember what they accomplished. They made no insurrection of professed citizens for a redress of grievances. They made no revolution or civil war within an admitted sovereignty. They set up a distinct and independent sovereignty, within the territory of the Republic. This extended over eleven states, and we hardly saved our capital; while in the states of Maryland, Kentucky, and Missouri, the most the nation obtained at first was a declaration of sovereign neutrality. Looking at the fact, and not at right or law, we must remember that the rebellion drove out from its usurped borders every representative and obliterated every sign of Federal authority, possessed every foot of ground, and established and put in operation a central government, completed in all its parts, legislative, executive, and judicial.

. . . . . .

In the course of a war of four years, for the restoration of the Republic, we must not forget that not one place surrendered from political considerations. There were individual deserters, but not a regiment laid down its arms from motives of returning loyalty. They fought to the last, — as bitterly at last as ever, — and were surrendered by their commanders only when there was no other resource. It was by force that their government was broken down. It is by force that

the territory they held is now in our military occupation. . . . The purpose of the South now is to resume the exercise of state functions with the utmost possible speed, and with the least possible change in their home-systems. To secure that, they will do and submit to whatever is necessary. It must constantly be borne in mind that when once a state is admitted to its place, the power of the nation over all subjects of state cognizance is gone. If the dogma of State Supremacy is not destroyed, for practice as well as in theory, the war will have been in vain. It has not only been the favorite weapon of slavery, but has been eagerly caught up by the enemies of our institutions in Europe, — the tenet that the United States is not a nation, a government, a sovereignty, — that the citizens owe to it no direct allegiance, — that they cannot commit against it the crime of treason, if they carry with them into their treason the forms of state authority. *The right of this republic to be a sovereign, among the sovereignties of the earth, must be put beyond future dispute, abroad as well as at home.* We have paid the fearful price, and we must not be defrauded of the results.

Let us now, fellow citizens, look at the dangers which attend an immediate restoration of the rebel states to the exercise of full state authority. Slavery is the law of every rebel state. In some of these states free persons of color are not permitted to reside; in none of them have they the right to testify in court, or to be educated, in few of them to hold land, and in all of them they are totally disfranchised. But, far beyond the letter of the law, the spirit of the people and the habits of generations are such as to insure the permanence of that state of things, in substance.

. . . . . .

We trust it cannot be necessary to pause here and refute a political fallacy, which the logic of events has already exposed. It has been contended that, forcible resistance having ceased, the rebel states are, by that fact, again in their orbits, and in the rightful possession and exercise of all their functions as states, in local and national affairs, just as if no war had taken place, — that the nation, whether by Congress or the Executive, has no option to exercise, no powers or rights to enforce, no conditions that it can make. We trust that the mere statement of this proposition, in the light of the circumstances in which we stand, is a sufficient refutation. We are holding the rebel country in military occupation, and the nation is asserting a right, before it yields that occupation, to see the public safety secured, and the public faith preserved. The only question can be as to the mode of obtaining this result. We trust all loyal people of the land will have no hesitation in standing by the President, with clear convictions, as well as strong purpose, on this issue. By necessity, the Republic must hold and exercise some control over these regions and people until the states are restored to their full functions as states, in national as well as in state affairs. This authority is to be exercised by the President or by Congress, or both, according to the nature of each case. Though resulting, necessarily, from the fact of the war, these powers are not necessarily to be exercised by military persons or in military forms. This temporary, provisional authority, although supreme for the time, may be exercised, much of it, by civil officers, using the methods of civil power, and admitting the employment of judicial and executive functions, with the arts and business and social inter-

course of life. This we understand to be, in substance, the position which the government now occupies, and we believe the people recognize it to be of necessity and of right.

Let us now, fellow citizens, turn our attention to our rights and duties. Having succeeded in this war, and holding the rebel states in our military occupation, it is *our right and duty to secure whatever the public safety and the public faith require.*

First. The principle must be put beyond all question, that the Republic has a direct claim upon the allegiance of every citizen, from which no state can absolve him, and to his obedience to the laws of the Republic, "anything in the constitution or laws of any state to the contrary notwithstanding."

Second. The public faith is pledged to every person of color in the rebel states, to secure to them and their posterity forever a complete and veritable freedom. Having promised them this freedom, received their aid on the faith of this promise, and, by a successful war and actual military occupation of the country, having obtained the power to secure the result, we are dishonored if we fail to make it good to them.

Third. The system of slavery must be abolished and prohibited by paramount and irreversible law. Throughout the rebel states, there must be, in the words of Webster, "impressed upon the soil itself an inability to bear up any but free men."

Fourth. The systems of the states must be truly "republican."

Unless these points are secured, the public faith will be broken, and there will be no safety for the public peace or the preservation of our institutions.

It must be remembered that, under the Constitu-

tion, most of these subjects are entirely matters of state jurisdiction. Once withdraw the powers of war, and admit a state to its full functions, and the authority of the nation over these subjects is gone. It is a state function to determine who shall hold land, who shall testify in state courts, who shall be educated, and how, who shall labor, and how, and under what contracts or obligations and how enforced, and who shall vote in national as well as in state elections. We have already said that all these points now stand in the constitutions and laws of the rebel states decided against the freedmen. Action is necessary to put them right. So great a change is, no doubt, fundamental, and goes to the bottom of their social and political system. If it is not made now, before civil society becomes settled, before the states are restored to the exercise of all their powers, it will never be made, in all human probability, by peaceful means.

The question now occurs, How are these results to be secured, before those states are permitted to resume their functions? We agree that these results ought to be secured in conformity with what may be called the American System, — that upon which and for which our Constitution was made. This is a system of separate states, each with separate functions, constituted by the people of each, and self-governing within its sphere, with a central state constituted by the people of all, supreme within its sphere and the final judge of its sphere and functions. The President recognizes the importance of proceeding in accordance with this system. He aims at a restoration of the states, by the people of the states, without resort to the exercise of sovereign legislative jurisdiction over them by the general government. In this we offer to him our

sympathy, as we ask for him an intelligent support. But inasmuch as once restored the state will be beyond our reach, the utmost care must be taken to avoid a hasty and unsatisfactory restoration. We acknowledge that there may be dangers in protracted and extensive military occupation. But we believe that the people *are* willing to incur their share of these perils. We believe the people feel that the greatest hazard is in premature restoration fraught with future danger. Any restoration would be dangerous which did not secure, beyond all reasonable peril, the abolition of slavery, actual freedom, just rights to the free, and, within each state, "a republican form of government."

The President and his Cabinet, we have every reason to believe, have these results in view. We cannot doubt that Congress will refuse to receive any state upon any other terms. If there are any members of Congress whose fidelity on these points is doubtful, we implore you to exercise over them all the just authority and influence of constituents.

We advance no extreme or refined theory as to what may be included within the term "a republican form of government." In the exercises of the extraordinary prerogative of the General Government to determine whether a state constitution is "republican," there must be practical wisdom and no refined theories. If the constitutions with which the rebel states now come are not "republican," in such a reasonable and practical sense as nations act upon — if they are so far unrepublican as to endanger public peace and the stability of our institutions, then we may treat them as not "republican" in the American sense of the term.

What, then, is the character of their present con-

stitutions, assuming that slavery is prohibited? Here presents itself no question of mere principle or theory, but facts of an overruling and decisive character. From one third to one half of their free population are absolutely and forever not only disfranchised, but deprived of all the usual rights of citizens in a republic. Not only so, but this disfranchisement is perpetual, hereditary, and insurmountable. It is more deeply seated than Oriental *caste*. It clings to each man and his posterity forever, if there be a traceable thread of African descent. No achievements in war or peace, no acquisitions of property, no education, no mental power or culture, no merits, can overcome it. To make the case worse, these people are not only disfranchised, but the temper, spirit, and habits of the ruling class, the only class partaking of civil authority, will keep them not only disfranchised, but uneducated, without land, without the right to testify, and without the means of protecting their formal freedom. The result has been, and must ever be, that the system is essentially and practically oligarchal, in such a sense as actually and seriously to endanger the public peace and the success of our republican institutions.

Attempts are made to embarrass the subject by referring to several of the free states, whose constitutions restrict free blacks in the exercise of some of the usual rights of citizens. But these are not practical questions before the country. The General Government has no present cognizance of those questions in those states. Besides, as we have said, the exercise of this extraordinary authority must be upon practical and reasonable grounds, and not on mere theory. The partial disfranchisement of people of

color in those states we regard as one of the subtle effects of the slave-power in our politics, which we hope to see pass away with its cause. The number of persons whom it bears upon is so small, the effect upon them so slight, and such the state of society, and the habits and feelings of the people, that the substantial character of those states as "republican" is not sensibly affected. Departures from principle, however small, must always be regretted; but in the vast and critical affairs of nations, slight aberrations from exact principles are constantly occurring, and are constantly submitted to and allowed for, in fundamental institutions, as well as in occasional practice. The case of the rebel states is vastly and absolutely different. It presents a question of a false principle organized and brought into action, with vast dimensions, having already created one war, and all but destroyed the Republic, and ever threatening danger hereafter. We can hardly think it in good faith that the effort is made to deter the nation from confronting this vast peril, over which it has present and necessary jurisdiction, by invoking these slight cases found remaining in loyal states, over which the nation has no present cognizance, and from which it has nothing to fear.

We do not ask that the nation shall insist on an unconditioned, universal suffrage. We admit that states determine for themselves the principles upon which they will act, in the restrictions and conditions they place upon suffrage. All the states make restrictions of age, sex, and residence, and often annex other conditions operating in substance equally upon all, and reasonably attainable by all. Those matters lie within the region of advice from neighbors, and not of na-

tional authority. We speak only to the point where the national authority comes in. We cannot require the rebel states, if we treat them as states, to adopt a system for the sole reason that we think it right. Of that, each state, acting as a state, must be the judge. But in the situation in which the rebel states now are, the nation can insist upon what is necessary to public safety and peace. And we declare it to be our belief that if the nation admits a rebel state to its full functions with a constitution which does not secure to the freedmen the right of suffrage in such manner as to be impartial and not based in principle upon color, and as to be reasonably attainable by intelligence and character, and which does not place in their hands a substantial power to defend their rights as citizens at the ballot-box, with the right to be educated, to acquire homesteads, and to testify in courts, the nation will be recreant to its duty to itself and to them, and will incur and deserve to incur danger and reproach proportioned to the magnitude of its responsibility.

It should not be forgotten that, slavery being abolished, and therewith the three-fifths rule of the Constitution, nearly two millions will be added to the representative population of the slave states in the apportionment for members of Congress and of votes in presidential elections, and that this increase of political power to the rebel states must be at the expense of the free states. If the freedmen remain, as they now are, disfranchised, this increased power will be wielded by a class of voters smaller in proportion than before. This furnishes an additional temptation to that class to retain it in their hands; and we shall be compelled to meet, as heretofore, the old spirit, not improved by

its recent experience, and largely increased in its political power.

As we speak from a free state, it may be suggested that we are not so good judges of what should be done for the colored people of the South as those who have been brought up among them. It does not follow that those who have been brought up under an abuse are the best judges whether it shall be continued, or of what shall be substituted in its place. The people of the North have seen the colored races acting as free men under free institutions, which the people of the South have not. They who have known the man of color only as a slave before his master, or sometimes as a disfranchised free man under a slave system embracing his race, are not the only nor necessarily the best qualified class to give an opinion as to what he may do or what should be done for him as a free man, under free systems. History teaches us that national emancipations do not emanate from the masters. And wherever emancipation has seemed to disappoint expectations, the difficulties are traceable, in large measures, to persistent and multiform counteractions by the late master-class.

Appeals may be made to taste or pride, on the subject of the social equality of the people of color. We must not permit our opinions to be warped by such considerations. The present question is strictly one of political justice and safety, and not of social equality. When the free man of color, educated in the common schools, deposits a vote which he can write himself, gives a deposition which he can read and sign, and pays a tax on the homestead he has bought, the law forces no comparisons between his intellectual, moral, physical, or social condition, and that of the white cit-

izen, of whatever race or nation, who lives, votes, or testifies by his side.

The President has undertaken, in certain of the rebel states, an experiment for speedy restoration. Recognizing the general policy and duty of restoration as soon as practicable, the experiment commands our earnest wishes for its success. By its success we mean — not the return of the states to their position; that they are only too ready to do; but their return *with constitutions in which the public safety and public faith shall be secured.* We cannot conceal our apprehensions that the experiment will fail. But let not the Republic fail! The more recent signs are that the spirit which caused the war is preparing to fight over politically the ground it has lost in battle. This ought not to surprise us. Let no haste to restore a state, no fear of rebel dissatisfaction, lead the Republic to compromise its safety or its honor!

During the progress towards restoration, the nation holds the states in military occupation, by powers resulting necessarily from successful war. This hold upon them is to be continued until this or some other experiment does succeed. We need not be precipitate. The present authority, although resulting from war, may, as we have said, be largely exercised by civil methods and civil functionaries, and be accompanied with the enjoyment of many civil rights and local municipal institutions, executive and judicial. If the present experiment fails, we may try the experiment of building by the people from the foundation, by means of municipal institutions of towns and counties, with the aid of education, commerce and immigration, a new spirit being infused and the people becoming accommodated to their new relations, and so advance gradually to complete restoration.

This is but one suggestion. Various methods are open to us. Only let it be understood that *there is no point at which the rebels can defy, politically, any more than they could in war, the authority of the Republic.* The end the nation has in view is the same as that for which the war was accepted and prosecuted, — *the restoration of the states to their legitimate relations with the Republic.* The condition of things calls for no limitations of time or methods. By whatever course of reasoning it may be reached, upon whatever doctrine of public law it may rest, however long may be the interval of waiting, and whatever may be the process resorted to, the friends and enemies of the Republic should alike understand that it has the powers and will use the means to ensure a final restoration of the States, with constitutions which are republican, and with provisions that shall secure the public safety and the public faith.

XII

THE PRIZE CAUSES

[Beginning with the earliest months of the Civil War, the United States established a blockade of the Confederate ports, and captured as prizes blockade-runners of neutrals, and also vessels belonging to citizens residing in the seceding states.

Early in the war, England and other powers recognized the belligerency of both North and South, and it was feared that both England and France were on the point of recognizing the independence of the Confederate States. In order to prevent the latter, and to emphasize our right of denial of secession, both President Lincoln and his Secretary of State Mr. Seward had, in proclamations and official correspondence, spoken of the whole affair as a mere suppression of a local insurrection of citizens, and ignored that it was a war. At first, too, there had been much opposition in the Northern States to the recognition of belligerency by England and France, because, in the popular mind, it had been somewhat confused with, or at least held as being a sort of, recognition of independence.

By well-known principles of international law, blockade and prize could only be resorted to in case of war with an existing power, not in a mere suppression of a local insurrection of citizens. To keep up the blockade and capture and condemn blockade-runners was essential to the suppression of the rebellion. Without these powers, conflict might be indefinitely prolonged, with greatly increased chances of success for the Confederacy.

The owners of the vessels captured as prizes brought suit in the Federal Courts, claiming the vessels back on the ground that their capture was illegal, contending that there was no war, but only a local insurrection. These suits were appealed to the United States Supreme Court. Mr. Dana, as United States

District Attorney for the District of Massachusetts, to which district some of the prizes were brought, argued these cases for the government, both in the lower court and in the Supreme Court.

Here was a dilemma, and how was Mr. Dana to meet it? How did he meet it? He reasoned out the philosophy of war and showed that war was a process of coercion, and that blockade and prize were recognized powers of coercion allowed by the law of nations in a war. Having shown this, he emphatically recognized that a mere suppression of a local insurrection of citizens was not a war in this sense, and that to make it a war, it must be against an existing nation; but he went on to prove that, though the nation against which we were contending must be an existing one, or, in legal language, a *de facto* nation, it was not necessary that we should recognize its independence, or that its existence was lawful, or, technically speaking, that it was a *de jure* nation. He also turned the recognition of belligerency by foreign nations into what it really was, though not generally understood to be,— an acquiescence in our rights to these disputed war powers.

The argument by which Mr. Dana enforced these views is, by tradition of the Bench and Bar to this day, one of the greatest arguments, none greater, before the Supreme Court of the United States. He convinced the entire court. To appreciate the task Mr. Dana had before him, the reader should be reminded that, out of a court of nine judges, six were democrats, with a strong leaning towards the doctrine of state supremacy, and three of these were appointed from slave-holding states. The opinion of the court not only unanimously sustained Mr. Dana's contention of the right of prize, and based the opinion on Mr. Dana's argument, but also clearly stated Mr. Dana's points, that to make it a war, it was enough that the nation against which we were fighting was a *de facto* one, that it need not be one *de jure*, nor need its independence be recognized. Up to that time, our government had been performing the difficult and somewhat contradictory task of carrying on a war, when blockade, contraband and prize were considered; but only suppressing a local insurrection of citizens, when neutrality or recognition of independence

by foreign powers or right of secession was considered. After the decision of the Supreme Court in 1863 on the Prize Causes, it was no longer necessary to carry on this inconsistent, double-dealing policy. The decision of the court had done away with any such necessity, and had officially committed us to the fact of a war, and a great war.

While Mr. Dana's argument and the decision of the court made all this clear, the public was slow to take in the changed point of view, and Mr. Dana, in order to clear up the misunderstandings that arose, issued a pamphlet, entitled, "Enemy's Territory and Alien Enemies: What the Supreme Court decided in the Prize Causes." This is published here. There is also the brief, both separately printed, and published with extracts from his argument with the decision of the court in the second volume of Black's United States Supreme Court Reports.[1] To the lay reader, I may explain that a brief is rather dull reading. It is made up of short, condensed statements of the chief points, followed by citations of authority by name, book and page, in support of these points.[2]

But, oh, for the argument! Verily, the lawyer's fame is writ in water! Mr. Adams tells in the Life[3] the complimentary remarks made by the judges privately, and also publicly stated by Judge Greer on reading the opinion, and by members of the bar who were present. But the argument, with all its power of illustration, force of logic, clear statement, philosophy and eloquence, except as a tradition, has died with the death of those who heard it.

The pamphlet called "Enemy's Territory" touches a special branch of the Prize Causes. That branch has nothing to do with the capture of blockade-runners. It is related only to the capture at sea, wherever found, of vessels belonging to citizens

[1] 2 Black, 635. Mr. Dana's brief and summary of argument, pp. 650–665. The opinion of the court, pp. 665–682.

[2] For further consideration of the same questions involved, and the popular misunderstanding of these Prize Causes, see Note to "Grasp of War" speech, *supra*.

[3] Vol. ii, pp. 266–270.

residing in the "enemy's territory." The prize law allows such captures only in case the territory is "enemy's territory."

Now, when he took the stand that the territory (Richmond, in the case of the Amy Warwick) was enemy's, he seemed to be admitting that it was territory rightfully belonging to the enemy. In the general use of language, that would be the case. To illustrate, — if, in a suit between myself and B as to the ownership of a lot in the possession of B, I had in previous conversation called it "B's lot," that would be admissible evidence to show that I had acknowledged that it rightfully belonged to B; but, to apply the analogy to the prize law, in order to get the lot back from B by process of court and secure a certain writ, I have to show that B is in possession and that I am not able to get the lot by peaceable means; and, one step further, to make the parallel complete, let us suppose that the process by which I, the plaintiff, am to get the lot out of the possession of B, the defendant, requires me to call it the "defendant's lot." In that case, it would be clear enough from the context that I am not admitting that it was B's lot as of right, otherwise I would not be taking out the process; but that I admit only that it was B's for the time being by forcible possession, which possession B is intending to keep as long as he can.

Just so in the branch of prize law that allows capture of vessels of citizens in enemy's territory, the process, that is, the capture and condemnation, requires the government to show that the territory is in complete forcible control of the enemy. The phrase in the process is "enemy's territory." That process however, in the Civil War, was but a part of the proceedings by which the United States sought to get the territory back into its possession from out of the possession of those holding it by force.

There was, no doubt, considerable confusion in the public mind, as always arises when common phrases are used in any science in a restricted or unusual sense; but in addition to that, it must be remembered that there were many persons in the North, and still more in European countries, whose sympathies with the South induced them to make such use of the decision of the Supreme Court as would mislead people into thinking that that

decision had acknowledged the independence of the Confederacy and the right of secession; and this necessitated the publication of the pamphlet on this special branch of the prize law.]

Enemy's Territory and Alien Enemies

What the Supreme Court decided in the Prize Causes

Mr. William Beach Lawrence has written a letter to a foreign journal ("The Law Magazine," London, November, 1863), in which he says of the decision of the Supreme Court of the United States, in the prize causes last winter, — "What was somewhat at variance with the views of those who had heretofore denied the right of secession, it recognized the war as made by the States in their political capacities, and, as a corollary therefrom, declared all the inhabitants of the seceded States, on account of their residence and without regard to their individual locality, alien enemies."

My purpose is to show that this is not a correct statement of the decision. It is now reported in 2 Black's Reports, and it will be found that the Court made no such recognition, followed no such corollary, announced no such declaration, and arrived at no such result.

This misconception of the decision has not been confined to Mr. Lawrence and the advocates of a state right of secession. Prominent men, advocating far different doctrines, seem to have looked at the decision in the same light. It has been vouched in to aid various theories; but all under the impression that it decides that the political relation of the inhabitants of the insurgent states to the General Government is that of alien enemies, and that the territory covered

by those states is, in law, no more than enemy's territory. It has, therefore, seemed to me not a superfluous task, on an issue so vital and pressing, to endeavor to explain the prize decisions, on that point, to persons who may not have studied the principles upon which they rest. And I make the attempt with the more confidence because, as the opinion of the Court supposes in its readers a knowledge of the phraseology and principles of the laws of war, an endeavor to give it a popular explanation is not supererogatory. Neither is it unnatural that the general reader should be misled by the terms used, and by the form of the reasoning, for prize law has its technical terms, and the end to which some of the reasoning is addressed is not apparent without a knowledge of the whole ground. I do not purpose to go further than the Court, and discuss the ultimate question, — what is the relation of those states, as bodies politic, or of their inhabitants, to the General Government, or to offer any opinion of my own in aid of a solution of that question. I confine myself to the humbler, but I think important task, of offering a popular explanation of the decision of the Court.

The Supreme Court decided that the established rule of international war respecting "enemy's property" is applicable to such an internal contest as that in which we are now engaged. This was the extent of the decision on that point: and in this the Court was unanimous.

What is the rule of international war respecting "enemy's property"? It is sufficient for the present purpose to state it thus: If a person is domiciled in enemy's territory, his property, found on the high seas, is subject to capture. It is immaterial what

may be the civil or political *status* of that person, as regards the government of the capturing power. He may be an alien enemy. He may be a neutral — perhaps a consul of a neutral power. He may be a loyal citizen of the capturing power, with an involuntary domicile in the enemy's territory. When the Court condemns his property, it is because of the situation or predicament of the property, and not because of the moral *animus* or political *status* of its owner. It is called "enemy's property"; but that is a technical phrase of prize law. It does not imply anything as to the legal, political *status* of the owner. One of the earliest condemnations of "enemy's property" in the war of 1812, was of the property of an American citizen, who happened to be domiciled in Liverpool, for commercial purposes, when the war broke out and the capture was made. (*The Venus*, 8 Cranch, 253.) A student of international law can easily suppose cases where the property even of the President himself, in that war, might have been condemned by us as "enemy's property."

It may be useful, in this connection, to refer to the reasons upon which this rule rests, as aiding to a better understanding of the rule itself. The reasons are, that property, in certain situations, is so placed that the hostile power, whom the war is intended to coerce, has an interest in its existence, transit, or arrival, and the capturing power a corresponding interest to deprive the enemy of that advantage. In this conflict of interests, the consent of nations authorizes the strongest to take the property, if it is found at sea. One of the facts which puts property in this predicament is that the owner of it is himself domiciled in the enemy's territory, and therefore he and

his property are subject to the unlimited power of the enemy, to his taxation, his exactions, his confiscations, forced contributions, and use of all kinds, with or without compensation. As the power of the enemy over the property of the inhabitants of his territory does not depend on their political *status*, and may even be increased by their being hostile to him, so neither does the right of the belligerent to intercept and take such property depend on those considerations. It is at the discretion of political power to forego the condemnation, if the owner is known to be a loyal subject, having an involuntary domicile with the enemy, or to condemn the property and remunerate the owner after the war is over, or to make no remuneration. As a judicial question, the Prize Court can only decide that the property is lawful prize.

The Supreme Court applied this rule to our present war. They held that the property of a person domiciled in enemy's territory was subject to capture, as a question of law, it being a political question whether that right of capture should be enforced. It was immaterial, in domestic war as in foreign war, whether the owner, so domiciled, be a rebel citizen or a loyal citizen, a foreigner aiding the rebellion voluntarily or involuntarily or not aiding it at all, or a loyal citizen having an involuntary domicile there. The Court decided absolutely nothing as to the legal or political *status* of the owner in relation to our own government. To guard against a mistake which might arise from the use of the term "enemy's property," the Court expressly says that "enemy's property" is "a technical term peculiar to Prize Courts." And again, "Whether property be liable to capture

as 'enemy's property,' does not in any manner depend on the personal allegiance of the owner. It is of no consequence whether it belongs to an ally or a citizen." (Prize Cases, 2 Black, 674.) As Chief Justice Marshall said, it is "a hostile character impressed on the property," from its predicament or situation, that gives it that name. And as Judge Story said, of property of a citizen found engaged in trade with the enemy, "it is the illegal traffic that stamps it as 'enemy's property.'"

It is further necessary to inquire how the Court treated the question of "enemy's territory," residence of the owner in which renders the property at sea liable to capture. Here, again, the Court simply applied to our contest the admitted rule of international law. What is that rule? It is sufficient for the present purpose to say that a certain kind and degree of possession by the enemy, and the exercise of a *de facto* jurisdiction over a region, render it, for the purposes of war and of the prize law, "enemy's territory." Whether a place is, in the meaning of the prize law, "enemy's territory," is a question of fact. It is not concluded by treaties, statutes, ordinances, or any paper-title. War is an appeal to force, and force settles the question of enemy's territory for the time. In the war of 1812–14, the peninsula of Castine became enemy's territory, within the meaning of the laws of war. If a vessel belonging to a person domiciled and actually residing there, at that time, had been taken by one of our cruisers, bound in to that port, our Prize Courts would have condemned it as lawful prize, without deciding or inquiring whether the owner was a British subject, an American citizen, or a neutral. *The doctrine of* PRIZE OF WAR *does not*

rest on the basis of a penalty on the owner for his personal hostility, actual or implied. It rests on the basis of the right of one belligerent power to coerce another belligerent power by taking from its control or possibility of use, property and materials of certain descriptions and found in certain predicaments. FORFEITURES and CONFISCATIONS belong to a distinct branch of law, — to the internal, municipal rules of each country, to its penal or criminal code. We are treating only of the rights and powers of WAR, to which alone the doctrines of Prize belong. When the British withdrew their occupation of Castine the owner of this property condemned as "enemy's property," if a citizen of the United States, would have resumed all his rights and duties as such, and no act of the people of Castine, or of the National Government, or of the State Government, would be necessary to establish his *status* as a citizen, or the *status* of Castine as part of the State and Nation.

Now, all that the Supreme Court did in respect to the proposition of "enemy's territory," was to apply the rules of international war to our contest, so far as the law of prize was concerned. The owners of the vessels and their cargoes had their domicile and actual residence in Richmond, Virginia, and Richmond was, at the time of the capture and adjudication, so far in the possession, and under such control and *de facto* jurisdiction of enemies of the United States, as to render it, at that time, within the meaning of prize law, "enemy's territory."

That result was not owing to state lines, secession ordinances, or any other conventional acts of states or people. It was a question of *de facto* forcible occupation. Richmond would have been pronounced

"enemy's territory," and this property condemned as "enemy's property," equally as well, if Virginia had never passed an ordinance of secession. And conversely, if Richmond had been regained into our possession, it would not have been decreed "enemy's territory," with all its secession ordinance, nor could this property have been decreed "enemy's property." When a prize court, sitting under the laws of war, decides that a certain region is enemy's territory, for the purposes of prize law, it does not necessarily predicate anything, affirmatively or negatively, as to the civil or political relations of that region or of its inhabitants with the enemy's government, or with its own.

To guard against a possible mistake arising from the use of the phrase "enemy's territory," Judge Grier strikingly says, "it has a boundary marked by lines of bayonets, and which can be crossed only by force. South of this line is enemy's territory, because it is claimed and held in possession by an organized, hostile and belligerent power." The reason why it is enemy's territory for the time being, and for purposes of prize, is not its ordinances of secession, or any legislation, valid or invalid, of the states, or any legal effects of rebellion on the region or its inhabitants, — but "*because it is claimed and held by an organized, hostile, and belligerent power.*" It is immaterial whether that organized, hostile, belligerent power has used the state machinery or not; whether it claims to be the several states, or a new body politic; whether it is composed solely of citizens, or solely of invading aliens, or of both. It is enough that it is such an organized force as to raise its acts to the dignity of war, and that the proper political department

of our government has treated it as war, and applied to it the rights and powers of maritime capture.

The boundary of enemy's territory is, then, a varying line, depending on *de facto* condition, and not on the enemy's legislation, valid or invalid. What kind and degree of possession is necessary to constitute a region "enemy's territory," for the purposes of the law of prize, the Court did not think necessary to decide, for the possession the enemy had of Richmond was sufficient to satisfy any possible definition. (If the reader desires to investigate the question of the kind and degree of possession by the enemy which will make a region "enemy's territory" for the time being, he will find nearly all the law on the subject in the case of *The Gerasimo*, in 11 Moore's Pr. Council Reports.)

The case which presented the naked question of enemy's property was the Amy Warwick. This was first adjudicated by Judge Sprague; and in his opinion, he sets forth the doctrine and its reasons, and says that the judgment does not "go beyond the fact of permanent residence," and takes pains to preclude any inference that the decision affects the existing or future political relations of the territory or its inhabitants with the General Government or the State. (*The Amy Warwick*, 24 Law Reporter, 335, 494.)

At the argument of the prize causes on appeal, the counsel for the United States adopted a line of argument intended to satisfy the Court that such were the reasons on which rested the rules of war touching enemy's property, that those rules could be applied to an internal war without the necessity of predicating anything as to the political relations of the

owners or of the place of their residence towards the General Government.[1]

It was wittily said, by a distinguished member of Congress, that the Supreme Court had decided that two of their number were alien enemies. I refer to this *bon mot* as a good illustration of an incorrect understanding of the decision. If Mr. Justice Wayne had continued to reside in Savannah, and Savannah continued to be under the control of the enemy, a vessel belonging to Judge Wayne would have been good prize, if the Government chose to treat it as such. But the fact that his property had been so condemned would have no legal effect on his political *status* under our Government, or on the political *status* of Georgia or its inhabitants.

In closing, I offer the following synopsis of what I understand the Court did and did not decide:—

What the Court did not decide: —

1. The Court did not decide that the passing of the ordinances of secession made the territory of the insurgent states enemy's territory, or its inhabitants alien enemies.

2. The Court did not decide that the passing of the secession ordinances terminated, or in any way affected, the legal relations of the insurgent states, as bodies politic, with the General Government, or the political relations of their inhabitants with the General Government or with their respective states.

3. The Court decided absolutely nothing as to the effect of the passing of the secession ordinances

[1] I regret not to find among the arguments for the Government in these causes, in 2 Black's Reports, the admirable argument of Mr. Evarts. His absence from the country on public duty probably prevented his preparing a synopsis for the reporter.

on the civil or political relations of the inhabitants of the insurgent states with the General Government or with their respective states, or on the relations of the insurgent states, as bodies politic, with the General Government.

4. The Court did not decide that the inhabitants of the seceding states are alien enemies at all, or that the territory of those states is enemy's territory.

What the Court did decide: —

1. That in case of domestic war, the Government of the United States may, at its option, use the powers and rights known to the international laws of war as blockade and capture of enemy's property at sea.

2. That to determine whether property found at sea is "enemy's property," within the meaning of the law of prize, the same tests may be applied in domestic as in international wars.

3. One of those tests is that the owner of the property so found has his domicile and residence in a place of which the enemy has a certain kind and degree of possession.

4. Richmond, Virginia, was, at the time of the capture and condemnation of those vessels, under such possession and control of an organized, hostile, belligerent power, as to render it indisputably "enemy's territory," within the strictest definitions known to the laws of war.

5. That it was immaterial how that organized power came into existence, whether by the use of state machinery or otherwise, or what its political claims or assumptions are, or whether it is composed of rebel citizens, or invading aliens, or both, or whether it professes to recognize state lines. It is enough for the Court that it is waging war, and so recognized

by the political department of the General Government, and has the requisite possession of the region in which the owner of the property resides.

6. That a Court of Prize, in such case, decides independently of all questions as to the political relations of the owner, or of the place of his domicile, with the Government of the capturing power.

XIII

RUFUS CHOATE

Remarks at the Meeting of the Suffolk Bar in his Honor

Mr. Chairman, — By your courtesy, and the courtesy of this bar, which never fails, I occupy an earlier moment than I should otherwise be entitled to; for the reason that in a few hours I shall be called upon to take a long leave of the bar and of my home. I cannot do that, sir, I cannot do that without rising to say one word of what I know and feel upon this sad loss.

The pressure which has been upon me in the last few days of my remaining here, has prevented my making that kind of preparation which the example of him whom we commemorate requires of every man about to address a fit audience upon a great subject. I can only speak right on what I do feel and know.

"The wine of life is drawn." The "golden bowl is broken." The age of miracles has passed. The day of inspiration is over. The Great Conqueror, unseen and irresistible, has broken into our temple and has carried off the vessels of gold, the vessels of silver, the precious stones, the jewels, and the ivory; and, like the priests of the Temple of Jerusalem, after the invasion from Babylon, we must content ourselves, as we can, with vessels of wood and of stone and of iron.

With such broken phrases as these, Mr. Chairman,

perhaps not altogether just to the living, we endeavor to express the emotions natural to this hour of our bereavement. Talent, industry, eloquence, and learning there are still, and always will be, at the Bar of Boston. But if I say that the age of miracles has passed, that the day of inspiration is over, — if I cannot realize that in this place where we now are, the cloth of gold was spread, and a banquet set fit for the gods, — I know, sir, you will excuse it. Any one who has lived with him and now survives him, will excuse it, — any one who, like the youth in Wordsworth's ode,

> "by the vision splendid,
> Is on his way attended,
> At length . . . perceives it die away,
> And fade into the light of common day."

Sir, I speak for myself, — I have no right to speak for others, — but I can truly say, without any exaggeration, taking for the moment a simile from that element which he loved as much as I love it, though it rose against his life at last, — that in his presence I felt like the master of a small coasting vessel, that hugs the shore, that has run up under the lee to speak a great homeward-bound Indiaman,[1] freighted with silks and precious stones, spices and costly fabrics, with sky-sails and studding-sails spread to the breeze, with the nation's flag at her mast-head, navigated by the mysterious science of the fixed stars, and not unprepared with weapons of defence, her decks peopled with men in strange costumes, speaking of strange climes and distant lands.

All loved him, especially the young. He never

[1] As Mr. Dana originally gave it, it was "a great Spanish galleon."

asserted himself, or claimed precedence, to the injury of any man's feelings. Who ever knew him to lose temper? Who ever heard from him an unkind word? And this is all the more strange from the fact of his great sensitiveness of temperament.

His splendid talents as an orator need no commendation here. The world knows so much. The world knows perfectly well that juries after juries have returned their verdicts for Mr. Choate's clients, and the Court has entered them upon the issues. The world knows how he electrified vast audiences in his more popular addresses; but, sir, the world has not known, though it knows better now than it did, — and the testimony of those better competent than I am will teach it, — that his power here rested not merely nor chiefly upon his eloquence, but rested principally upon his philosophic and dialectic power. He was the greatest master of logic we had amongst us. No man detected a fallacy so quickly, or exposed it so felicitously as he, whether in scientific terms to the bench, or popularly to the jury; and who could play with a fallacy as he could? Ask those venerated men who compose our highest tribunal, with whom all mere rhetoric is worse than wasted when their minds are bent to the single purpose of arriving at the true results of their science, — ask them wherein lay the greatest power of Rufus Choate, and they will tell you it lay in his philosophy, his logic, and his learning.

He was, sir, in two words, a unique creation. He was a strange product of New England. Benjamin Franklin, John Adams, Samuel Dexter, Daniel Webster, and Jeremiah Mason seem to be the natural products of the soil; but to me this great man always

seemed as not having an origin here in New England, but as if, by the side of our wooden buildings, or by the side of our time-enduring granite, there had risen, like an exhalation, some Oriental structure, with the domes and glittering minarets of the Eastern world. Yet, this beautiful fabric, so aerial, was founded upon a rock. We know he digged his foundation deep, and laid it strong and sure.

I wished to say a word as to his wit, but time would fail me to speak of everything. Yet, without reference to that, all I may say would be too incomplete. His wit did not raise an uproarious laugh, but created an inward and homefelt delight, and took up its abode in your memory. The casual word, the unexpected answer at the corner of the street, the remark whispered over the back of his chair while the docket was calling, you repeated to the next man you met, and he to the next, and in a few days it became the anecdote of the town. When as lawyers we met together, in tedious hours, and sought to entertain ourselves, we found we did better with anecdotes of Mr. Choate than on our own original resources.

Besides his eloquence, his logical power, and his wit, he possessed deep and varied learning. His learning was accurate, too. He could put his hand on any Massachusetts case as quick as the judge who decided it.

But if I were asked to name that which I regard as his characteristic, — that in which he differed from other learned, logical, and eloquent men of great eminence, — I should say it was his æsthetic nature.

Even under the excitement of this moment, I should not compare his mind in the point of mere

force of understanding (and, indeed, he would not have tolerated such a comparison) with Daniel Webster; and yet I think we have a right to say that, in his æsthetic nature, he possessed something to which the minds of Franklin, Adams, Dexter, Mason, and Webster were strangers.

But I ask pardon of the bar. I am not desirous of making these comparisons.

I need not say, sir, that Rufus Choate was a great lawyer, a great jurist, and great publicist, but more than all that — and I speak of that which I know — his nature partook strongly of the poetic element. It was not something which he could put on or off, but it was born with him — I will not say died with him, but is translated with him.

Shakespeare was his great author. I would have defied even the Shakespeare scholar to refer to any passage of Shakespeare that Mr. Choate would not have recognized instantly. Next to Shakespeare, I think I have a right to say he thought that he owed more to Wordsworth than to any other poet. He studied him before it was the fashion, and before his high position had been vindicated.

Then he was, of course, a great student of Milton, and after that, I think that those poets who gained the affections of his youth, and wrote when he was young, — Byron, Scott, Coleridge, Southey, — had his affections chiefly; though, of course, he read and valued and studied Spenser and Dryden, and, as a satirist and a maker of epigrams, Pope. This love of poetry with him was genuine and true. He read and studied always, not with a view to make ornaments for his speeches, but because his nature drew him to it. We all know he was a fine Greek and Latin

scholar; was accurate; he never made a false quantity. Who ever detected him in a misquotation? He once told me he never allowed a day to go by that he did not write out a translation from some Greek or Latin author. This was one of the means by which he gained his affluence of language. Of Cicero he was a frequent student, particularly of his ethical and philosophical writings. But Greek was his favorite tongue.

One word more, sir. It is not so generally known, I suppose, of Mr. Choate, that, certainly during the last ten years of his life, he gave much of his thoughts to those noble and elevating problems which relate to the nature and destiny of man, to the nature of God, to the great hereafter; recognizing, sir, that great truth — so beautifully expressed in his favorite tongue — in sacred writ, Τὰ μὴ βλεπόμενα αἰώνια — things not seen are eternal. He studied not merely psychology; he knew well the great schools of philosophy; he knew well their characteristics, and read their leading men. I suspect he was the first man in this community who read Sir William Hamilton, and Mansell's work on "The Limits of Religious Thought"; and I doubt if the Chairs of Harvard and Yale were more familiar with the English and German mind, and their views on these great problems, than Mr. Choate.

He carried his study even into technical theology. He knew its genius and spirit better than many divines. He knew in detail the great dogmas of St. Augustine; and he studied and knew John Calvin and Luther. He knew the great principles which lie at the foundation of Catholic theology and institutions, and the theology of the Evangelical school; and he knew and studied the rationalistic writings of the

Germans, and was familiar with their theories and characteristics.

With all those persons whom he met and who he felt, with reasonable confidence, had sufficient elevation to value these subjects, he conversed upon them freely. But beyond this — as to his opinions, his results — I have no right to speak. I only wished to allude to a few of the more prominent of his characteristics; and it is peculiarly gratifying to remember, at this moment, that he had the elevation of mind so to lay hold upon the greatest of all subjects.

I meant to have spoken of his studies of the English prose-writers, among whom Bacon and Burke had his preference. But he read them all, and loved to read them all; from the scholastic stateliness of Milton, warring for the right of expressing thoughts for all ages, to the simplicity of Cowper's Letters.

But all this is gone for us! We are never to see him again in the places that knew him. To think that he, of all men, who loved his home so, should have died among strangers! That he, of all men, should have died under a foreign flag! I can go no further. I can only call upon all to bear witness now, and to the next generation, that he stood before us an example of eminence in science, in erudition, in genius, in taste, — in honor, in generosity, in humanity, — in every liberal sentiment, and every liberal accomplishment.

XIV

THE MONROE DOCTRINE

[Mr. Dana's note to Wheaton's "International Law," on the Monroe Doctrine, has been repeatedly reprinted in pamphlet form and referred to in diplomatic correspondence, and quotations from it have appeared in the text-books and digests on international law in the very latest editions; but the note itself in full is out of print. Its historical and international importance is great, and the note is, I believe, of lasting value.

I have added to Mr. Dana's article on the Monroe Doctrine a note carrying it up to the present time, including the occupation of Mexico by the French during our Civil War, the boundary dispute between Great Britain and Venezuela, the collection of claims against Venezuela, President Roosevelt's attitude in connection with foreign claims against San Domingo, and the Hague Peace Conference treaties regarding the arbitration of the amounts of foreign claims against a delinquent country.]

CERTAIN declarations in the annual message of President Monroe of Dec. 2, 1823, relating to foreign affairs, have become known in history by the compendious phrase, the "Monroe Doctrine." They have been the subject of a good deal of controversy and misunderstanding; and, as they have considerable moral influence among American traditions, it is important that they should be carefully examined in the light of circumstances of the time, and of contemporaneous and subsequent exposition.

It will be found that the message contains two declarations, separated widely in the order of the

message, and not less so in the circumstances out of which they arose, the state of things to which they were to be applied, and the principles of public law upon which they depended. Yet these have often been combined, if not confounded, into one doctrine. The first declaration related to new acquisition of sovereign title by European powers over any portions of the American continent, by occupation or colonization, as of unoccupied country. It was introduced in connection with the unsettled boundaries in the North-west. The second declaration related to interposition by European powers in the internal affairs of American States, and was introduced in connection with the Spanish-American wars of independence. These two declarations require a separate treatment. I shall take up first that respecting colonization.

To understand the subject, it is necessary to refer to the state of things at the time of the declaration. The only European powers on the northern continent were Russia and Great Britain; for Spain had, by the treaty of 1819, ceded to the United States all her territory north of the forty-second parallel, and the successful revolution in Mexico had deprived her of the rest. The Czar, by a ukase of 4th September, 1821, had asserted exclusive territorial right, from the extreme northern limit of the continent to the fifty-first parallel; while, by the treaty of 1818 between Great Britain and the United States, these two powers had agreed to a joint occupation for ten years of all the country that might be claimed by either on the north-west coast, westward of the Rocky Mountains, without prejudice to the rights or claims of either party. At some future time or other, the

boundaries between these powers must be settled; and, in a country situated as that was, it was well known that the sovereign title to most parts of it must depend upon original discovery, exploration, and occupation. In such controversies, it is known to be a question as obscure as it is important, what kind or degree of occupation, and under what circumstances made, is necessary to give exclusive sovereign jurisdiction. On the north-west coast, the facts of discovery, exploration, and occupation were already in dispute, and the meaning of the terms rendered more doubtful by the Nootka-Sound Convention, of 28th October, 1790, made by Great Britain with Spain, to whose rights in that region the United States succeeded. While Great Britain and the United States had a boundary line to run between themselves, they were yet united against the imperial ukase of 1821. In this position of things, Mr. J. Q. Adams, then Secretary of State, in a letter of July 2, 1823, wrote to Mr. Rush, our Minister at London, inclosing copies of his instructions to Mr. Middleton, our Minister at St. Petersburg, and asking him to confer freely with the British Government upon the subject. In this letter and instructions, Mr. Adams takes the ground that the exclusive rights of Spain to any portion of the American continent have ceased, by force of treaties and of successful revolutions. He refers particularly to the burdensome and injurious restrictions and exclusions which have marked the European colonial systems in America, in respect of commerce, navigation, residence, and the use of rivers for passage, trade, and fishing. He contends that the entire continent is closed against the establishment, by any European power, of any such colonial

systems hereafter, in any places not now in their actual occupation, because of the sufficient sovereign title of the powers already established there to cover the entire continent. He says: "A necessary consequence of this state of things will be, that the American continents henceforth will no longer be subject to colonization. Occupied by civilized nations, they will be accessible to Europeans and each other on that footing alone; and the Pacific Ocean, in every part of it, will remain open to the navigation of all nations in like manner with the Atlantic. Incidental to the condition of national independence and sovereignty, the rights of interior navigation of their rivers will belong to each of the American nations within its own territories." In this letter is the germ of that portion of the Monroe Doctrine relating to non-colonization. Indeed, its paternity belongs to Mr. Adams. It rests on the assertion that the continent is "*occupied by civilized nations*," and is "accessible to *Europeans and each other* on that footing alone."

When Mr. Rush made known Mr. Adams's letter to the British Cabinet, he asserts that they totally denied the correctness of the position, and that "Great Britain considered the whole of the *unoccupied* parts of America as being open to her future settlements *in like manner as heretofore*"; that is, "by priority of discovery and occupation."

Four months after this letter, President Monroe, in his annual message, speaking of the North-western Boundary and the proposed arrangements with Great Britain and Russia, uses this language: "In the discussions to which this interest has given rise, and in the arrangements in which they may terminate, the

occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European power." In taking this position, Mr. Monroe did not intend to establish a new system for America, defensive and exclusive against European powers, but intended only to apply to the state of things in America a recognized principle of public law. The only question can be, whether the state of things in America did or did not, at that time, warrant the application of the principle. In other words, was any part of the country so unoccupied and unappropriated by any civilized power as to be open to new acquisition on that ground; or was the whole continent so occupied and held as, upon principles of public law, to exclude the acquisition of sovereign title by virtue of subsequent occupation? The question presented was, in fact, one of political geography.

It is known that neither Great Britain nor Russia assented to the position taken by Mr. Adams, and now publicly announced by the President under his advice; for those powers had plans of extending their colonization and occupation, and contended that portions of the country were still open thereto upon principles of public law. In 1825–26, Mr. Adams, as President, had occasion to explain this declaration by reason of the proposal for the Panama Congress; and, in the debates upon the Panama mission, the subject was fully discussed. The Congress at Panama was proposed by the Spanish-American States, whose

independence the United States had acknowledged, but who were still nominally at war with Spain. Their purpose was to form an alliance among the American States for self-defence, for the maintenance of peace upon the continent, and to settle some principles of public law to govern their relation with each other. The United States was invited to take part in the Congress; and the proposal was well received by President Adams and Mr. Clay, his Secretary of State. Among the measures to be adopted by the Congress, the following was officially announced by Colombia, then the leading Spanish-American power: "To take into consideration the means of making effectual the declaration of the President of the United States respecting any ulterior design of a foreign power to colonize any portion of this continent, and also the means of resisting all interference from abroad with the domestic concerns of the American governments." A strong opposition arose in Congress to the Panama mission, and Mr. Adams offered an explanation of its probable results. In his special message to the Senate of Dec. 26, 1825, he says: "An agreement between all the parties represented at the meeting, that each will guard by its own means against the establishment of any future European colony within its borders, may be found advisable. This was more than two years since announced by my predecessor, as a principle resulting from the emancipation of both the American continents." Again, in his message to the House of Representatives, of March 26, 1826, referring to this doctrine of non-colonization in Mr. Monroe's message of 1823, he says: "The principle had first been assumed in the negotiation with Russia. It rested upon a course of reasoning equally simple and

conclusive. With the exception of the existing European colonies, which it was in nowise intended to disturb, the two continents consisted of several sovereign and independent nations, *whose territories covered their whole surface.* By this their independent condition, the United States enjoyed the right of commercial intercourse with every part of their possessions. To attempt the establishment of a colony in those possessions would be to usurp, to the exclusion of others, a commercial intercourse which was the common possession of all."

The Spanish-American States had appeared to understand Mr. Monroe's message as "a pledge," by the United States, to the other American States, of mutual support in maintaining this doctrine; and to consider the United States bound to join with them in some alliance, offensive and defensive, for that purpose. Congress was unwilling to adopt the policy of entangling alliances. A resolution of the House of Representatives declared that the United States "ought not to become parties with the Spanish-American republics, or either of them, to any joint declaration for the purpose of preventing the interference of any of the European powers with their independence or form of government, or to any compact for the purpose of preventing colonization upon the continents of America; but that the people of the United States should be left free to act, in any crisis, in such a manner as their feelings of friendship towards these republics, and as their own honor and policy may at the time dictate."

The Senate confirmed the appointment of two commissioners for the Panama Congress, and the House of Representatives voted the appropriations;

but, owing to the death of one commissioner and the delay of the other, the United States was not represented at the first session of the Congress, and a second session was never held. This was owing in part to the disturbed condition of the Spanish-American States, but more to their disappointment at the attitude of the United States. Whatever view the administration of Mr. Adams may first have taken, and however popular the proposal of the mission may have been at first, it is certain that the administration at last came to a narrow limitation of the project; and the public judgment soon settled upon an opposition to the entire scheme. The opposition in Congress successfully contended, that, if the Panama meeting amounted to anything, it would tend to establish on this continent, in the interests of republicanism, the same kind of system which had been established in Europe in the interests of despotism, and that the United States would necessarily be its protector, and the party responsible to the world; while the Spanish-American States would get the benefits of a system of mutual protection which the United States did not need.

In criticising Mr. Adams's language in his message of December 26, — "Each shall guard, *by its own means*, against the establishment of any future European colony within *its borders*," which, he says, was the principle announced by his predecessor, — it is often said that he reduced this branch of the Monroe Doctrine to insignificance, as this is no more than States will naturally and necessarily do, without compact. But this is not a correct or sufficient view of the subject. Mr. Monroe had equally assumed, in 1823, that a sovereign State would not permit other sov-

ereign States to appropriate its territory by colonization. On that assumption, he declared simply *the fact*, that the whole continent was within the territory of some responsible State, and not *feræ naturæ*, and so open to appropriation. It was this fact that was, at the time, disputed by European powers. Mr. Monroe did not declare or intimate, directly or indirectly, *a policy* — what the United States would do if a European power should attempt colonization within what he claimed to be our territory; still less, what we would do if a European power should attempt it in what we held to be the territory of some other American sovereign State. Our action, in either event, was left to be determined upon when the case should arise. When, therefore, the administration and Congress refused to make any compact, or commit the government in advance by pledge or understanding, to any system of coöperation in a future contingency, they did not abandon or qualify Mr. Monroe's position. The proper view, therefore, of Mr. Adams's proposal is, that each State represented at the Congress should make, for itself, the declaration which Mr. Monroe made for the United States in 1823, — that is, that its territories were not open to appropriation by colonization, — and pledge itself to resist any attempts in that direction. Even this proposal, simple and inefficient as it seemed, was objected to, as liable to be construed into an implied pledge of assistance to any State that should be driven to war to maintain it.

Mr. Everett, in his speech, said: "On one of these points, — the resistance to colonization, — when the southern republics shall become fully informed of the position of the United States in reference to that

question, most assuredly they will withdraw the wish, if they now entertain it, to enter into an alliance with us." Mr. Webster said: "We have a general interest, that, through all the vast territories rescued from the dominion of Spain, our commerce may find its way, protected by treaties *with governments existing on the spot.* These views, and others of a similar character, render it highly desirable to us that these new States should settle it, as a part of their policy, not to allow colonization within their respective territories. True indeed, we do not need their aid to assist us in maintaining such a course for ourselves; but we have an interest in their assertion and their support of the principle as applicable to their own territories." Mr. Clay, then Secretary of State, in his despatch of March 25, 1825, to Mr. Poinsett, our Minister to Mexico, referring to Mr. Monroe's declaration respecting colonization, says: "Whatever foundation may have existed three centuries ago, or even at a later period, when all this continent was under European subjection, for the establishment of a rule, founded on priority of discovery and occupation, for apportioning among the powers of Europe parts of this continent, none can now be admitted as applicable to its present condition. There is no disposition to disturb the colonial possessions, as they now exist, of any of the European powers; but it is against the establishment of new European colonies upon this continent, that this principle is directed. The countries in which any such new establishments might be attempted, are now open to the enterprise and commerce of all Americans; and the justice or propriety cannot be recognized of arbitrarily limiting and circumscribing that enterprise and commerce

by the act of voluntarily planting a new colony, without the consent of America, under the auspices of foreign powers belonging to another and a distant continent. Europe would be indignant at an attempt to plant a colony on any part of her shores; and her justice must perceive, in the rule contended for, only perfect reciprocity."

President Polk, in his annual message to Congress, of Dec. 2, 1845, after dealing with the Oregon boundary question, and defending the annexation of Texas, and protesting against any possible interposition of European powers to prevent it, seeks to bring into service this portion of the Monroe Doctrine. Quoting the passage respecting colonization, he says: "In the existing circumstances of the world, the present is deemed a proper occasion to reiterate and re-affirm the principle avowed by Mr. Monroe, and to state my cordial concurrence in its wisdom and sound policy. Existing rights of every European nation should be respected: but it is due alike to our safety and our interests that the efficient protection of our laws should be extended over our whole territorial limits; and that it should be distinctly announced to the world as our settled policy, that no future European colony or dominion shall, with our consent, be planted or established on any part of the North-American continent." It will be seen that Mr. Polk quotes no part of Mr. Monroe's message except the single paragraph relating to colonization. Professedly re-affirming that, he states a broader and very different doctrine; namely, not only that the continent is not open to colonization, but that no European "dominion" shall be "established" with our consent on any part of the North-American continent. This

doctrine of Mr. Polk would require our consent to any acquisition of dominion by a European power, whether by voluntary cession or transfer, or by conquest.

Toward the close of the Mexican war, on the 29th April, 1848, Mr. Polk sent a special message to Congress on the subject of Yucatan. He represented that country as suffering severely from an insurrection of the native Indians, and as having offered to transfer to the United States "the dominion and sovereignty of the peninsula," if we would give them material aid in suppressing the insurrection. He added that they had applied also to Great Britain and Spain; and expressed the opinion, that, if we did not accept the offer, Yucatan might pass under the control of one of those powers. He then refers to the Monroe Doctrine as opposed to the transfer of American territory to any European power, and to the extension of their system to this hemisphere; quotes his own message of Dec. 2, 1845 (cited above); and recommends Congress to take measures to prevent Yucatan becoming a European colony, which, he says, "in no event could be permitted by the United States." A bill was immediately introduced into the Senate, authorizing the raising of an additional military force to enable the President to "take temporary military possession" of Yucatan, and to aid its people against the Indians. A motion was made to amend the bill so as to change entirely the character of the proposed step. The amendment was upon the theory that Yucatan might be treated by us as a part of the republic of Mexico, and occupied by us as part of our war against that power. This was supported by Mr. Jefferson Davis; but the adminis-

tration party generally, led by Mr. Cass and Mr. Hannegan, favored the original bill, and supported it on the ground of preventing by anticipation a new European dependency. The opposition resisted both schemes throughout. While the discussion was going on, news arrived of a treaty between the Indians and whites in Yucatan; and the project of taking possession was abandoned. During this debate, Mr. Calhoun made a speech upon the Monroe Doctrine, significant from the fact that he was a leading member of Mr. Monroe's Cabinet at the time of the message, and at this time the only survivor. He gave the history of the declaration respecting foreign interposition in American affairs, now well known, and referred to hereafter; its origin in the attempt to extend the arm of the Holy Alliance over Spanish America; and states that the subject was gravely considered by the Cabinet, on receiving from Mr. Rush Mr. Canning's proposal, and that the language in which the declaration was couched was carefully weighed and agreed upon by the entire Cabinet. These are the passages at the close of the message, in connection with the affairs of Spanish America, relating to attempts of the European powers to extend their system over this hemisphere, and interpositions to oppress or control the destiny of any American State. As to the paragraph relating to colonization, introduced into the early part of the message, in connection with the British and Russian boundaries, Mr. Calhoun says that was not submitted to the Cabinet, and formed no part of the principle they intended to announce; but was a disconnected position taken by Mr. Adams, in the negotiations under his sole charge with Russia and England, which the President

introduced into his message, by Mr. Adams's advice, in that connection. Mr. Calhoun treated it as limited to acquisitions of sovereignty over unoccupied regions of country by virtue of prior colonization, and as having no relation to such transfers of acknowledged sovereign territory as may be made by coercion or voluntary agreement between civilized nations. He says: "The word 'colonization' has a specific meaning. It means the establishment of a settlement, by emigrants from the parent country, in a territory either uninhabited, or from which the inhabitants have been partially or wholly expelled." No doubt, the same objections existed against new foreign dominions, however they might be derived; but the paragraph only declared against deriving dominion from colonization, as not admissible in the condition which the continent had reached. As to the other and more general doctrine of opposition to European intervention, Mr. Calhoun took the ground which had been taken in the Panama discussion, and which the opposition was then holding in the case before the Senate, — that the United States was under no pledge to intervene against intervention, but was to act in each case as policy and justice required; and that, in this case, there was no proof of a danger of actual transfer to a European power, or if there were, that the object was important enough to us to warrant our intervention.

At the time Mr. Calhoun made this speech, as has been said, neither Mr. Adams nor Mr. Monroe was living; but Mr. Calhoun referred back to his speech on the Oregon question, where he says he made the statement that the clause respecting colonization was not submitted to the Cabinet. "I stated it in order

that Mr. Adams might have an opportunity of denying it, or asserting the real state of the facts. He remained silent; and I presume that my statement is correct." (Calhoun's Works, iv, 454.) Mr. Calhoun's statement derives confirmation also from the fact that this subject of colonization is not noticed in the correspondence, hereafter cited, between Mr. Monroe and Mr. Jefferson, to whom the subject of a declaration had been referred by Mr. Monroe.

In explanation of this movement respecting Yucatan, and the attempt to invoke, in its aid, the popularity of the Monroe Doctrine, it should be remembered that the slave-power had obtained an ascendency in the counsels of the nation; that Mr. Polk's administration was devoted to its interests; and that its purpose was to add slave States to the Union by extending our territory southward, and, eventually, by the acquisition of Cuba. It was not politic, with reference to its Northern adherents, to avow the motive; and its movements were made under the color of preventing foreign intervention or the acquisition of foreign dominion, and under the sanction of a popular tradition. Mr. Calhoun not only saw that the Monroe Doctrine was perverted, but believed that the cause of slavery extension would be perilled by involving the country in foreign complications in its behalf, on novel and doubtful principles.

A careful examination of this history, from the first letters of Mr. Adams to Mr. Rush and Mr. Middleton, in 1823, to the close of the Yucatan debate, will show that the general object of Mr. Adams was to prevent the establishment on this continent of new colonial dependencies of European powers. These

were objectionable by reason of the restrictions and exclusions on commerce and navigation which, to that time, formed part of the European colonial systems, especially when such colonies lay at the mouth of a river occupied above by American colonies, or the converse; and by reason of the totally different political systems of which they would become a part, as distant from our own in principle as in geographic space. It was not necessary to declare that one State shall not appropriate by colonization part of the recognized territory of another State. That would be an act of war, the world over. It was not necessary to take the new and peculiar position, that, if any parts of this continent were lying *ferœ naturæ* and beyond the recognized limits of a civilized State, they still should be closed to the colonization of any but the independent States of this continent: excluding not only European States unconnected with the continent, but those that now had possessions here. Mr. Adams thought the end could be attained by declaring that no part of the continent was in that condition; that it was all, in his own words, "occupied by civilized nations," and "accessible to Europeans and each other on that footing alone." It will be seen that this declaration has ceased to be of much consequence, as no doubt can now be made that such is the present condition of the continent. By treaties and long possession, the boundaries of the continent have been adjusted, among the American States and the previously existing foreign colonies, upon the theory of including all parts of the continent within the domain of a recognized State, from the Polar Seas to the Straits of Magellan. If any portion of an American State should hereafter become a foreign depend-

ency, it must be as a result of coercion or of voluntary compact, and not by virtue of title founded on appropriation by recent primary occupation.

In the debates in the Senate of the United States in 1855–56, on the construction to be given to the Clayton-Bulwer treaty of 1850, there was some discussion as to the effect of the phrase "occupy and colonize." That treaty, which was intended to secure an inter-oceanic transit across the Isthmus, and, for that purpose, to maintain the neutrality of the region in use, contained this clause: "The governments of the United States and Great Britain hereby declare, that neither one nor the other will ever occupy or fortify or colonize, or assume or exercise any dominion over, Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have to or with any State or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same." The British Government took the position that this clause related only to future acts, and did not embrace places in their possession at the time the treaty was made. This construction was rejected by the United States. The words "fortify or colonize, or assume . . . dominion over," doubtless look solely to the future. The word "occupy" may be ambiguous. It has, in the Law of Nations, a technical sense, derived from the Roman law, signifying the taking original possession of anything not at the time in possession, and therefore open to ap-

propriation, — as of animals *feræ naturæ*, or of things derelict, &c.; and, when applied to territory, signifying the acquisition of sovereign title by original occupation of a place not at the time within the occupation and jurisdiction of a recognized sovereignty. But, in its general and popular sense, it signifies merely the act or condition of possessing: as successive tenants are said to *occupy* a house, or a military force a town. In the former sense, the word would be limited to future acts; while, in the latter sense, it would not. But the American argument did not rest on the character of one word, but on the sense of the entire clause, especially as colored by the words "exercise dominion."

We now proceed to examine that distinct branch of the Monroe Doctrine which relates to European intervention in American affairs.

The result of the congresses at Laybach and Verona was an alliance of Russia, Prussia, Austria, and France; the ostensible object of which was to preserve the peace of Europe, and to put down conspiracies against established power, consecrated rights, and social order: but, as the allies acknowledged no legitimate basis of right and order except the existing hereditary sovereign houses of Europe, the practical result was a combination of forces against all changes in the direction of liberal institutions not voluntarily made by the sovereigns. In accordance with the spirit of this alliance, the movements for free constitutions in 1821 in Spain, Naples, and Piedmont were put down by armed intervention, and absolutism re-instated. At this time, the Spanish colonies in America, after years of warfare, had substantially secured their independence, which had been recog-

nized by the United States; but Spain still asserted her claim; and the independence of the provinces had not been acknowledged by Great Britain diplomatically, though she had sent consuls to their principal ports. In 1823, to carry out the purposes of the Holy Alliance, France invaded Spain, to suppress the constitutional government of the Cortes established there, and restore absolutism in the person of Ferdinand VII. As the success of the French invasion became certain, there were signs that the parties to the Holy Alliance intended to go further, and lend their aid to Ferdinand VII to restore his dominion over the Spanish-American provinces. The fears of this course were justified by the previous language of the Holy Alliance. In the Laybach circular of May 12, 1821, they distinctly declared that they regarded "as equally null, and disallowed by the public law of Europe, any pretended reform effected by revolt and open force"; and in their circular of Dec. 5, 1822, respecting the constitutional government in Spain, they declared their resolution "to repel the maxim of rebellion, in whatever place or under whatever form it might show itself"; thus repeating their claim made at Troppau, "that the European powers have an undoubted right to take a hostile attitude in regard to those States in which the overthrow of the government might operate as an example." England professed, also, to see indications that France intended to be compensated for her effective intervention, by a cession of some American province, and Cuba was the suspected reward.

Great Britain, who had never been party to this alliance, and protested against the intervention of 1821, took special umbrage at the French invasion

of Spain, her late ally, from whose borders she had, only ten years before, expelled the French armies. There was a strong popular inclination in England to make this invasion a cause of war; but this was not seconded by the ministry, who betook themselves to diplomatic efforts to defeat the schemes of the continental powers. The French Government, on its part, had its suggestion that the British Cabinet was determined to send a squadron, and take possession of Cuba. The people of Cuba, already divided between the parties of the king and the Cortes, and terrified by symptoms of slave insurrections, had among them large numbers who, dissatisfied with Spanish rule, looked to other powers for protection, — some to Great Britain, but far the larger part to the United States. About September, 1822, the latter party sent a secret agent to confer with President Monroe. They declared, that, if the United States Government would promise them protection, and ultimate admission into the Union, a revolution would be made to throw off the Spanish authority, of the success of which they had no doubt. While this proposition was before Mr. Monroe's Cabinet, he received an unofficial and circuitous communication from the French Minister, asserting that his government had positive information of the design of Great Britain to take possession of Cuba. The American Government replied to the Cuban deputation, that the friendly relations of the United States with Spain did not permit us to promise countenance or protection to insurrectional movements, and advised the people of Cuba to adhere to their Spanish allegiance; at the same time informing them that an attempt upon Cuba, by either Great Britain or France, would

place the relations of Cuba with the United States in a very different position. Mr. Rush was instructed to inform Mr. Canning that the United States could not see with indifference the possession of Cuba by any European power other than Spain, and to inform him of the rumors that had reached the Cabinet. Mr. Canning disavowed emphatically all intention on the part of Great Britain to take possession of Cuba, but avowed her determination not to see with indifference its occupation by either France or the United States; and proposed an understanding between the British, French, and American governments, without any formal convention, that Cuba should be left in the quiet possession of Spain. This was assented to by Mr. Monroe; but he had no communication with France on the subject, leaving that to the management of Great Britain.

As respects the Spanish colonies which had been at war with Spain for their independence, the United States were naturally anxious about the movements of the allies; and Mr. Adams had communicated to Mr. Rush at London, in general terms, the strong feeling of the government, and the earnest popular opinion on that subject. The British Government was also very solicitous to prevent all intervention against those provinces by the continental powers, and to leave them free to complete their independence. This would not only, with the arrangement respecting Cuba, defeat the Transatlantic schemes of France, if she had any, and, in the famous words of Mr. Canning, "call the new world into existence to redress the balance of the old," but would repress generally the absolutist powers on the continent, avenge the affront to Great Britain by the invasion

of Spain, and procure for England the benefit of an unrestricted commerce with Spanish America. Mr. Canning feared that a formal recognition of the independence of those colonies might involve England in a war with the continental powers; but was confident that their independence would be secured if all intervention or hope of intervention in aid of Spain could be effectually precluded. With this view, Mr. Canning, in August and September, 1823, urged upon Mr. Rush a combined declaration by Great Britain and the United States to the effect, that, while they aimed at the possession of no portion of the Spanish colonies for themselves, and would not obstruct any amicable negotiations between the colonies and the mother country, they could not see with indifference the intervention of any foreign power, or the transfer to such power of any of the colonies. In support of his request, Mr. Canning stated that a proposal would be made for a European Congress, to settle the affairs of Spanish America; and said that Great Britain would take no part in it, except upon the terms that the United States should be represented. Mr. Rush replied, as to the Congress, that it was the traditional policy of the United States to take no part in European politics; and, having no instructions from his government, said he would still take the responsibility of joining in the declaration, if Great Britain would first acknowledge the independence of the colonies. Mr. Canning not being ready to take this decisive step, the proposed joint declaration was never made; but Mr. Rush communicated the proposal to his government; the result of which was the celebrated declaration against European intervention in Mr. Monroe's annual message of Dec. 2, 1823.

In Mr. Monroe's Cabinet at that time, John Quincy Adams was Secretary of State, and Mr. Calhoun Secretary of War; and, beside the advice derived from them, Mr. Monroe laid the subject of Mr. Canning's proposal before Mr. Jefferson, — then in retirement, — and asked his opinion. Mr. Jefferson replied by an elaborate letter, of 24 October, 1823. (Jefferson's Life, iii, 491.) He says: "Our first maxim should be, never to entangle ourselves in the broils of Europe; our second, never to suffer Europe to intermeddle with Cisatlantic affairs." Referring to the great power Great Britain could wield for good or evil in these controversies, and expressing his gratification at the stand she was then taking, and recognizing the fact that we could not join in the declaration if we had any designs upon Cuba or any American State ourselves, he advised Mr. Monroe to join in the declaration, which Mr. Jefferson worded thus: "That we aim not at the acquisition of any of those possessions; that we will not stand in the way of any amicable arrangement between the colonies and their mother country; that we will oppose with all our means the forcible interposition of any other power as auxiliary, stipendiary, or under any other form or pretext, and most especially their transfer to any power by conquest, cession, or acquisition in any other way."

It will be seen that the administration did not accept Mr. Canning's proposal for a joint declaration, but spoke for the United States alone; and, in doing so, did not adopt the declaration proposed by Mr. Canning and recommended by Mr. Jefferson, but a very different one. After treating of various other matters foreign and domestic, as usual in the annual

message, Mr. Monroe passes, towards its close, to speak of the efforts in Spain and Portugal to improve the condition of the people, and of the general disappointment of the expectations of the American people in favor of the liberty and happiness of their fellowmen on that side of the Atlantic and says: "In the wars of the European powers, in matters relating to themselves, we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded or seriously menaced that we resent injuries, or make preparation for our defence. With the movements in this hemisphere we are, of necessity, more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective governments. And to the defence of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of our most enlightened citizens, and under which we have enjoyed an unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers to declare, that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power, we have not interfered, and shall not interfere. But with the governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not

view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States. In the war between those new governments and Spain, we declared our neutrality at the time of their recognition; and to this we have adhered, and shall continue to adhere, provided no change shall occur which, in the judgment of the competent authorities of this government, shall make a corresponding change on the part of the United States indispensable to their security." Then, speaking of the recent forcible interposition by the allies in the internal concerns of Spain, he says: "To what extent such interposition may be carried, on the same principle, is a question in which all independent powers whose governments differ from theirs are interested, and even those most remote, and surely none more so than the United States. Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same; which is, not to interfere in the internal concerns of any of its powers; to consider the government *de facto* as the legitimate government for us; to cultivate friendly relations with it; and to preserve those relations by a frank, firm, and manly policy, meeting in all instances the just claims of every power, submitting to injuries from none. But, in regard to these continents, circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor can any one believe that

our Southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition in any form with indifference. If we look to the comparative strength and resources of Spain and those new governments, and their distance from each other, it must be obvious that she can never subdue them. It is still the true policy of the United States to leave the parties to themselves, in the hope that the other powers will pursue the same course."

This message of President Monroe reached England while the correspondence between Mr. Canning and the Prince Polignac was in progress; and it was received not only with satisfaction, but with enthusiasm. Mr. Brougham said: "The question with regard to Spanish America is now, I believe, disposed of, or nearly so; for an event has recently happened than which none has ever dispersed greater joy, exultation, and gratitude over all the free men of Europe: that event, which is decisive on the subject, is the language held with respect to Spanish America in the message of the President of the United States." Sir James Mackintosh said: "This coincidence of the two great English commonwealths (for so I delight to call them; and I heartily pray that they may be for ever united in the cause of justice and liberty) cannot be contemplated without the utmost pleasure by every enlightened citizen of the earth." This attitude of the American Government gave a decisive support to that of Great Britain, and effectually put an end to the designs of the absolutist powers of the continent to interfere with the affairs of Spanish America. Those dynasties had no disposition to hazard a war with such a power, moral and material, as Great Britain

and the United States would have presented, when united in the defence of independent constitutional governments.

It is to be borne in mind that the declarations known as the Monroe Doctrine have never received the sanction of an act or resolution of Congress; nor have they any of that authority which European governments attach to a royal ordinance. They are, in fact, only the declarations of an existing administration of what its own policy would be, and what it thinks should ever be the policy of the country, on a subject of paramount and permanent interest. Thus, at the same session in which the message was delivered, Mr. Clay introduced the following resolution: "That the people of these States would not see, without serious inquietude, any forcible interposition by the allied powers of Europe, in behalf of Spain, to reduce to their former subjection those parts of the continent of America which have proclaimed and established for themselves, respectively, independent governments, and which have been solemnly recognized by the United States." But this resolution was never brought up for action or discussion. It is seen also, by the debates on the Panama mission and the Yucatan intervention, that Congress has never been willing to commit the nation to any compact or pledge on this subject, or to any specific declaration of purpose or methods, beyond the general language of the message.

In the debates on the Clayton-Bulwer treaty, in 1855–56, above referred to, all the speakers seemed to agree to this position of the subject. Mr. Clayton said: "In reference to this particular territory, I would not hesitate at all, as one Senator, to assert the Monroe Doctrine and maintain it by my vote; but I do not

expect to be sustained in such a vote by both branches of Congress. Whenever the attempt has been made to assert the Monroe Doctrine in either branch of Congress, it has failed. The present Democratic party came into power, after the debate on the Panama mission, on the utter abnegation of the whole doctrine, and stood upon Washington's doctrine of non-intervention. You cannot prevail on a majority, and I will venture to say that you cannot prevail on one-third, of either house of Congress to sustain it." Mr. Cass said: "Whenever the Monroe Doctrine has been urged, either one or the other house of Congress, or both houses, did not stand up to it." Mr. Seward said: "It is true that each house of Congress has declined to assert it; but the honorable senators must do each house the justice to acknowledge that the reason why they did decline to assert the doctrine was, that it was proposed, as many members thought, as an abstraction, unnecessary, not called for at the time." Mr. Mason spoke of it as having "never been sanctioned or recognized by any constitutional authority." Mr. Cass afterwards, in a very elaborate speech (of Jan. 28, 1856), gave his views of the history and character of the doctrine. He placed it upon very high ground, as a declaration not only against European intervention or future colonization, but against the acquisition of dominion on the continent by European powers, by whatever mode or however derived; and seemed to consider it as a pledge to resist such a result by force, if necessary, in any part of the continent. He says: "We ought years ago, by Congressional interposition, to have made this system of policy an American system, by a solemn declaration; and, if we had done so, we should have spared our-

selves much trouble and no little mortification." Referring to Mr. Polk's message, in 1845, he said there was then an opportunity for Congress to adopt the doctrine, not as an abstraction, but on a practical point. "We refused to say a word; and, I repeat, we refused then even to take the subject into consideration." He denied the correctness of Mr. Calhoun's explanation (*vide supra*), and contended that the non-colonization clause was intended to be, and understood by England to be, a foreclosure of the whole continent against all future European dominion, however derived. It may well be said, however, and such seems now to be the prevalent opinion, that the complaints of Mr. Cass and others of his school, of the neglect and abandonment of the Monroe Doctrine, apply rather to their construction of the doctrine than to the doctrine itself.

That the declarations in Mr. Monroe's message arose out of the apprehension that the Holy Alliance sought to extend its system to the American colonies, and possibly to independent American States, there can be no doubt. The only points made by Mr. Monroe are — "Any attempt on their part to extend their system [the political system of the Holy Alliance] to any portion of this hemisphere"; and "Any interposition for the purpose of oppressing them [the American States], or controlling in any other manner their destiny." It is observable that the protest is against certain modes of European action, and not against new acquisitions specifically, nor even inferentially, if made, for instance, by treaties in which there should be no coercion and no interposition by third powers, or by conquest in a war not waged for the policy or purpose objected to. Mr. Jefferson, in

his letter above referred to, had noticed this subject, and placed among the acts we should oppose "their transfer to any power by conquest, cession, or acquisition in any way." Still, Mr. Monroe's Cabinet made no declaration on the point of transfer of dominion. It is also to be observed that Mr. Canning's proposition to Mr. Rush was for a joint declaration by the two governments of a double proposition, — 1st, That they did not aim at the possession of any portion of the Spanish colonies for themselves; and, 2d, That "they could not see the transfer of any portion of them to any other power with indifference." This double proposition, communicated by Mr. Rush to the President and by him to Mr. Jefferson, and recommended by Mr. Jefferson and laid before the Cabinet is still not adopted in the message. Confining itself to a declaration against interposition to oppress or control, or to extend the system of the Holy Alliance to this hemisphere, the message avoids committing the government on the subject of acquisition, either by the United States or the European powers, and whether by voluntary cession or conquest. Possibly the administration may have paused at Mr. Jefferson's caution in his letter referred to: — "But we must first ask ourselves a question, — Do we wish to acquire any one or more of the Spanish provinces? — before we can unite in the proposed joint declaration." Mr. Jefferson confesses that, in his opinion, Cuba would be "the most interesting addition that could ever be made to our system of States"; yet is willing, in view of the great advantages to be gained by the joint declaration, to forego Cuba. The slaveholding interest was clearly looking to Cuba, not only as an addition to its political power in the Union, but

to prevent abolition of slavery there by some other power; and it is known that Mr. Adams had a noticeable leaning in favor of its importance to us in a military and commercial view. The Texas question was already looming in the distance; and it was but three years since we had acquired Florida, and but twenty years since we had purchased the vast Louisiana territory. Twenty-two years after this, we annexed Texas; and, twenty-five years after, we acquired by conquest California and New Mexico; and, for several years before the civil war of 1861, the lave-owner in the Union was exerting itself to annex Cuba. It is true the government had, as has been seen, exchanged declarations with England as to Cuba; but then, as later, when, in 1854, the tripartite alliance for the retention of Cuba by Spain was proposed, we were not willing to commit ourselves to absolute guaranties on that point: and a successful revolution in Cuba might have made, at any time, an opening for her annexation. When we compare the declarations in the message with the joint declaration proposed by Mr. Canning and recommended by Mr. Jefferson, and consider our own prior history and our then position, it certainly is a fair inference that the administration purposely avoided any specific and direct statement as to transfer of dominion by competent parties, in the way of treaty, or by conquest in war.

In further explanation of the Monroe Doctrine, it is to be noticed that it is correctly called a doctrine, and no more. There is no intimation what the United States will do in case of European interposition, or what means it will take to prevent it. The United States have steadily refused to enter into any arrange-

ment with the other American States for establishing a continental system on that point, or for mutual defiance, or even to commit themselves in the way of pledge or promise. When the Spanish-American States wished to treat the message of 1823 as a "pledge" to them for the future, that construction of it was successfully resisted by the opposition, however favorably it may be thought Mr. Adams and his Cabinet at first regarded it. And public opinion may be considered as settled on the point that the action of the nation, in any case that may arise, must be unembarrassed by pledge or compact; and, further, as equally settled, against the introduction of anything approaching the nature of a Holy Alliance for this continent, though it be in the interests of republican institutions.

It has sometimes been assumed that the Monroe Doctrine contained some declaration against any other than democratic-republican institutions on this continent, however arising or introduced. The message will be searched in vain for any thing of the kind. We were the first to recognize the imperial authority of Don Pedro in Brazil, and of Iturbide in Mexico; and more than half the northern continent was under the sceptres of Great Britain and Russia; and these dependencies would certainly be free to adopt what institutions they pleased, in case of successful rebellion, or of peaceful separation from their parent States.

As a summary of this subject, it would seem that the following positions may be safely taken: I. The declarations upon which Mr. Monroe consulted Mr. Jefferson and his own Cabinet related to the interposition of European powers in the affairs of Ameri-

can States. II. The kind of interposition declared against was that which may be made for the purpose of controlling their political affairs, or extending to this hemisphere the system in operation upon the continent of Europe, by which the great powers exercise a control over the affairs of other European States. III. The declarations do not intimate any course of conduct to be pursued in case of such interpositions, but merely say that they would be "considered as dangerous to our peace and safety," and as "the manifestation of an unfriendly disposition toward the United States," which it would be impossible for us to "behold with indifference"; thus leaving the nation to act at all times as its opinion of its policy or duty might require. IV. The declarations are only the opinion of the administration of 1823, and have acquired no legal force or sanction. V. The United States has never made any alliance with, or pledge to, any other American State on the subject covered by the declarations. VI. The declaration respecting non-colonization was on a subject distinct from European intervention with American States, and related to the acquisition of sovereign title by any European power, by new and original occupation or colonization thereafter. Whatever were the political motives for resisting such colonization, the principle of public law upon which it was placed was, that the continent must be considered as already within the occupation and jurisdiction of independent civilized nations.

On this subject, the reader is referred to the following authorities: — Mr. Adams to Mr. Rush, July 2, 1823; Mr. Monroe's message, December 2, 1823; Mr.

Rush's Memoranda of Residence at the Court of London; Stapleton's Life of Canning; Briefwechsel zwischen Varnhagen von Ense und Oelsner, vol. iii; Mr. Clay's resolution, offered January 20, 1824; the ukase of the Emperor Alexander, September 4, 1821; the treaty between the United States and Spain, 22 February, 1819; the Nootka-Sound Convention between Spain and Great Britain of 28 October, 1790; Mr. Monroe's annual message, December 7, 1824; Mr. Adams's messages of December 26, 1825, and March 26, 1826; Mr. Clay's despatch to Mr. Poinsett, March 25, 1825; Mr. Webster's speech on the Panama mission, Webster's Works, iii, 178; Mr. Everett's speech on the same, Congressional Debates, 1826; Mr. Calhoun's speech on the Yucatan question, Calhoun's Works, iv, 454; Mr. Polk's annual message of December 2, 1845; his special message on Yucatan, of April 29, 1848; the debate in the Senate on the Yucatan question, April and May, 1848, Congressional Globe, 1848, p. 712 *et seq.;* the Clayton-Bulwer treaty, United-States Laws, x, 995; Debates in the United States on the Clayton-Bulwer treaty, 1855–56, Congressional Globe and Appendix for first Session Thirty-fourth Congress; North-American Review, 1856, page 478; Mr. Everett's letter of September 2, 1863, on the Monroe Doctrine, in the New-York Ledger; Letter of J. Q. Adams on the same, to the Rev. Dr. Channing, of August 11, 1837; Mr. Canning's speech of December 12, 1826; Mr. Buchanan's article on the Monroe Doctrine, in his History of his Administration, page 276.

French Intervention in Mexico

This intervention began with a convention "made at London on the 31st of October, 1861, between Great Britain, France and Spain, professedly for the purpose of obtaining redress and security from Mexico to the citizens of the contracting powers." The direct object was to force the payment by Mexico of bonds held by, and the collection of damages for injuries inflicted on citizens of, the contracting powers, and also to secure a more efficacious protection for the persons and property of their citizens residing in Mexico in the future. The contracting powers "engaged not to seek for themselves any acquisition of territory or special advantage, nor to exercise in the internal affairs of Mexico any influence of a nature to prejudice the right of the Mexican nation to choose and constitute the form of its government," and that the occupation of territory and "other operations" should be limited to such as should be judged suitable to secure the above objects; in short, it was war on Mexico, not only to obtain payment of debts and damages, but to change the government to one more secure, which change, however, was to be effected by the Mexicans themselves, and until these objects were attained, armed occupation was to be acquired and maintained.

Mr. Seward, Secretary of State, suggested an arrangement by which the United States would enable Mexico to pay her just debts; but that alone was not considered satisfactory, as the contracting powers insisted that one of their chief objects was to secure the future good treatment of resident foreigners. Mr. Seward admitted the right of the powers to judge for themselves whether they had sustained grievances that required them to levy war; but that the United States had a deep interest that they should not interfere with the right of the Mexican people to choose the form of their own government.

In April, 1862, the Spanish and English withdrew, on the ground that the French had gone beyond the terms of the convention in giving military aid to the party in favor of establishing an imperial government in Mexico. Under French protec-

tion, an assembly of notables selected by the imperial party offered the throne to Archduke Maximilian of Austria, without even the pretense of a general vote of the Mexican people, and this government was acknowledged and protected by France. Both the United States and Great Britain refused to recognize this new government; but acknowledged a state of war and held themselves neutral.

The government of the United States, during the first three years of this interference on the part of France, was so occupied with the Civil War that only occasional protests were made; but soon after the Civil War was over, at the end of 1865, Mr. Seward took more decided steps. He then made it clear that in the United States there was much discontent, not with the French war in Mexico, but with the attempt of France to establish by force a monarchical government in an American state which itself preferred a republican form of government; and expressed the wish that France "might find it compatible with its interests and high honor to withdraw from this aggressive attitude in Mexico," which meant, in diplomatic language, as Bancroft says in his Life of Seward, that France must "withdraw or fight." A United States "army of observation" under command of General Sheridan was established on the banks of the Rio Grande and had much to do with the success of Seward's diplomacy.[1] In 1866, France promised to withdraw by the following year, but later expressed a wish to postpone the departure. To this Secretary Seward replied by cable that the United States "would not acquiesce" in postponement, and the French withdrew from the city of Mexico in February, 1867. Maximilian's forces were routed and he was shot June 19 of the same year.[2]

Venezuelan Boundary Question

A dispute had arisen between Great Britain and Venezuela as to the boundary line between British Guiana, a colony of Great Britain, and the Republic of Venezuela. In that dispute,

[1] See *Personal Memories of P. H. Sheridan*, vol. ii, pp. 206–228.

[2] See Dana's *Wheaton*, note 41, pp. 126–132, and Moore's *International Law Digest*, vol. vi, sections 956–957.

which had been going on for many years, Venezuela claimed — and with a sufficient prima facie case to make it worthy of consideration — that Great Britain had been extending its boundary claims westward into Venezuelan territory, and was unwilling to arbitrate the whole question, but only a portion of her most westerly and recently extended claims.

In response to the annual message of President Cleveland touching on this subject, a resolve was passed by both Houses of Congress and approved February 2, 1895, in which it was "earnestly recommended" that Great Britain and Venezeula refer the dispute to "friendly arbitration." In accordance with this resolution, a correspondence was begun between Secretary Olney for the United States and Lord Salisbury for Great Britain, in the same year. Mr. Olney, in his letter of July 20,[1] claimed that the Monroe Doctrine, declaring against "future acquisition by European powers" or trying to "extend their political system to any portion" of America, applied to a boundary dispute in which it was claimed with some show of justice that extensions of territory were being made, and that the United States could not "behold" such a possible extension with "indifference," and urged arbitration, covering the whole of the territory claimed by either party, as the only proper method of settling the dispute.

President Cleveland, in a subsequent message to Congress dated December 2, 1895,[2] touched on this dispute between Great Britain and Venezuela,[3] and referred to the dispatch by Secretary Olney of July 20, "in which" the message says "the attitude of the United States was fully and distinctly set forth. The general conclusions there reached and formulated are in substance that the traditional and established policy of this government is," etc.; "that, as a consequence, the United States is bound to protest against the enlargement of the area of British Guiana in derogation of the rights and against the will of Vene-

[1] Sen. Doc. No. 31, 54 Cong., 1 Sess., p. 4.

[2] *Ibid.*, p. 4.

[3] This occupied three fourths of a page out of a message 34 pages in length.

zuela; that considering the disparity," etc.; "the territorial dispute between them can be reasonably settled only by . . . arbitration." Lord Salisbury's reply, though dated November 26, was not received in Washington till some time after this message. In that reply,[1] Lord Salisbury agreed to the Monroe Doctrine in so far that "any fresh acquisitions on the part of any European state would be a highly inexpedient change"; but asserted that Her Majesty's government must not be understood as accepting the Monroe Doctrine, and denied that it was in any way "clothed with the sanction . . . of international law," and claimed that "the disputed frontier of Venezuela has nothing to do with any of the questions dealt with by President Monroe," and gives the United States no right to demand arbitration between Great Britain and Venezuela, and called such a demand by the United States a "novel prerogative."

In a letter to the British Ambassador at Washington of the same date,[2] Lord Salisbury stated that the apparent extensions of the boundary line into Venezuelan territory were explained by the fact that Great Britain had, on previous occasions, placed the boundary line short of its real claims, in hopes of securing a compromise with Venezuela, and failing in that, had pushed the boundary to the extent of what it considered its full rights. In conclusion, Lord Salisbury refused to arbitrate the whole dispute, but was willing to arbitrate with reference to the claims west of the Schomburgk line, so-called, drawn by an engineer of that name in Her Majesty's employ in 1840. This left a portion only of the disputed territory open to arbitration, and more particularly excluded territory near the mouth of the Orinoco, which controlled the entrance to the great river running through Venezuelan territory.

After receiving this refusal to arbitrate the dispute in a substantial manner, President Cleveland, in a special message of December 17,[3] enclosed copies of the above correspondence, answered some of Lord Salisbury's arguments in relation to the

[1] Sen. Doc. No. 31, 54 Cong., 1 Sess., p. 22.

[2] *Ibid.*, p. 26.

[3] *Ibid.*, pp. 1–4.

Monroe Doctrine, and then went on to say, it is "now incumbent upon the United States to take measures to determine, with sufficient certainty for its protection, what is the true division line between the republic of Venezuela and British Guiana," and suggested to Congress a commission with "adequate appropriations," to be appointed by the executive, to investigate and report.

"When such report is made and accepted it will in my opinion be the duty of the United States to resist by every means in its power, as a willful aggression upon its rights and interests, the appropriation by Great Britain of any lands or the exercise of governmental jurisdiction over any territory which after investigation we have determined of right belongs to Venezuela.

"In making these recommendations I am fully alive to the responsibility incurred, and keenly realize all the consequences that may follow.

"I am nevertheless firm in my conviction that while it is a grievous thing to contemplate the two great English-speaking peoples of the world as being otherwise than friendly competitors in the onward march of civilization, and strenuous and worthy rivals in all the arts of peace, there is no calamity which a great nation can invite which equals that which follows a supine submission to wrong and injustice and the consequent loss of national self-respect and honor, beneath which are shielded and defended a people's safety and greatness."

Both Great Britain and the United States were thunderstruck by this message. The stock market in the United States, which had been in a weak condition, fell rapidly on the mere suggestion of war, for which we were but inadequately prepared, and not only much of the opposition press, but some of the independent papers, especially in New York and Boston, which had hitherto supported President Cleveland, attacked this message with ferocity. Congress, however, was almost a unit in support of President Cleveland's position, and so was most of the press of the country, not under Wall Street influences.

Among the attacks, it was stated that, in the first message, the phrase used by Cleveland, "the enlargement of area of

British Guiana in derogation of the rights and against the will of Venezuela," was a finding on the part of President Cleveland that Great Britain was in the wrong. This statement was repeated and this quotation to substantiate it was made again and again by such papers as the New York "Nation." This quotation, omitting the words "that as a consequence" and taken alone by itself without reference to the rest of the message, might surely seem to have such a meaning; but the words in question are but a survey of the "general conclusions" of Mr. Olney's letter of July 20, and in that letter, Mr. Olney, Secretary of State, says: —

"It is not admitted, however, and therefore cannot be assumed that Great Britain is in fact usurping dominion over Venezuelan territory. While Venezuela charges such usurpation, Great Britain denies it, and the United States, until the merits are authoritatively ascertained, can take sides with neither."

Lord Salisbury, in his reply of November 26, clearly understands the attitude of the United States as not committed to any finding, and says "the government [United States] apparently have not formed and certainly did not express any opinion upon the actual merits of the dispute. The government of the United States do not say that Great Britain or that Venezuela is in the right in the matters that are in issue"; and still more is it apparent that President Cleveland was making no finding, when we come to the special message which caused the excitement, and which puts it conditionally, "if any European power by an extension of its boundaries," and again, "without any conviction as to the final merits of the dispute, but anxious to learn if the government of Great Britain sought, under claim to boundary, to extend her position, . . . this government proposes . . . arbitration"; and arbitration being declined, the message proposed a commission to determine "the true divisional lines." Taking it altogether, and apart from the excitement of the moment, it is quite clear that the sentence is only a statement of a conclusion that our government was bound to protest against

such an enlargement of area, in case any such enlargement should in fact exist.[1]

Whatever may be said as to the harshness of the wording of the special message of December 17, for which there is, however, recent diplomatic authority, it had the effect of arousing the British public conscience. The correspondence, covering many years and different administrations, on this subject, had all been pigeon-holed in the Foreign Office of Great Britain, excepting that Gladstone, in 1885, had proposed a more liberal arbitration[2] than his successor, Lord Salisbury, was willing to carry out. Public opinion in England being enlightened and stirred by this message, forced Lord Salisbury to submit the whole question to arbitration without reservation except that actual settlements should be reserved and that "adverse holdings for fifty years" should make a good title.[3] This "actual settlement" reservation was suggested by Secretary Olney and embodied in the arbitral agreement in accordance with which the arbitration was to be conducted following the precedent made in the Geneva Arbitration on the Alabama claims. This removed the last objection by Great Britain to complete arbitration.[4] The treaty was signed February 2, 1897, before the United States commission of inquiry had made its report. Later, President Cleveland, in his "Political Problems," said: —

"Some may be surprised that this controversy was so long chronic and yet in the end yielded so easily to pronounced treatment."

The International Commission of Arbitration rendered a unanimous award October 3, 1899, and in that, while giving Great Britain a large share of the interior territory in dispute,[5]

[1] See also *Presidential Problems*, by Grover Cleveland, p. 258.

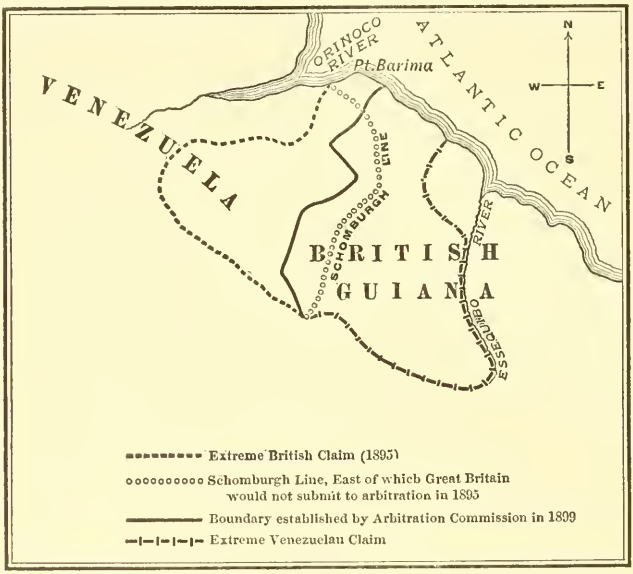
[2] Letter of Lord Granville, May 15, 1885.

[3] Art. IV, rule (a) of treaty, Great Britain Foreign Office, Venezuela No. 1, 1899, p. 3.

[4] Letter of Mr. Olney to Sir Julian Pauncefote, July 13, 1896, pp. 253–254, U. S. For. Rels., 1896.

[5] Message of President McKinley to Congress, Dec. 5, 1899, House Doc., vol. i, 56th Cong., 1st Sess., 1899, p. xxxii.

gave to Venezuela no little land on and near the coast, which was of great value as it commanded the mouth of the Orinoco, and which was a part of the territory Lord Salisbury, in his correspondence of 1895, was unwilling should be submitted to



arbitration. Great Britain was allowed about one quarter of the interior land which she was willing to arbitrate in 1895.

I learn, on sufficient authority, that President Cleveland feared, if this matter were allowed to drift on till open rupture came between England and Venezuela, we should be involved in the war. Diplomatic relations between England and Venezuela had already been broken off, and armed conflicts, followed by threats of war measures, had already occurred in the disputed territory. Should war have begun, in which it must appear that there was good reason to believe England's claim to territory had been increased so that her action would seem to be the forcible extension of territory, the American people would become aroused and force our government to side with Venezuela. Then Great Britain could not retreat with honor. In-

evitably it would then be too late to get arbitration by mere suggestion of force, while, on the other hand, Cleveland, being a man of peace above all things, foresaw the great advantage of making this suggestion in the diplomatic stages of the controversy. Some passages in President Cleveland's Venezuelan Boundary Controversy [1] sustain this view.

As to acquiescing in the policy maintained by Lord Salisbury, that England, in a case of arbitrating a boundary dispute, could exempt from arbitration, at her discretion, any part of the territory in dispute, that would have been a fatal precedent for us, for example, in the subsequent dispute with Great Britain as to the boundary between the United States and her Canadian provinces. As a result of this latter arbitration, almost the whole territory was given to the United States; but had the doctrine of withholding part of the disputed territory been established, Great Britain could easily have refused to arbitrate upon more than a portion of this territory, which eventually came to us.

German Claims for Reparation and Apology against the Haytian Government

In 1897, the government of Hayti, relying upon its own view of the Monroe Doctrine, applied to the United States for its influence to prevent coercion by Germany, which was seeking reparation and apology for injuries to a German subject residing in Hayti. Mr. William M. Evarts, Secretary of State, answered, "The Monroe Doctrine to which you refer is wholly inapplicable to the case," and instructed Mr. Powell, our Minister in Hayti, that it is not "the duty of the United States to protect its American neighbors from the responsibilities which attend the exercise of independent sovereignty."

The United States and Nicaragua

Having established the principle that other nations may demand reparation and apology, by force if necessary, without contravening the Monroe Doctrine, our government feels itself

[1] *Presidential Problems*, by Grover Cleveland.

free to make the same demands. President Zelaya of Nicaragua was reported to have tortured and shot two Americans, Groce and Cannon, in the autumn of 1909. Secretary of State Knox, in a strong message to Zelaya, demanded an immediate and full explanation, United States vessels with marines were sent to the coast, ready to take action in case the truth of these reports could be confirmed, and diplomatic relations with Nicaragua were broken off.

Collection of Claims by Foreign Governments against Venezuela

In 1902–3, Great Britain, Germany and Italy, by a combined blockade of the ports of Venezuela, compelled the payment of claims, partly money engagements, and partly damages for injury to the subjects of those nations residing in Venezuela. Germany, in its note of December 11, 1901, stated to the United States government its plan to use coercion in case Venezuela refused settlement, saying, "We declare especially that under no circumstances do we consider in our proceedings the acquisition or the permanent occupation of Venezuelan territory," though Germany might have to resort to "the temporary occupation on our [its] part of different Venezuelan harbor-places and the levying of duties in those places."

President Roosevelt, in his message of December 3, 1901, had re-stated the principles of the Monroe Doctrine, and had added, "We do not guarantee any state against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power."

Later, being forced by the blockading of her ports, Venezuela, through the United States government, conveyed a proposal of arbitration, and this was accepted by the powers, reserving some special war-claims. The Hague Tribunal was to be the arbitrator. It considered, however, only the claim of the preferential payment to the blockading powers, which claim, by its decree of February 22, 1904, was sustained. The amount of the claims, with the special war exceptions, was finally decided by mixed commissions at Caracas.

San Domingo Protocol

The decision of the Hague Tribunal, in the case of the collection of claims against Venezuela, in favor of preferential payment of the claims of the blockading powers, before the payment of the claims of other nations, had a more important bearing on the Monroe Doctrine than would at first appear.

It had been the traditional policy of the United States not of itself to compel or to join with other countries in compelling by military or naval force, its financial claims against other American countries. Continuing to follow this policy would, under the Hague decision, postpone the claims of the United States and its citizens until the claims of all other nations willing to use force had been satisfied. In case the delinquent country were rich and prosperous, this postponement might not be so serious a matter; but if the delinquent country were practically bankrupt, and if it would take a generation or more to pay off the force-preferred claims, then the United States would practically be deferring the rights of its citizens to the next world, as far as lives in being are concerned.

In this same connection, though independent of the decision of the Hague Tribunal, arises the question as to the so-called "temporary occupation" of the territory, mainly customs ports, of American countries by European naval forces for the purpose of collecting debts. Such occupation, if the delinquent country were rich and the debts moderate, would be "temporary" in the sense of being short; but if the delinquent country were bankrupt and the obligation large, such "temporary occupation" might become practically permanent.

Take, for example, the "temporary occupation" of Egypt by Great Britain, which has lasted over twenty years, with no sign of its coming to an end; or the "temporary occupation" of Mexico by the French from 1862 to 1867, which would not have ceased but for the demand of the United States.

A case of indefinite occupation was proposed by Spain in 1866 in connection with the Chincha Islands. Spain proposed to occupy these islands and sell guano, to recoup herself for her ex-

penses in the war with Peru. This being an indefinitely long occupation, Secretary Seward notified Spain that such a precedent would "severely tend to disturb the harmonious relations" between the United States and Spain, which attitude caused Spain to give up the proposed "temporary occupation."

The probability of just such a prolonged occupation, and the indefinite postponement of the claims of United States citizens, arose in the case of San Domingo in 1905. A protocol had been arranged by President Roosevelt with the government of San Domingo, by which the United States was to take charge of the customs revenue of San Domingo, and pay a percentage for the support of the government of that country, the balance to be paid to the creditors of other countries, including those of the United States. This protocol with an explanatory message [1] in its support was sent to the United States Senate February 7th, 1905. While this was of course an extension of the Monroe Doctrine to a point that might fairly be said to make it a new doctrine, yet there had been at least partial precedents for this course of action. When the English, Spanish, and French governments were planning to take forcible measures, including temporary occupation of territory, to collect claims, etc., against Mexico in 1861, Mr. Seward proposed, in his note to the powers, dated December 4, that the United States might make a treaty with Mexico by which we should guarantee satisfaction of all just money claims and secure repayment to ourselves. A loan of $11,000,000 was suggested.[2] As security, the American government was to have a mortgage on all the public lands, minerals, etc., of Lower California and Chihuahua and other provinces bordering on the United States. A commission, composed of three Mexicans and two Americans, was to assume the administration of the lands, etc.[3] It proved, however, that money payment alone was not satisfactory to the

[1] Presidential Messages, 1905; House Documents 59th Cong., 1st Sess., vol. i, pp. 334–342. Protocol; *Ibid.*, pp. 342–343.

[2] Seward to Adams, June 7, 1862.

[3] Lord Lyons and Earl Russell, Dec. 31, 1861, p. 418; Exec. Doc. 1861–2, vol. viii; Jas. Corwin to Seward, Mar. 24, 1862.

powers, and when the treaty came to the United States Senate, it was found to be of no use, and was rejected on resolution of February 25, 1862.

Again, in 1880, Secretary Evarts, and in the next year Secretary Blaine, suggested that the United States would guarantee to the powers seeking money compensation from Venezuela, monthly payments to satisfy the claims of the creditor nations. In case of default in the installments, "the agent placed there by the United States and acting as trustee for the creditor nations, shall be authorized to take charge of the custom-houses of Laguayra and Puerto Cabello, and receive from the monthly receipts a sufficient sum to pay the stipulated amounts."

The protocol signed by President Roosevelt, which amounted to a voluntary assignment by San Domingo to the United States for the benefit of creditors, was not at first accepted by the Senate. President Roosevelt as a *modus vivendi* appointed agents under an agreement with the government of San Domingo, and to the satisfaction of the creditors, by which these agents should collect the revenues under the general scheme as proposed in the protocol. After two years' delay, the United States Senate ratified the protocol and the treaty was duly signed February 8, 1907.[1]

Forcible Collection of Debts Regulated at the Hague Peace Conference

A convention respecting the limitation of the employment of force for the recovery of contract debts was adopted at the Hague Peace Conference, October 18, 1907. This provided in general that "recourse to armed force for the recovery of contract debts claimed from the government of one country by the government of another country as being due to its naturals" should not be had unless "the debtor state refuses or neglects to reply to an offer of arbitration, or after accepting the offer prevents any compromise from being agreed on, or after arbitration fails to submit to the award." This, it is believed, is a

[1] Treaty accepted and secrecy removed Feb. 25, 1907. Senate Journal, 59th Cong., 2d Sess., p. 353.

great step in advance towards averting armed intervention.[1] Dr. Don Louis Maria Drago, Argentine minister for foreign affairs, brought this plan to the attention of the United States at the time of Venezuela's difficulties in 1902. Alexander Hamilton had early given definite form to the same principle. This plan, called "Drago doctrine," was brought to the attention of the Hague Peace Conference of 1907, by a resolution adopted at Rio de Janeiro, the year before.[2]

The United States Senate, on April 17, 1908, ratified this convention, with the understanding that "recourse to the permanent court for this purpose can be had only by agreement thereto through general or special treaties of arbitration heretofore or hereafter concluded by the parties in dispute."

The Hague Convention of 1907 established a permanent court of arbitration for the settlement of international disputes, in which "neither honor nor vital interests are involved." This was ratified by the United States Senate April 2, 1908, subject to reserves of declaration.[3]

General Conclusions

From the above precedents, since Mr. Dana's note was written, the Monroe Doctrine seems to include the following principles:

No foreign country may establish in an American country, and maintain by force, a monarchial form of government contrary to the wishes of the inhabitants of that American country. This is clearly within the original doctrine. A forcible increase of territory in America by a European country may be resisted, and if there is reason to apprehend that such an increase is being made in a boundary dispute, the United States may demand that the whole dispute be arbitrated. Though this may follow

[1] See Texts of the Peace Conferences of the Hague, 1899–1907, by James Brown Scott, pp. 193–198.

[2] See the resolution adopted at the International Conference of American States, held at Rio de Janeiro, July 21 to Aug. 26, 1906, Sen. Doc. No. 365, 59th Congress, 2d Sess., p. 14. (Senate, 5073, 1906–7.)

[3] See Texts of the Peace Conferences of the Hague, 1899–1907, by James Brown Scott, p. 193.

as a logical consequence from the original message of President Monroe, it is not explicitly within it. The United States is not to protect American countries from their own misconduct against other nations. Foreign nations may by force temporarily occupy American countries for the purpose of collecting claims. This has been modified by the Hague treaties requiring arbitration, or at least offers of arbitration, as to the amount of the claims, before such forcible occupation. European occupation of territory in America for the purpose of collecting claims, which, though declared to be "temporary," is likely to be for a long and indefinite period, the United States may resist.

How foreign countries may collect large claims against an impoverished country, which would require too long and indefinite occupation, has been provided for by President Roosevelt's San Domingo plan, which in that island has secured peace, stopped revolutions, and contented all its creditors. This, though a natural corollary of the already somewhat extended Monroe Doctrine, was clearly not in the original. Since Mr. Dana's note was written, the Monroe Doctrine, with President Cleveland's interpretation of it, has received the "sanction" of Congress in the Venezuelan boundary dispute in 1895, and, together with President Roosevelt's corollary, it has received the "sanction" of the United States Senate in the San Domingo treaty of 1907.

Authorities

See Moore's *Int. Law Dig.* (1906), vi, 368–604; Oppenheim's *Int. Law*, London (1905), i, 66, 188–191; *Elements Int. Law*, G. B. Davis (1908), 110–115; Woolsey's *Int. Law* (1878), § 180; Wharton's *Int. Law Dig.*, §§ 57–65, 150 f., 287; Tucker's *Monroe Doctrine* (1903); Halleck's *Int. Law* (1908), i, 92, 95; T. J. Lawrence's *Int. Law* (1895), 131, 248–251; Reddaway's *Monroe Doctrine, England* (1898); T. B. Edington's *Monroe Doctrine* (1904); Phillimore's *Int. Law;* A. A. Stockton's *Monroe Doctrine and Other Addresses* (1898); *What is the Monroe Doctrine?* Filley (1905); Prof. Hugo Münsterberg's *The Americans*, 221–225; "San Domingo Question," F. G. Newlands, *North American Review*, June, 1905; G. S. Boutwell's *The Venezuelan Question and the Monroe Doctrine* (1896); A. C. Coolidge (in his *United States as a World Power*, 1908);

Monroe Doctrine, Am. Hist. Leaflets, N. Y., No. 4, 1892; "Genesis of the Monroe Do trine," W. C. Ford, "J. Q. Adams and his Connection with the Monroe Doctrine," *Proceedings Mass. Hist. Soc.*, Jan. 1902; Henderson (in his *Diplomatic Questions*, 1901), *Monroe Doctrine;* J. A. Kasson's *Monroe Doctrine, etc.* (1904); J. F. McLaughlin, *The Monroe Doctrine* (1896); J. B. McMaster (1896) (in his *With the Fathers*); A. T. Mahan, *Naval Administration and Warfare* (1908); Theodore Roosevelt, *American Ideals* (1897); Grover Cleveland, *Presidential Problems, Venezuelan Boundary Question;* Wilson and Tucker, *International Law* (1910), 83, 101.

XV

ARGUMENT BEFORE THE HALIFAX FISHERY COMMISSION

[The argument of Mr. Dana before the Fishery Commission at Halifax, Nova Scotia, 1877, should not be published without disclosing the "secret history" of the Commission and of its "astounding" award. In the biography of Mr. Dana, from which I have just quoted, Mr. Adams says: "The time for that has not yet come"[1] [1890]; but now, a whole generation after the award, the time may well be said to have arrived if it is ever to come, and that it should ever come is plain, because to tell the secret history is not merely to regret the unalterable past. The fisheries dispute still remains an unsettled cause of irritation between Great Britain and the United States, and the astounding award must be revised before a basis of permanent agreement can be reached.

By the Treaty of 1818, Great Britain had a right to exclude United States vessels from fishing within three miles of her coasts in a great part of her North American domain, and the United States always had a right, of course, to place duties, and prohibitive duties if she wished, on the importation of any fish or fish-products.

In 1871, the United States and Great Britain made the Treaty of Washington. This was mainly concerned with the celebrated Alabama Claims, but also included the fisheries; and by the important clauses relating to the latter, the United States vessels were to have a right to fish within the three-mile limit from which they were excluded by the Treaty of 1818, and Canadians were

[1] This note has been submitted to and approved by the gentlemen who were secretaries of the two leading counsel for the United States at the time of the Halifax Arbitration.

to be allowed to bring their fish and fish-products into the United States free of duty. This arrangement was to last for twelve years, and as much longer as both parties to the treaty were satisfied.

In drawing this Treaty of Washington in 1871, it was found impossible to agree upon the relative value of these two concessions; and it was therefore provided that a special commission should be appointed, later called the Halifax Commission, to appraise them. It was hoped, to use the words of Mr. Thompson, the chief counsel for Great Britain, in his opening argument, that the award might be "the basis upon which future and more lasting negotiations may be entered into, and so a source of continued national and local irritation be entirely removed."

The award was for $5,500,000, or at the rate of nearly half a million a year. When the case was argued before the Halifax Commission, five fishing seasons under the treaty had already elapsed. The whole profit, on a most liberal scale, on all the kinds of fish caught by vessels from the United States in or near the three-mile limit in question, including all that were caught within the Gulf of St. Lawrence during each of these five years, was, on the average, not equal to one twentieth of the yearly rate of the award, without offsetting anything at all for the right, which the Canadians struggled so earnestly to secure as something of great value, of selling their fish free of import duties in the United States. This Mr. William M. Evarts, Secretary of State, made plain in his illuminating note on the award in his official report to President Hayes.[1]

The Commission or Tribunal before which the case was argued consisted of one member representing the United States, one representing Great Britain, each paid by his own government, and a third, the referee or arbitrator, who was also the President, and was paid one half by each government. The decision was signed by the referee and the commissioner from Great Britain, and was dissented from completely by the United States commissioner. Unfortunately, no grounds or reasons

[1] Documents and Proceedings of the Halifax Commission, 1877; Ex. Doc. 45th Cong., 2d Sess., No. 89, vol. i, pages vii-xiv.

were given by the Commission to explain the "astounding" award.

We come now to the secret history. Mr. Dana, in a letter to Mr. Evarts, dated Halifax, Nova Scotia, November 25, 1877, written a few days after the award was made, says: "The bad result I attribute entirely to the composition of the tribunal. We have struggled against this and aimed at counteracting the influences which we saw from the first were likely to be most unfortunate."

As to the arbitrator, M. Maurice Delfosse, Mr. Dana describes him in this same letter as "a gentleman of fine feeling, entirely inexperienced in anything like a judicial inquiry into facts or the weighing of testimony, and by temperament and constitution subject to the influence of a more robust temper and powerful will, aided by great tact and sagacity."

In addition to that, M. Delfosse had the European notions of judicial proceedings.

Unfortunately, the Treaty of Washington put the United States in the attitude of debtor.[1] As Mr. Dana said in the letter of November 30, 1877, to Mr. Evarts: "The wording of the treaty was against us. . . . If the article had put the alternative to the tribunal, which was the debtor, if either, so that our case would have presented a demand on our part, we should have had a far stronger position."

The United States then being a confessed debtor, the very arguments of counsel and evidence of witnesses that tended to show we owed nothing at all, or less than nothing, seemed to M. Delfosse to be in the nature of very "ingenious" attempts at evading officially declared responsibility, and doubtless had the effect on his mind of discrediting our whole case. He seemed to have had that European reverence for official statements later exhibited in the first Dreyfus trial in France. He frequently

[1] The wording of the treaty was that the Halifax Commission was to be appointed "to determine . . . the amount of any compensation which in their opinion ought to be paid by the government of the United States to the government of Her Britannic Majesty in return for the privileges accorded." (Art. xxii.)

showed, in his conversation, that he thought cross-examination, by which we exposed the weaknesses of the British testimony, was a mere lawyers' trick to confuse witnesses.

As to the United States member of the tribunal, it should be understood in the first place that it was of the utmost importance that he should know the case thoroughly, be able to present the statistics and arguments tellingly, and have a strong personal attraction; because, in the conferences, he would have the chance to get at exactly what misapprehensions might be in the mind of the arbitrator, and correct them in conversation, while the counsel, though they argued never so ably, had to argue at arm's length, and could only guess as to what might be going on in the arbitrator's thoughts. Ex-Governor Clifford of Massachusetts had been appointed our commissioner, but unfortunately he died shortly before the case was opened, and another man was put in his place. Of this American commissioner, whom I shall call Mr. X, Mr. Dana in a letter to Mr. Evarts says: —

"I must speak freely in strict confidence. He has been worse than useless. I have some notion that his powers (so to speak) are diminished by years of sloth and heavy feeding. Whether anything serious has happened to him, I do not know. I have never been able to get from him anything that could be called conversation; and when we have spoken about the case, I was never satisfied whether he understood it or not. His first public appearance was at a dinner given to us by the Bar, at which he made two speeches, the last volunteered. The effect was about an equal proportion of wonder and amusement. They were polite about it, but evidently thought he was a strange fish. The only explanation not impeaching his intellect was an excess of champagne. At a dinner given by M. Doutre, he volunteered a speech, where none was expected, which was worse than that at the Bar dinner. It caused us great mortification. Just before the decision, at a dinner by Sir A. Galt, he volunteered another speech, which was so distressing to us that the dinner broke up somewhat prematurely to save us the risk of another. You know M. Delfosse well enough to understand that he not only would have no confidences with such a man, but would prob-

ably look upon him with disgust, while Sir A. Galt would adroitly obtain a great if not mastering influence over him. During the seventy-six days of our session, I do not remember that the president ever turned to the right, where sat the United States member, for conference, but invariably to the left, Sir A. G., and addressed him frequently, while our member of the Court seemed to make no attempt even to mingle in the conference. He complained that we did not address ourselves to him. We felt it to be true, for he was a great deal in a semi-somnolent state, and we thought that he would be likely to agree with us so far as he followed us. Incidental matters were sometimes settled by the president and Sir A. G., or rather, under Sir A. G., without his being looked to, — of course nothing of importance."

Mr. Dana further says that Mr. X's general influence with M. Delfosse "was worse than nothing." It was on one of these dinners that the American member stumbled over Sir Alexander Galt's name, and called him "Sir Harker Dandy" and "Sir Harker Dardy."

More than one eye-witness of the proceedings of the tribunal described the Commission as follows. M. Delfosse looked bored, Sir Alexander Galt, the English member, alert and attentive, the American member asleep.

In a letter of November 30, 1877, to Mr. Evarts, Mr. Dana, speaking of the failure of any assistance to M. Delfosse from the American member, says as follows: —

"The day after my letter to you of the 25th inst., I had an interview with M. Delfosse. As all was over, he spoke freely and complained that they received no aid from the U. States member of the tribunal. He said that they had no word from him during the taking of the testimony, which he was disposed to ascribe to delicacy. After the evidence was in, he and Sir A. G. both wished a conference, and Sir A. G. had them both at dinner, and the subject was started, but with no results. Mr. X had nothing to say. At the final conference, when Sir A. G. was fully prepared with reasons, arguments, digested statistics, etc., Mr. X had no arguments or suggestions, or statistics, but only stood on his negative of all compensation."

In addition to that, Mr. X's clothing was untidy, his general appearance slovenly, and he was careless and forgetful in his tobacco-chewing practices; while M. Delfosse was a European of immaculate dress and the neatest possible habits, and one who was apt to judge of people by their appearance in these respects.

How such a man as Mr. X came to be appointed to such a position, Mr. Dana told me, was an instance of the favoritism of the "spoils system." Mr. X was a fellow townsman of United States Senator Dawes, who secured the appointment, and Mr. X "needed" the money compensation.

As to the award, Mr. Dana says: "For myself I do not think that the great body of testimony, brought forward on each side with so much labor and expense, has been the basis of the decision. I think the decision was diplomatic altogether, and based upon mental operations which could have been gone through with in substantially the same manner had there been nothing beyond the two cases filed."

It seems to have been based on halving the revised British demand, with a penalty attached. The original British demand was for $14,800,000. This was reduced by the decision of the tribunal that some of the items going to make up the total, as stated in the official claim, related to matters not included within the treaty. Cutting these out, the claim may well have been reduced as Mr. Dana suggests, by "about one third," or to $10,000,000. At the final conference of the Commissioners, according to Mr. Dana's letter to Secretary of State, Mr. Evarts, November 25, 1877: —

"M. Delfosse suggested as a compromise $4,500,000 [$500,000 less than half of $10,000,000]. It seems that when the Commissioners came together to read the award to the agents and counsel, M. Delfosse was induced by Sir A. Galt, we do not know why or how, to add one million. I suppose it to have been on the suggestion that Mr. X's refusing to approach nearer to a compromise and raising the question of validity[1] entitled the British side to the utmost."

[1] Mr. X took the position that no award was binding unless unanimous.

In Mr. Dana's letter to Mr. Evarts, November 30, after M. Delfosse "spoke freely" of the award, he states: —

"M. Delfosse further said that it was again and again explained to Mr. X that his (M. Delfosse's) proposal for four and a half millions, to which Sir A. Galt assented, was conditional upon its being accepted by Mr. X and was to go for nothing otherwise. . . . This was to explain their apparent advance from $4,500,000 to $5,500,000."

That is, the award was to be half a million less than half the British claim if the American commissioner assented, and half a million more than half if he did not.

During the course of the hearings at Halifax, though not officially argued by counsel for Great Britain, it was frequently stated in conversation and put before M. Delfosse that the award of the Geneva Arbitration for the Alabama Claims had been too large, and that it was no more than fair to offset this by a liberal award to England in the fishery case, which was a part of the same treaty. M. Delfosse, in conversation in Boston after the award, in trying to justify it, laughingly remarked that it was no more than fair, even if it were somewhat too large, as Great Britain had paid too much for the Alabama Claims. M. Delfosse also expressed the general view that a small award would not be becoming to the dignity of an international tribunal in an important question between two great and wealthy countries.

Finally, it has been stated that M. Delfosse was influenced by his desire to be appointed as minister from his own government to Great Britain. Neither my father, nor any of those that I have seen connected with the case, have ever for a moment believed that M. Delfosse consciously gave in to that influence, though it was perfectly well known that he entertained that ambition; but with a man without judicial training, the indirect and unconscious influences may have told in the decision.

It may be interesting to the reader to know what the results of so great an award have been. In the words of the Secretary of State, Mr. William M. Evarts: "The question between the two countries is of much more serious import than the . . . money payment involved. The subject of valuation will remain

as an occasion of controversy after the brief treaty period covered by the award has expired."[1]

As to the hope of the chief counsel for Great Britain that the award might be a "basis upon which future and more lasting negotiations may be entered into, and so a source of continued national and local irritation may be entirely removed," the joint arrangement of free trade in fish and free fishing within the three-mile limit was brought to an end by the United States at the first possible moment, namely, in 1883. The United States could not, of course, go on paying at such a rate. The Canadians are excluded from selling their fish in the United States, their chief market, and the old, irritating efforts at exclusion from the three-mile limit by the British and at avoiding this exclusion by the American fishermen continue to this day. To the more far-sighted of the English statesmen, the largeness of the award, while a temporary triumph, was in the end a misfortune. M. Delfosse was not made Minister to England.

How, in the Treaty of 1818, we ever came to abandon the right of fishing within the three-mile limit, for which John Adams so earnestly and successfully contended in making the treaty of peace with Great Britain at the close of the Revolutionary War; why the Treaty of 1818 was so carelessly worded in its application to the United States interests; and why we came to concede so much more than was fair in the Treaty of 1871, are questions worth asking, and Mr. Dana's answer may be worth knowing. He believed that these were mistakes, and that they arose because we did not have trained diplomats and permanent, high-grade secretaries in our State Department, while in the Foreign Office and the diplomatic corps of Great Britain, they had able men, perhaps no more able than some of our negotiators, but long in the service, with practically permanent tenure, thoroughly familiar with the whole history of such matters, skilled in the use of diplomatic language and international law and able to take advantage of our want of knowledge. We suffer, equally, in all our various departments, as is now becoming

[1] *Halifax Commission*, vol. 10, page xiv.

more and more apparent, for lack of just such permanent, well-trained assistant secretaries.

Of course, it may be said of the Treaty of 1818 that our military weakness was such that we could not get all we wanted; but it is doubtful if our representatives knew the value of what they were giving up and the strength of our original claims. The wording of this treaty has now brought us to the necessity of making the new, recent treaty of April 4, 1908, with Great Britain, by which certain questions regarding the construction of the Treaty of 1818 have just been submitted to the Hague Tribunal. The more important questions were, whether the right of the inhabitants of the United States to take fish on the coasts of Newfoundland, the Magdalen Islands and Labrador, from which we were not excluded by the Treaty of 1818, "in common with the subjects of" Great Britain, is subject to regulations as to catching fish and as to port dues, made without the consent of the United States, by Great Britain, Canada and Newfoundland;[1] whether the inhabitants of the United States, while exercising these liberties, have a right to employ as members of their fishing crews persons not inhabitants of the United States;[2] and finally, from where must we measure the "three marine miles off any of the coasts, bays, creeks or harbors" on the prohibited coasts of the Canadian shores? Two of the arguments in favor of the United States contention were, — that in all the presentations of the case at Halifax, the three-mile limit was assumed to be from the shores, or from lines of headlands that are not over six miles apart; and that the award was so large that the right to diminish the value of taking fish by regulation of seasons and methods could not have been taken into account, as in fact it was not urged in argument.[3]

[1] The Hague Tribunal on Sept. 7, 1910, decided that no port dues but "reasonable regulations" could be imposed without the consent of the United States, but their reasonableness, necessity and fairness should be submitted to a special expert commission.

[2] This right to employ persons not inhabitants of the United States is sanctioned by the Hague Tribunal.

[3] The decision on this is against the United States. The award

In considering Mr. Dana's argument, it should be remembered that Judge Foster and Mr. Trescot had already argued for the United States, and Mr. Dana left to them certain topics on which he hardly touched at all.]

Argument on Behalf of the United States

May it please your Excellency and your Honors, — Your legislature of this Province has set apart for our use this beautiful hall; and while my friend and associate, Mr. Trescot, saw in the presence of the portrait of His Majesty George III, which looks down upon us from the walls, an encouragement for the settlement of the matter confided to us, because that king supposed it settled more than a hundred years ago, I confess that the presence of that figure has been to me throughout most interesting and even pathetic. It was the year he ascended the throne, that the French were finally driven from North America, and that it all became *British* America, from the southern coast of Georgia up to the North Pole, and all these islands and peninsulas which form the Gulf of St. Lawrence passed under his sceptre. And what a spectacle for him to look down upon now, after a hundred years! A quiet assembly of gentlemen, without parade, without an armed soldier at the gate, settling the vexed question of the fisheries, which in former times and under other auspices would have been cause enough for war. And settling them between whom? Between his old thirteen colonies — now become a republic of forty millions of people, bounded by seas and zones — and his own empire, its sceptre still held

recommends definite lines based on certain enumerated coast points, which exclude us from certain large bays, though their entrances are more than six miles broad.

in his own line, by the daughter of his own son, more extended, and counting an immensely larger population than when he left it, showing us not only the magnitude and increase of the Republic, but the stability, the security, and the dignity of the British Crown.

Yes, gentlemen of the Commission, when he ascended the throne, and before that, when his grandfather, whose portrait also adorns these walls, sat upon the throne of England, this whole region was a field of contest between France and Great Britain. It was not then British North America. Which power should hold it, with these islands and peninsulas and these fisheries adjacent to and about it, depended upon the issue of war, and of wars one after another. But Great Britain, holding certain possessions here, claimed the fisheries, and made large claims, according to the spirit of that day, covering the Banks of Newfoundland, and the other banks, and the whole deep-sea fishery out of sight of land, and also up to the very shores, within hailing distance of them, without any regard to a geographical limit of three miles, which is a very modern invention. That contest was waged, and the rights in these islands and these fisheries settled by the united arms of Great Britain and of New England, and largely, most largely, of Massachusetts. Why, Louisburg, on Cape Breton, held by the French, was supposed to be the most important and commanding station, and to have more influence than any other upon the destinies of this part of the country. Its reduction was ordered by the Legislature of Massachusetts. And, Mr. President, it was a force of between three and four thousand Massachusetts men, under Pepperell, and a few hundred from the other colonies, with one

hundred vessels, that sailed to Louisburg, invested and took it for the British Crown, in trust for Great Britain and her colonies. Gridley, who laid out the fortifications at Bunker Hill, and Prescott, who defended them, were in the expedition against Louisburg, and the artillery was commanded by Dwight, maternal ancestor of our friend, Judge Foster. And wherever there was war between France and England for the possession of this continent, or any part of it, or these islands and these fisheries, the militia and volunteers of Massachusetts fought side by side with the regulars of Great Britain. They fought under Wolfe at Quebec, under Amherst and Howe at Ticonderoga; and, even at the confluence of the Alleghany and Monongahela, Washington saved the remnant of Braddock's command. We followed the British arms wherever they sought the French arms. The soldiers of Massachusetts, accompanying the British regulars to the sickly sugar-islands of the West Indies, lay side by side on cots in the same fever-hospitals, and were buried in the same graves. And if any of you shall visit the Old Country again, and your footsteps lead you to Westminster Abbey, you will find there a monument to Lord Howe, who fell at Ticonderoga, erected in his honor by the Province of Massachusetts. And there let it stand! an emblem of the fraternity and unity of the olden times, and a proof that it was together, by joint arms and joint enterprise, blood and treasure, that all these Provinces, and all the rights appertaining and connected therewith, were secured to the Crown and the Colonies!

. . . . . .

I may as well present here, gentlemen of the Commission, as at any other time, my view respecting

this subject of the right of deep-sea fishery. The right to fish in the sea is in its nature not real, as the common law has it, nor immovable, as termed by the civil law, but personal. It is a liberty. It is a franchise, or a faculty. It is not property, pertaining to or connected with the land. It is incorporeal. It is aboriginal. . . . I speak of the free-swimming fish of the ocean, followed by the fishermen through the deep sea; not of the crustaceous animals or any of those that connect themselves with the soil under the sea, or adjacent to the sea, nor do I speak of any fishing which requires possession of the land or any touching or troubling the bottom of the sea. I speak of the deep-sea fishermen who sail over the high seas, pursuing the free-swimming fish of the high seas. Against them, it is a question not of admission, but of exclusion. These fish are not property. Nobody owns them. They . . . belong, by right of nature, to those who take them, and every man may take them who can. It is a totally distinct question whether, in taking them, he is trespassing upon private property, the land or park of any individual holder. . . . The fisherman who drops his line into the sea creates a value for the use of mankind, and therefore his work is meritorious. It is, in the words of Burke, "wealth drawn from the sea"; but it is not wealth until it is drawn from the sea.

. . . . . .

I am willing to put at stake whatever little reputation I may have for acquaintance with the jurisprudence of nations (and the less reputation, the more important to me) to maintain this proposition, that *the deep-sea fisherman, pursuing the free-swimming fish of the ocean with his net, or his leaded line, not touching*

shores or troubling the bottom of the sea, is no trespasser, though he approach within three miles of a coast, by any established, recognized law of all nations. . . . The Treaty between Great Britain and France of 1839, which provides for a right of exclusive fishery by the British on the British side of the Channel, and by the French on the French side of the Channel, each of three miles, and measures the bays by a ten-mile line, is entirely a matter of contract between the two nations. The Treaty begins by saying, not that each nation acknowledges in the other the right of exclusive fishery within three miles of the coast; nothing of the kind. It begins by saying, "It is *agreed between the two nations* that Great Britain shall have exclusive fishery within three miles of the British coast, and that the French shall have exclusive fishery within three miles of the French coast," and then it is further agreed that the bays shall be measured by a ten-mile line. All arbitrary alike, all resting on agreement alike, without one word which indicates that the law of nations any more gives an exclusive right to these fisheries for three miles from the coasts, than it does to measure the bays by ten miles. In the time of Queen Elizabeth this matter seemed to be pretty well understood in England. Her Majesty sent a commission, an embassy, to Denmark, on the subject of adjusting the relations between the two countries, and among the instructions given the ambassadors were these: —

"And you shall further declare that the Lawe of Nations alloweth of Fishing in the sea everywhere; as also of using ports and coasts of princes in amitie for traffique and avoidinge danger of tempests; so that if our men be barred thereof, it should be by some

contract. We acknowledge none of that nature; but rather, of conformity with the Lawe of Nations in these respects, as declaring the same for the removing of all clayme and doubt; so that it is manifest, by denying of this Fishing, and much more, for spoyling our subjects for this respect, we have been injured against the Lawe of Nations, expresslie declared by contract as in the aforesaid Treaties, and the King's own letters of '85."

. . . . . .

Though possession of the land close to the sea, says this remarkable letter of instructions, "may yield some oversight and jurisdiction, yet use not princes to forbid passage or fishing, as is seen by our law of England." There is much more to the same effect. So that whatever claim of jurisdiction over the sea a neighboring nation might make, whatever claim to property in the soil under the sea she might make, it was not the usage of princes to forbid passage, innocent passage, or the fishing and catching of the free-swimming fish, wherever they might be upon the high seas.

I wish particularly to impress upon your Honors, that all the North British Colonies were in possession and enjoyment of the liberty of fishing over all the north-western Atlantic, its gulfs and bays. There is no word indicating the existence of either a three-mile line of exclusion, or of an attaching the right of fishing to the geographical position of the colony. No, gentlemen, the Massachusetts fisherman who dropped his leaded line by the side of the steep coast of Labrador, or within hail of the shore of the Magdalen Islands, did it by precisely the same right that he fished in Massachusetts Bay, off Cape Cod or

Cape Ann. Nobody knew any difference in the foundation or the test of such rights, in those days. It was a common heritage, not dependent upon political geography. As I have said, it was conquered by the common toil, blood and treasure, and held as a common right and possession.

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At the close of the [Revolutionary] war, the Treaty of 1783 was made. Now, at the time when the Treaty of 1783 was made, Great Britain did not claim to have conquered America, or to have taken from us by military force any of our rights; and the consequence was that in framing the Treaty of 1783, while we altered by common consent some of the boundary lines, none by right of conquest, it was declared that the people of the United States shall "continue to enjoy unmolested the right to take fish of every kind on the British banks, and all other banks of Newfoundland; also in the Gulf of St. Lawrence, and all other places in the sea where the inhabitants of both countries used at any time heretofore to fish." What could be stronger than that? It was an acknowledgment of a continued right possessed long before. And if any question of its construction arose, it appealed to what they had been heretofore accustomed to do; "where the inhabitants of both countries used at any time heretofore to fish."

How was it construed by British statesmen? Is there any doubt about it? I take it my brethren of the Dominion bar will consider Lord Loughborough good authority. He said these words in the House of Lords respecting the fishery clause of the Treaty: "*The fisheries were not conceded, but recognized as a right inherent in the Americans, which, though no longer*

British subjects, they are to continue to enjoy unmolested." The same thing, substantially, was said by Lord North, who had been, we are told now by his biographers, the unwilling, but certainly the subservient instrument, in the hands of his king, for trying to deprive us of this, as well as our other rights. We then did continue to enjoy them, as we had from 1620 down. We had as much right to them as the British Crown, because it was our bow and our spear that helped to conquer them. Then came the war of 1812; and we had enjoyed the fisheries freely, without geographical limit, down to that time. The war of 1812 certainly did not result in the conquest of America, either maritime or upon the land. It was fought out in a manly way between two strong people, without any very decided result; but after the war, in 1814, . . . the parties could not agree [as to the fisheries], and it went on in that way until 1818; and then came a compromise, and nothing but a compromise. The introduction to the Treaty of 1818 says: "Whereas differences have arisen respecting the liberty claimed by the United States and inhabitants thereof to take, dry and cure fish in certain coasts, harbors, creeks and bays of His Majesty's dominions in America, it is agreed between the high contracting parties." It is all based upon "differences," and all "agreed."

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But England was a powerful nation. She fought us in 1812 and 1814 with one hand, — I acknowledge it, though it may be against the pride of American citizens, — while she was fighting nearly all Europe with the other; but she was now at peace. Both nations felt strong; both nations were taking breath

after a hard conflict, and it was determined that there should be an adjustment; and there was an adjustment, and it was this. Great Britain tacitly waived all claim to exclude us from any part of the high seas. She expressly waived all right to exclude us from the coasts of Labrador, from Mount Joly, northward and eastward indefinitely, through those tumbling mountains of ice, where we formerly "pursued our gigantic game." She expressly withheld all claim to exclude us from the Magdalen Islands, and from the southern, western, and northern shores of Newfoundland; and, as to all the rest of the Bay of St. Lawrence and the coasts of Nova Scotia and New Brunswick, we agreed to submit to her claim to exclude us. So that it stood thus: that, under that Treaty, and only under that Treaty, we admitted that Great Britain might exclude us, for a distance of three miles, from fishing in all the rest of her possessions in British North America, except those where it was expressly stipulated she should not attempt to do it. So she had a right to exclude us for a distance of three miles from the shores of Cape Breton, Prince Edward Island, Nova Scotia, a portion of Newfoundland, and New Brunswick, and what has now become the Province of Quebec, while she could not exclude us from the coast of Labrador, the Magdalen Islands, and the rest of Newfoundland. There was the compromise. We got all that was then thought useful, in the times of cod-fishing, with the right to dry nets and cure fish wherever private property was not involved. The Treaty of 1818 lasted until 1854, — thirty-six years. So we went on under that compromise, with a portion of our ancient rights secured and another portion suspended, and nothing more.

Great changes took place in that period. The mackerel fishery rose into importance. Your Honors have had before you the interesting spectacle of an old man who thinks that he was the first who went from Massachusetts into this Gulf and fished for mackerel, in 1827, or thereabouts. He probably was. But mackerel-fishing did not become a trade or business until considerably after 1830, when the catch of mackerel became important to us as well as to the Provinces.

But there were great difficulties attending the exercise of this claim of exclusion — very great difficulties. There always have been, there always must be, and I pray there always shall be such, until there be free fishing as well as free trade in fish. They put upon the stand Capt. Hardinge, of Her Majesty's navy, now or formerly, who had taken an active part in superintending these fisheries and driving off the Americans. We asked him whether the maintenance of this marine police was not expensive. He said that it was expensive in the extreme, that it cost £100,000 — I believe that was the sum named. He did not know the exact amount, but his language was quite strong as to the expensiveness of excluding the Americans from these grounds, of maintaining these cruisers. But it also brought about difficulties between Great Britain and her Provinces. The Provincial authorities, on the 12th of April, 1866, after this time (but they acted throughout with the same purpose and the same spirit), undertook to say that every bay should be a British private bay which was not more than ten miles in width; following no pretence of international law, but the special treaty between Great Britain and France; and afterwards they gave out licenses for a nominal sum, as they

said, for the purpose of obtaining a recognition of their right. They did not care, they said then, how much the Americans fished within the three miles, but they wished them to pay a "nominal sum for a license," as a recognition of the right. Well, the "nominal sum" was fifty cents a ton; but by and by the Colonial Parliament thought that nothing would be a "nominal sum" unless it was a dollar a ton, and at last they considered that the best possible "nominal sum" was two dollars a ton.

But Her Majesty's government took a very different view of that subject, and wherever there has been an attempt to exclude American fishermen from the three-mile line, there has been a burden of expense on Great Britain, a conflict between the Colonial Department at London and the Provincial authorities here, — Great Britain always taking the side of moderation, and the Provincial Parliaments the side of extreme claim and untiring persecution. Then there was a difficulty in settling the three-mile line. What is three miles? It cannot be measured out, as upon the land. It is not staked out or buoyed out. It depends upon the eye-sight and judgment of interested men, acting under every possible disadvantage. A few of the earlier witnesses called by my learned friends for the Crown undertook to say that there was no difficulty in ascertaining the three-mile line; but I happened to know better, and we called other witnesses, and at last nobody pretended that there was not great difficulty. Why, for a person upon a vessel at sea to determine the distance from shore, everything depends upon the height of the land he is looking at. If it is very high, it will seem very much nearer than if it is low and sandy. The state of the atmos-

phere affects it extremely. A mountain side on the shore may appear so near in the forenoon that you feel as if you can almost touch it with your fingers' ends, while in the afternoon it is remote and shadowy, too far altogether for an expedition with an ordinary day's walk to reach it. Now, every honest mariner must admit that there is great difficulty in determining whether a vessel is or is not within three miles of the shore, when she is fishing. But there is, further, another difficulty. "Three miles from the shore," — what shore? When the shore is a straight or curved line, it is not difficult to measure it; but the moment you come to bays, gulfs, and harbors, then what is the shore? The headland question then arose, and the Provincial officials told us, — the Provinces by their acts, and the proper officers by their proclamations, and the officers of their cutters, steam or sail, — told our fishermen upon their quarter-decks, that "the shore" meant a line drawn from headland to headland, and they undertook to draw a line from the North Cape to the East Cape of Prince Edward Island, and to say that "the shore" meant that line; and then they fenced off the Straits of Northumberland; they drew another line from St. George's to the Island of Cape Breton; they drew their headland lines wherever fancy or interest led them. And not only is it true that they drew them at pleasure, but they made a most extreme use of that power. We did not suffer so much from the regular navy, but the Provincial officers, wearing for the first time in their lives shoulder-straps and put in command of a vessel, "dressed in a little brief authority, played such fantastic tricks before high heaven" as might at any moment, but that it was averted by good fortune,

have plunged the two countries into war. Why, that conflict between Patillo and Bigelow amused us at the time; but I think your Honors were shocked when you thought that, as Patillo escaped, was pursued, and the shots fired by his pursuers passed through his sail, and tore away part of his mast and entered the hull, if they had shed a drop of American blood, it might the "multitudinous seas incarnadine" in war. Why, people do not go to war solely for interest, but for honor, and every one felt relieved, drew a freer breath, when he learned that no such fatal result followed. None of us would like to take the risk of having an American vessel beyond the three miles, but supposed to be within it, or actually within it for an innocent purpose, attacked by a British cutter, or attacked because she was within three miles from a headland line, and blood shed in the encounter. Now, Great Britain felt that, and felt it more than the Provinces did, because she had not the same money interest to blind her to the greatness of the peril.

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Nor is that all, by any means. There was a further difficulty. No one could know what would become of us when we got into court. There was a conflict of legal decisions. One vessel might go free, when under the same circumstances another vessel might be condemned. The Treaty of 1818 did not allow us to go within three miles of certain shores, except for the purposes of shelter, and getting wood or supplies, and prohibited fishing within the three miles. The act of the 59th of George III was the act intended to execute that treaty. That act provided, that, "if any such foreign vessel is found fishing, or preparing to fish, or to have been fishing, in British waters,

within three miles of the coast, such vessel, her tackle, etc., and cargo shall be forfeited." That was the language of the Statute of George III, and of the Dominion statutes. Is it not plain enough, — it seems to me, it has seemed so to all Americans, I think, — that that statute was aimed, as the treaty was, against fishing within three miles? But in one court the learned judge who presides over it — a man of learning and ability, recognized in America and in the Provinces, therefore giving his decision the greater weight — decided two points against us. We had supposed that the statute meant "for fishing within three miles you will be condemned," and in order that it should not be required that a man should be caught in the very act of drawing up fish (which would be almost impossible), it was explained by saying, "or caught having fished or preparing to fish" — meaning such acts as heaving his vessel to, preparing his lines, throwing them out, and the like. The learned court decided, first, that buying bait, and buying it on shore, was "preparing to fish," within the meaning of the statute. If an American skipper went into a shop, leaned over the counter, and bargained with a man who had bait to sell on shore, he was "preparing to fish," and, as he certainly was within three miles of the shore, his preparation was made within three miles; and the judge treated it as immaterial whether he intended to violate the provision of the treaty by fishing within three miles of the shore, so long as he was preparing, within three miles, to fish anywhere in the deep sea, on the Banks of Newfoundland, or in American waters. Then came the decision of the learned judge of New Brunswick (they were both in 1871), who said that buying bait

was not the "preparing to fish" at which the statute was aimed; and further, that it was essential to prove that the fishing intended was to be within three miles of the shore. There was a conflict of decisions, and we did not know where we stood.

Another effect of this restriction was, that it brought down upon the Dominion fishermen the statute of the United States, laying a duty of two dollars a barrel upon every barrel of mackerel, and one dollar a barrel upon every barrel of herring. That statute was, — and I shall presently have the honor to cite the evidence upon that point, that I may not be supposed to rely upon assertion, — that statute was, in substance, prohibitory. The result was, that it killed all the vessel-fishing of these Provinces. They had no longer seamen who went to sea in ships. A shore-fishery sprung up for the use of the people themselves, and was gradually somewhat extended — I mean, a boat-fishery around the shores. But, as I shall cite authorities to show, as I hope that your Honors already believe, that the first effect was to draw away from these Provinces the enterprising and skilled fishermen who had fished in their vessels and sent their catches to the American market. It drew them away to the American vessels, where they were able, as members of American crews, to take their fish into market free of duty.

There was, at the same time, a desire growing on both sides for reciprocity of trade; and it became apparent that there could be no peace between these countries until this attempt at exclusion by imaginary lines, always to be matters of dispute, was given up, — until we came back to our ancient rights and position. It was more expensive to Great Britain than

to us. It made more disturbance in the relations between Great Britain and her provinces than it did between Great Britain and ourselves; but it put every man's life in peril; it put the results of every man's labor in peril; and for what? For the imaginary right to exclude a deep-sea fisherman from dropping his hook or his net into the water for the free-swimming fish, that have no habitat, that are the property of nobody, but are created to be caught by fishermen, *prædæ humani generis.* So at last it was determined to provide a treaty by which all this matter should be set aside, and we should fall back upon our own early condition.

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Upon the question, "How is the three-mile line to be determined?" we find everything utterly afloat and undecided. My purpose in making these remarks is, in part, to show your Honors what a precarious position a State holds which undertakes to set up this right of exclusion, and to put it in execution. The international law makes no attempt to define what is "coast." We know well enough what a straight coast is and what a curved coast is, but the moment the jurists come to bays, harbors, gulfs and seas, they are utterly afloat, — as much so as the sea-weed that is swimming up and down the channels. They make no attempt to define it, either by distance or by political or natural geography. They say at once: "It is difficult, where there are seas and bays." Names will not help us. The Bay of Bengal is not national property, it is not the king's chamber; nor is the Bay of Biscay, nor the Gulf of St. Lawrence, nor the Gulf of Mexico. An inlet of the sea may be called a "bay," and it may be two miles wide at its

entrance; or it may be called a "bay," and it may take a month's passage in an old-fashioned sailing vessel to sail from one headland to the other. What is to be done about it? If there is to be a three-mile line from the coast, the natural result is, that that three-mile line should follow the bays. The result then would be, that a bay more than six miles wide was an international bay, while one six miles wide, or less, would be a territorial bay. That is the natural result. Well, nations do not seem to have been contented with this. France has made a treaty with England, saying that, as between them, anything less than ten miles wide shall be a territorial bay.

The difficulties on that subject are inherent, and, to my mind, they are insuperable. England claimed to exclude us from fishing in the Bay of Fundy; and it was left to referees, of whom Mr. Joshua Bates was umpire, and they decided that the Bay of Fundy was not a territorial bay of Great Britain, but a part of the high seas. This decision was put partly upon its width, but the real ground was, that one of the assumed headlands belonged to the United States, and it was necessary to pass the headland in order to get to one of the ports of the United States. For these special reasons, the Bay of Fundy, whatever its width, was held to be a public and international bay.

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[In the case of *Queen* v. *Cunningham*, Bell's Cr. Cas. p. 72, it was held that Great Britain had criminal jurisdiction over a vessel ninety miles from the mouth of the Bristol Channel, though over three miles from any land; while in the *Franconia* case, 2 Ex. D. 159, it was held that there was no such juris-

diction within three miles of the shore on the side of the more open English Channel.]

This naturally leads to the question: "Does fishing go with the three-mile line?" I have had the honor to say to this tribunal, that there is no decision to that effect, though I admit that there is a great deal of loose language in that direction. I do not raise any question respecting those fish that adhere to the soil, or to the ground under the sea. But on what does that three-mile jurisdiction rest, and what is the nature of it? I suppose we can go no further than this — that it rests upon the necessities of the bordering nation, — the necessity of preserving its own peace and safety, and of executing its own laws. I do not think that there is any other test. Then the question may arise, and does, whether, in the absence of any attempt by statute or treaty to prohibit a foreign fisherman from following with the line or the seine or net, the free-swimming fish within that belt, his doing so makes him a trespasser by any established law of nations? I am confident it does not. That, may it please the tribunal, is the nature of this three-mile exclusion, for the relinquishment of which Great Britain asks us to make pecuniary compensation. It is one of some importance to her, a cause of constant trouble, and, as I shall show you, — as has been shown you already by my predecessors, — of very little pecuniary value to England, in sharing it with us, or to us in obtaining our share, but a very dangerous instrument for two nations to play with.

I would say one word here about the decision in the Privy Council in 1877, respecting the territorial rights in Conception Bay. I have read it over; and though I have very great respect for the common-law

lawyer, Mr. Justice Blackburn, who was called upon to pronounce upon a question entirely novel to him, I believe that if your Honors think it at all worth while to look over this opinion, in which he undertakes to say that Conception Bay is an interior bay of Newfoundland, and not public waters, although it is some fifteen or more miles wide, you will find that he makes the statement, which is true, that an Act of Parliament is binding upon him, whether the act be in conformity with international law or not. But the act is not binding upon you, nor is the decision. But there is nothing in the Act of Parliament which speaks upon that subject. It is the Act 59 George III, intended to carry out the Treaty of 1818, and for punishing persons who are fishing within the bays; and he infers from that, by one single jump, without any authority whatever of judicial decision or legislative language, that it must have meant to include such bays as the bay in question. (*Direct U. S. Cable Co.* v. *Anglo-American Telegraph Co.*, English Law Reports, Appeal Cases, Part 2, p. 394.)

This state of things lasted until the Treaty of 1854, commonly called the Reciprocity Treaty. The great feature of that treaty, the only one we care about now, is, that it put us back into our original condition. It left us in possession of our general right. It made no attempt to exclude us from fishing anywhere within the Gulf of St. Lawrence, and it allowed no geographical limits. And from 1854 to 1866 we continued to enjoy and to use the free fishery, as we had enjoyed and used it from 1620 down to 1818.

But the Treaty of 1854 was terminated, as its provisions permitted, by notice from the United States. And why? Great Britain had obtained from

us a general free trade. Large parts of the United States thought that free trade pressed hardly upon them. I have no doubt it was a selfish consideration. I think almost every witness who appeared upon the stand at last had the truthfulness to admit, that when he sustained either duties or exclusion, it was upon the selfish motive of pecuniary benefits to himself, his section, his state, or his country; and if that were the greatest offence that nations or individual politicians committed, I think we might well feel ourselves safe. We had received, in return for this advantage, a concession from Great Britain of our general right to fish, as we always had fished, without geographical exclusion. My learned friend, Judge Foster, read to you (which I had not seen before, and which was very striking) the confidential report of Consul Sherman, of Prince Edward Island, in 1864. I dare say my learned friend, the counsel from that Island, knows him. Now, that is a report of great value, because it was written while the Treaty was in existence, and before notice had been given by our government of the intention to repeal it. It was his confidential advice to his own country as to whether our interests, as he had observed them, were promoted by it; and he said, if the Reciprocity Treaty was considered as a boon to the United States, by securing to us the right to inshore fishing, it had conspicuously failed, and our hopes had not been realized. I think these are his very words. He spoke with the greatest strength to his country, writing from Prince Edward Island, which claims to furnish the most important inshore fishery of any, and declared that, so far as the United States was concerned, the benefit that came from that was illusory, and it

was not worth while for us any longer to pay anything for it. And that, as your Honors have seen, and as I shall have the pleasure to present still further by-and-by, was borne out by the general state of feeling in America. The result was, that in 1866 the Reciprocity Treaty was repealed. That repeal revived, as my country admitted, the Treaty of 1818; and we again laid, of course, the duties on the British importation of mackerel and herring. We were remitted to the antiquated and most undesirable position of exclusion; but we remained in that position only five years, from 1866 until 1871, until a new treaty could be made, and a little while longer, until it could be put into operation. What was the result of returning to the old system of exclusion? Why, at once the cutters and the ships of war, that were watching these coasts, spread their sails; they stole out of the harbors where they had been lurking; they banked their fires; they lay in wait for the American vessels, and they pursued them from headland to headland, and from bay to bay; sometimes a British officer on the quarter-deck, — and then we were comparatively safe, — but sometimes a new-fledged Provincial, a temporary officer, and then we were anything but safe. . . . Not only did it revive the expensive and annoying and irritating and dangerous system of revenue-cutters, and marine police, up and down the coast, telegraphing and writing to one another, and burdening the Provinces with the expense of their most respectable and necessary maintenance; but it revived, also, the collisions between the Provinces and the Crown; and when the Provincial governments undertook to lay down a ten-mile line, and say to the cutters, "Seize any American

vessel found within three miles of a line drawn from headland to headland, ten miles apart," such alarm did it cause in Great Britain, that the Secretary of State did not write, but telegraphed instantly to the Provinces, that no such thing could be permitted, and that they could carry it no further than the six-mile rule. Then attempts were made to sell licenses. Great Britain said: "Do not annoy these Americans; we are doing a very disagreeable thing; we are trying to exclude them from an uncertain three-mile line; we would rather give up all the fish in the ocean than to have anything to do with it; but you insist upon it; do not annoy those Americans; give them a license, — just for a *nominal* fee." So they charged a nominal fee, as I have said, of fifty cents a ton, which was afterwards raised — they know why, we do not — to a dollar. We paid the fifty-cent fee, and some Americans paid the dollar fee, — and why? They have told you why. Not because they thought the right to fish within three miles was worth that sum, but it was worth that sum to escape the dangers and annoyances which beset them, whether they were innocent or guilty under the law. Then at last the Provinces . . . raised it to an impossible sum, — two dollars a ton; and we would not pay it. What led them to raise it? What motive could there have been? They lost by it. Our vessels did not pay it. Why, this was the result, — I do not say it was the motive, — that it left our fishermen unprotected, and brought out their cutters and cruisers, and that whole tribe of harpies that line the coast, like so many wreckmen, ready to seize upon any vessel and take it into port and divide the plunder. It left us a prey to them, and unprotected. It also revived the duties, for we, of course, restored the

duty of two dollars a barrel on the mackerel, and one dollar a barrel on the herring. It caused their best fishermen to return into the employment of the United States, and their boat-fishing fell off. That has been stated to your Honors before, but it cannot be too constantly borne in mind.

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But we went on as well as we could in that state of things, until Great Britain, desirous of relieving herself from that burden, and the United States desiring to be released from those perils, and having also another great question unsettled, that is, the consequences of the captures by the Alabama, the two countries met together with Commissioners, at Washington, in 1871, and then made a great treaty of peace. I call it a "treaty of peace," because it was a treaty which precluded war, not restored peace after war, but prevented war, upon terms most honorable to both parties; and as one portion of that treaty — one that, though not the most important by any means, nor filling so large a place in the public eye as did the Congress at Geneva, yet fills an important place in history, and in its consequences to the people of both countries — was the determination of this vexed and perpetual question of the rights of fishing in the bays of the north-western Atlantic; and by that treaty, we went back again to the old condition in which we had been from 1620 down, with the exception of the period between 1818 and 1854, and the period between 1866 and 1871. That restored both sides to the only condition in which there can be peace and security; peace of mind, at least, freedom from apprehension, between the two governments. And when those terms were made, which were

terms of peace, of good-will to men, of security for the future, and of permanent basis always, and we agreed to free trade mutually in fish and fish-oil, and free rights of fishing, as theretofore almost always held, Great Britain said, "Very well; but there should be paid to us a money compensation." The United States asked none; perhaps it did not think it a fitting thing to do. Great Britain said, "This is all very well; but there should be a compensation in money, because we are informed by the Provinces" — I do not believe that Great Britain cared anything about it herself — "that it is of more pecuniary value to the Americans to have their right of fishing extended over that region from which they have been lately excluded, than it is to us to have secured to us free right to sell all over the United States the catchings of Her Majesty's subjects, free from any duty that the Americans might possibly put upon us." — "Very well," said the United States; "if that is your view of it, if you really think you ought to have a money compensation, we will agree to submit it to a tribunal." And to this tribunal it is submitted, First, under Article XVIII of the Treaty of 1871: what is the money value of what the United States obtains under that article? Next, what is the money value of what Great Britain obtains under Articles XXI and XIX? Second, Is what the United States obtains under Article XVIII of more pecuniary value than what Great Britain obtains under her two articles? Because I put out of sight our right to send to this market, and the right of the people of the Provinces to fish off our coasts, as I do not think either of them to be of much consequence. If you shall be of opinion, that there is no difference of

value, — and of course that means no *substantial* difference in value, or that the advantage is with Great Britain, — then your deliberations are at an end; but if you shall think there is a substantial difference in value in favor of the United States, then your deliberations must go further, and you must decide what is that value, in money.

I hope, if your Honors are not already persuaded, that you will be before the close of the argument on the part of the United States, and may not be driven from that persuasion by anything that may occur on the other side, that the United States were quite honest when they made the statement, in 1871, that in asking for the abandonment of the restrictive system in regard to the fisheries, they did not do it so much because of the commercial or intrinsic value of the fishing within the three-mile line, as for the purpose of removing a cause of irritation; and I hope that the members of this tribunal have already felt that Great Britain, in maintaining that exclusive system, was doing injustice to herself, causing herself expense, loss, and peril; that she was causing irritation and danger to the United States; that it was maintained from a mistaken notion, though a natural one, among the Provinces themselves, and to please the people of the Dominion and of Newfoundland; and that the great value of the removal of the restriction is, that it restores peace, amity, good-will; that it extends the fishing, so that no further question shall arise in courts or out of courts, on quarter-decks or elsewhere, whatever may be the pecuniary value of the mere right of fishing by itself; and that it would be far better if the Treaty of Washington had ended with the signing of the stipulations, except so far as

the Geneva Arbitration was concerned, and this question had not been made a matter of pecuniary controversy; that either a sum of money had been accepted at the time for a perpetual right, as was offered, or that some arrangement had been made between the two countries by which there should be the mutual right of free trade in timber, in coal, and in fish, or something permanent in its character.

But that is a bygone, and we are to meet the question as it comes now directly before us. Now, first, with your Honors' leave, I will take up the consideration of the money value of the removal of this geographical restriction, for that is what it is. The ancient freedom is restored; the recent and occasional restriction as to three miles is removed, and the colonists say that that has been of pecuniary value to us. Whether it is a loss to them or not is utterly immaterial, in this consideration. They cannot ask you to give them damages for any loss to them. It is only the value to us. It is like a person buying an article in a shop, and a third person appointed to determine what is the value of that article to the purchaser. It is quite immaterial how great a mistake the man may have made in selling it to him, or what damage the want of it may have brought upon his family or himself. If I have bought an umbrella across the counter, and we leave it to a third man to determine the value of the umbrella to me, it is totally immaterial whether the man has sold the only one he had, and his family have suffered for the want of it. That is a homely illustration, but it is perfectly apt. The question is, What is the value to the citizens of the United States, in money, of the removal

of this geographic restriction? Not what damage this may have been to the Provinces, by reason of the Treaty which Her Majesty's Government saw fit to make with us. What, then, is the money value of the removal of the restriction?

I will now take up for a moment the question of the cod-fisheries. In the first place, as to the cod-fishery, it is a deep-sea or off-shore fishery, not a fishery within three miles. I do not mean to say that stray cod may not be caught occasionally within that limit; but as a business, it is a deep-sea business. With your Honors' permission, I will read some of the evidence on that point.

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These are only passages selected from a large mass of testimony, but they were selected because the persons who testified in that way were either called by the British side, or were persons of so much experience that they are fair specimens of our view of the subject.

Now, cod fishery is the great trade and staple of the United States, and is growing more and more so. The small cod that were once thrown overboard are now kept. The oil is used a great deal, codfish oil; and there are manufacturing establishments in Maine, Connecticut, and Massachusetts, which, we have been told by the witnesses, work up a great deal of this material that used to be thrown overboard; they draw oil from it, and the rest is used for fertilizing the land, and that is a gradually increasing business. One of the witnesses, I recollect, from Gloucester, told us how greatly the trade in codfish had improved, so that now, instead of sending it out as whole fish, it is cut in strips, rolled together, and

put into cans, and sold in small or large quantities to suit purchasers, and in that very easy manner sent all over the United States.

The cod-fishery is also one as to which there is no fear of diminution, — certainly none of its extermination. Professor Baird told us, on page 456 of the American evidence, that a single cod produces from three to seven million eggs, each one capable of forming another living animal in the place of its mother. He said that owing to the winds and storms to which they were exposed, and to their being devoured by other fish which sought for them, the best information was that about a hundred thousand of these eggs prosper so as to turn into living fish, capable of taking care of themselves, the undefended and unrestricted navigators of the ocean. Although that is not a large percentage of the amount of ova, yet an annual increase of a hundred thousand for every one shows that there is no danger of the diminution, certainly none of the extermination, of that class of fish. It is enormous in quantity, something which the whole world combining to exterminate could hardly make any impression upon; and when the argument is made here that we ought to pay more for the right to fish because we are in danger of exterminating what codfish we have, — if that argument is made, — it amounts to nothing. But if the further argument is made, that we have no cod-fishery to depend upon, then we have the statistics, and we have information from witnesses from all parts, that the cod-fishery shows no signs of diminution, and that it is as large and extensive and as prosperous as ever. Gloucester has gone more into the business than it ever has before; and I do not recollect that there is

any evidence of the least value showing that that fishery is likely to fall off materially as a commercial product in our hands. There is a single British concurrence out of several others, I think, in this statement, which I will read. [Statement is to the effect that the cod-fishery is not precarious and the fishermen make a good living out of it.] I read that, because it is the testimony of an intelligent British witness, who represents one of those great Jersey firms that deal in codfish on the west coast of the gulf.

The bait of the codfish need not be caught within the three-mile line. That, I think, we have pretty well established. We may buy it when we wish it. Among the curious grounds set forth to swell the English claim against us, to make it meet, if possible, the obvious money claim we had against Great Britain, if it was seen fit to enforce it, — we now put it in only as a set-off, — appears the testimony that our fishing-vessels, going into Newfoundland, employed the men there to fish, and that it had a very deleterious moral effect upon the habits of the Newfoundland fishermen; that they had been, up to the time the Americans appeared there to buy their bait, an industrious people, in a certain sense; they had fished a certain part of the year under contracts, which it seems they could not get rid of, with a class of owners who held them in a kind of blissful bondage; but that when the Americans appeared, they led them to break these contracts; sometimes tempted them to fall off from their agreements, and put money into their pockets; they paid them for work; they gave them labor at a time when they ought to have been lying idle, — when it was better for them to lie idle! Oh, it steadied them, improved them, raised their moral tone, to be idle, and tended to preserve

those desirable relations that existed between them and the merchants of St. John's! A great deal was said about that; but at last there came upon the stand a witness, whose name, if I recollect, was Macdonnell (page 313 of the British testimony), a British witness. I did not know that he would not be fully as well filled with these feudal opinions as the others had been. He said the people at Fortune Bay were well off.

Nothing has been attempted since to contradict that statement. It is in accord with the nature of things. There is always danger in putting money in any man's hands, and there is also danger in poverty. The wise man saw that poverty had its perils as well as wealth; and nothing can be worse for a people in the long run than the condition to which the fishermen of Newfoundland had been reduced. And now, believing fully in this testimony of Mr. Macdonnell, I cannot doubt that our coming among them and buying their bait, stimulating them to work, and paying them money, has led to their hoarding money; has led to their abstinence from those habits which so beset the half-employed and the idle man, who has a large season of the year with nothing to do, but has a reasonable expectation, that, what with his labor and what with his credit, somebody or other who owns the boats will support him and his family.

I should like, also, to call your attention, on this question of getting bait, which is of some importance, to the testimony of Prof. Baird, which, I suppose, none of you has forgotten, which shows that we need not catch our bait for the cod in British waters. [Then follows a long extract from Prof. Baird's testimony supporting Mr. Dana's statement.]

That is, of course, not very material, because it only goes to the point that we are not dependent upon catching bait within three miles of the British coast, anywhere. We have ways of using salt bait, and the use of all these scientific methods of preserving bait, which will, no doubt, be resorted to and experimented upon, and we may be quite certain that they will, in skilful hands, succeed. Nothing further upon that point need be considered by your Honors.

I now call your attention to MACKEREL. The mackerel, may it please your Honors, is a deep-sea fish. He does not lurk about anybody's premises. He does not live close in to the shore. He is a fish to whose existence and to whose movements a mysterious importance is attached. A certain season of the year he is not to be seen; and at other times, mackerel are so thick upon the waters, that, as one of the most moderate of the British witnesses said, you might walk upon them with snow-shoes, I believe it was from East Point to North Cape! I do not know that I have got the geography quite right, but it is something like that. However, I do not doubt that the number is extraordinary at times, and at other times they are not to be seen. We do not know much about them. We know they disappear from the waters of our whole coast, from Labrador down to the extreme southerly coast, and then at the early opening of the spring they reappear in great numbers, armies of them. They can no more be counted than the sand of the sea, and are as little likely to be diminished in number. They come from the deep sea, or deep mud, and they reappear in these vast masses, and for a few months they spread themselves all over these

seas. A few of them are caught, but very few in proportion to the whole number, and then they recede again. Their power of multiplication is very great. I forget at this moment what Prof. Baird told us, but it is very great. They are specially to be found upon the banks of the Gulf of St. Lawrence, the Bradelle or Bradley Banks, the Orphan, Miscou, Green, Fisherman's Bank, and off the coast of Prince Edward Island, and especially, more than anywhere else, about the Magdalen Islands; and in the autumn, as they are passing down to their unknown homes, they are to be found in great numbers directly off the western coast of Cape Breton, near the highlands opposite Margaree island, and near Port Hood; but in the main, they are to be found all over the deep sea of the Gulf of St. Lawrence. The Gulf of St. Lawrence is full of ledges, banks, and eddies formed by meeting tides, which Prof. Hind described to us, and there the mackerel are especially gathered together. The map drawn on the British side, in the British interest, shows this enormous field for the mackerel fisheries; and though very few comparatively of the banks and ledges are put down, yet in looking over this map, it seems as if it was a sort of great directory, showing the abodes of the mackerel, and also the courses that the mackerel take in passing from one part of this great sea to another. There is hardly a place where mackerel fishing grounds are not marked out here, and they are nearly all marked out at a considerable distance from the shore, all around the Magdalen Islands, for many miles, and at a distance from Prince Edward Island, and on the various banks, ledges, and shoals that are to be found; and it is there, as I shall have the honor to point out to the

Court more particularly hereafter, that they have always been caught in the largest quantities, and the best of them, by American fishermen.

There are one or two experienced witnesses, from Gloucester, who have dealt with the subject carefully, for their own interests, not testifying for any particular purpose, but having kept their books and accounts, and dealt with the mackerel in their own business, whose words I would like to recall to the attention of the Court for a few moments.

The Commissioners will recollect the testimony of Mr. Myrick, an American merchant, who had established himself on Prince Edward Island. The inshore fishery, he said, is not suited to American vessels. Our vessels are large; they are built at a distance; they are manned by sixteen or seventeen men; they cost a great deal; they require large catches, and dealing with fish in large quantities, they deal at wholesale altogether, and not at retail. Retailing would ruin them. Anything short of large catches, large amounts, would be their end, and compel all the merchants to give up the business, or to take to boat-fishing, which, of course, Gloucester, or Massachusetts, or New England, or any part of the United States, could not undertake to carry on here. It has been stated to the tribunal, by experienced men, as you cannot but remember, that our fishermen object to going very near shore in the Gulf of St. Lawrence. There are perils of weather connected with the coast which cannot be set aside by ridicule. Gloucester is a town full of widows and orphans, whose husbands and parents have laid their bones upon this coast, and upon its rocks and reefs, trusting too much to the appearance of fine weather, as we all did last night,

waking up this morning in a tempest. Gloucester has tried to provide for these bereft people by every fisherman voluntarily paying a small percentage of his earnings to constitute a widows' and orphans' fund. Even the tempestuous Magdalen Islands are safer for vessels than are the inshore coasts of those islands, where we are now permitted to fish; their harbors are poor, their entrances are shallowed by sand-bars, which are shifting, which shift with every very high wind, and sometimes with the season. They are well enough after you get inside of them, but they are dangerous to enter, to persons inexperienced, — dangerous to any by night; and if a vessel is caught near the shore by a wind blowing inshore, against which she cannot beat with sails, for none of them carry steam, then she is in immediate peril. They therefore give a wide berth to the inshore fisheries, in the main. They resort to them only occasionally. They are not useful for fishing with our seines. We find that the purse-seines are too deep; that they are cut by the ground, which is rocky; that it is impossible to shorten them without scaring the mackerel, which must be taken by seines run out a great distance, for they are very quick of sight, and very suspicious of man; and they soon find their way out of the seines, unless they are laid a considerable distance off.

We need not catch our mackerel bait, any more than our cod bait, within the three-mile limit. On the contrary, the best mackerel bait in the world is the menhaden, which we bring from New England. All admit that. The British witnesses say they would use it, were it not that it is too costly. They have to buy it from American vessels; and they be-

take themselves to an inferior kind of bait when they cannot afford to buy the best bait from us. And another result is that the Americans have shown for many years that what are called the shore mackerel — that is, those that are caught off the coast of Massachusetts and several other of the New England States — are really better than the Bay mackerel. The evidence of that is the market prices they bring. It is not a matter of opinion. We have not called as witnesses persons who have only tasted them, and might have prejudices or peculiar tastes, but we have shown the market value.

It is also true, a matter of testimony and figures, that the American catch, the catch upon the American shore, is very large, and has increased, and is attracting more and more the attention of our people engaged in fishing, and it is only this year that the shore fishing proved to be unprofitable, and the confiding men who were led to send their vessels to a considerable extent, though not very great, into the Gulf, by reason of the British advertisements scattered about Gloucester, have come away still more disappointed than they had been by the shore fishing, because they had employed more time and more capital than their catch compensated them for. There are some statistics which I will read, taken from a prominent and trustworthy man, as to the American catch. David W. Low, on page 358 of the American evidence, states the figures as follows. [Statistics of Mr. Low, supporting the above statement, omitted.]

The statistics of John H. Pew & Sons, put in by Charles H. Pew, p. 496, for the last seven years, from 1870 to 1876, inclusive, show that the total, for that time, of Bay mackerel that their own vessels caught,

amounted to $77,995.22, and the shore mackerel for the same period was $271,333.54. Your Honors will recollect the statistics put in, which it is not necessary for us to transfer to our briefs, showing the exact state of the market on the subject of the proportion of American fish caught on the shores, and the proportion caught in the bay.

We have introduced a large number of witnesses from Gloucester, and I think I take nothing to myself in saying that the greater part of them, those who profess to be engaged in the trade or business at all, were men of eminent respectability, and commended themselves to the respect of the tribunal before which they testified. You were struck, no doubt, with the carefulness of their book-keeping, and the philosophical system which they devised, by means of which each man could ascertain whether he was making or losing in different branches of his business; and as the skipper was often part owner, and usually many dealers managed for other persons, it became their duty to ascertain what was the gain or loss of each branch of their business. They brought forward and laid before you their statistics. They surprised a good many, and I know that the counsel on the other side manifested their surprise with some directness; but, may it please the Court, when the matter came to be examined into, it assumed a different aspect. We made the counsel on the other side this offer. We said to them, "There is time enough, there are weeks, if you wish it, before you are obliged to put in your rebuttal; we will give you all the time you wish; send anybody to Gloucester you please, to examine the books of any merchants in Gloucester engaged in the fishing business, and ascertain for

yourselves the state of the bay and shore fishing as it appears there." You say that bay fishing is as profitable as the shore fishing; that it has made a great and wealthy city of Gloucester, and you assume that it is owing to their having had, for the greater part of the time, a right to fish inshore. It would seem to follow from this reasoning, that whenever we lost the right to fish inshore, Gloucester must have receded in its importance, and come up again with the renewal of the privilege of inshore fishing. Nothing of that sort appears, in the slightest degree.

"But," they say, "the Bay fishing must be of great importance, because of the prosperity of Gloucester." Now, the people of Gloucester have no disposition to deny their prosperity, but it is of a different kind from what has been represented. Gloucester is a place altogether *sui generis*. I never saw a place like it. I think very few of your Honors failed to form an opinion that it was a place well deserving of study and consideration. There is not a rich idle man, apparently, in the town of Gloucester. The business of Gloucester cannot be carried on, as mercantile business often is, by men who invest their capital in the business, and leave it in the hands of other people to manage. It cannot be carried on as much of the mercantile business of the world is carried on, in a leisurely way, by those who have arrived at something like wealth, who visit their counting-rooms at ten o'clock in the morning, and stay a few hours, then go away to the club, return to their counting-rooms for a short time, and then drive out in the enticing drives in the vicinity, and their day's work is over. It cannot be carried on as my friends in New Bedford used to carry on the whale fishery, where the gentle-

men were at their counting-rooms a few months in the year, and when the off season came, they were at Washington, Saratoga, or wherever else they saw fit to go. And yet they were prosperous. No; the Gloucester tradesmen are hard-working men, and they gain their wealth and prosperity on the terms of being hard-working men. The Gloucester merchants, if you see fit to call them so, — they are not particular about their title, but are content to be "fish-dealers," — are men who go to their counting-rooms early and stay late. If they go up to Boston on business, they take a very early train, breakfast before daylight, and return in season to do a day's work, though Boston is thirty and more miles distant; and when their vessels come in, they are down upon the wharves, they stand by the large barges, and they cull the mackerel with their own hands; they count them out with their own hands; they turn them with their own hands into the barrels, and cooper them, and scuttle the barrels, and put in the brine and pickle the fish, and roll them into the proper places; and when they have a moment's leisure, they will go to their counting-rooms and carry on their correspondence, by telegraph and otherwise, with all parts of the United States, and learn the value of these mackerel. They are ready to sell them to the buyers, who are another class of persons, or they are ready to keep and sell them in the larger market of Boston.

By their patient industry, by their simple hard day's works, they have made Gloucester an important place; but they have not added much to the mackerel fishery of the United States. Gloucester has grown at the expense of every other fishing town in New England. We have laid before your Honors, through

Mr. Low, I think it was, or through Mr. Babson, the statistics of the entire falling off of all the fishing towns in New England. Where are Plymouth and Barnstable, where Marblehead, which was known the world over as a fishing town? There are no more fishing vessels there. The people have all gone into the business of making shoes and other domestic manufactures. So with Beverly, so with Manchester, so with Newburyport, and so with the entire State of Maine, with the exception of a very few vessels on the coast. Two or three of the last witnesses gave us a most melancholy account of the entire falling off of fishing in Castine, Bucksport, and all up and down Penobscot Bay and River, so that there is hardly any fishing left. When they were fishing towns, people employed their industry in it. Their harbors were enlivened by the coming and going of fishing schooners, and now there is an occasional weekly steamer or an occasional vessel there owned, but doing all its business in Boston and New York. But the fishing business of all the towns of New England, except the cod fishery of Provincetown and of the towns near, has concentrated in Gloucester. It seems to be a law that certain kinds of business, though carried on sparsely at periods, must be eventually concentrated. When they are concentrated, they cannot be profitably carried on anywhere else. The result is, that the mackerel fishery and cod fishery, with the exception of the remote points of Cape Cod, have concentrated in Gloucester. There is the capital; there is the skill; there are the marine railways; there is that fishing insurance company, which they have devised from their own skill and experience, by which they insure themselves cheaper than any peo-

ple in the world ever did insure themselves against marine risks; so much so, that merchants of Gloucester have told us that if they had to pay the rates that are paid in stock companies, the fishing business could not be carried on by merchants who own their ships; the difference would be enough to turn the scale. Now it appears to be the fact, — I will not trouble your Honors by going over the testimony to which every Gloucester man swore, — it turns out to be the fact, that the prosperity of Gloucester, while it has additional resources in its granite, and as a sea-bathing place, has been owing mostly to the prudence and sagacity, the frugality and laboriousness, of the men brought up as fishermen, who turn themselves into fish-dealers in middle life, and carry their experience into it; and it is only on those terms that Gloucester has become what it is. An attempt was made at Salem, under the best auspices, to carry on this business, with the best Gloucester fishermen and most experienced men concerned in it, by a joint-stock company; but in the matter of deep-sea fishing, "the Everlasting" seems to have "fixed his canon" against its prosperity, except upon the terms of frugality and laboriousness. It never has succeeded otherwise, and scarce on those terms, except it be with the aid of bounties from the governments.

Now, we say that the whole Bay fishing for mackerel is made prosperous simply on those terms; that it is no treaty-gift that has created it, but it is the skill and industry of the fishermen, the capital invested by the owners, and the patient, constant labor and skill of the owners in dealing with their fish, after they are thrown upon their hands on the wharf and they have paid their fishermen, that has given to it

any value in the market. I do not think it is worth while to speculate upon the question whether fish in the water have any money value. I can conceive that fish in a pond and that fish that cling to the shore, that have a habitat, a domicile, like shell-fish, have an actual value. They are sure to be found. It is nothing more than the application of mechanical means that brings them into your hands. But certainly it is true, that the value of the free-swimming fish of the ocean, pursued by the deep-sea fishermen, with line or with net, must be rather metaphysical than actual. To pursue them requires an investment of capital; it requires risk and large insurance; it requires skill, and it requires patient labor; and when the fish is landed upon the deck, his value there, which is to be counted in cents rather than in dollars, is the result of all these things combined; and if any man can tell me what proportion of those cents or dollars which that fish is worth on the deck of the vessel is owing to the fact that the fishermen had a right to try for him, I think he will have solved a problem little short of squaring the circle, and his name ought to go down to posterity. No political economist can do it. I will not say that the fish in the deep sea is worth *nothing;* but, at all events, the right to attempt to catch it is but a liberty, and the result depends upon the man.

If there can be no other fishery than the one which you have the privilege of resorting to, then it may be of great value to you to have that privilege. If there be but one moor where he can shoot, the person who is shooting for money, to sell the game that he takes, may be willing to pay a high price for the privilege. But recollect that the fishing for the free-swimming

fish is over the whole ocean. The power of extending it a little nearer shore may be of some value, — I do not say that it is not, — but it strikes my mind as an absurd exaggeration, and as an utter fallacy, to attempt to reason from the market value of the fish there caught, to the money value of the privilege so extended. The fish are worth, I will say, $12.00 a barrel; but what does that represent, when the American merchants, Hall and Myrick, both tell us that the value on the wharf at Prince Edward Island is about $3.75 a barrel? Well, suppose the mackerel to be worth $3.75 a barrel on the wharf in Prince Edward Island, what does that represent? Is that a thing which the United States is to pay Great Britain for? Has Great Britain sold us a barrel of pickled mackerel on the wharf? Has anybody done it? I think not. That represents the result of capital and of many branches of labor. Then, if you ask, "What is the worth to Mr. Hall or Mr. Myrick of the mackerel on the deck of the vessel?" I say, it is next to nothing. The fish will perish if he is not taken care of. Skill is to be used upon him, then; what costs money is to be used upon him, ice and pickle, and he is to be preserved. All this to the end that he may eventually, after a great deal of labor, skill, and capital, be sent to the market. But, recollect that the vessel from whose deck he was caught cost $8000. Recollect, that the men who maintain that crew and feed them, and enable them to clothe themselves and follow that pursuit, are paying out large sums of money. Recollect, that the fisherman who catches the fish has, as the result of many years' labor, which may be called an investment, learned how to catch him; and it is by the combination of all these causes, that at

last the fish is landed. Now, in my judgment, it is purely fallacious to attempt to draw any inference from the market value of the fish to the right to extend your pursuit of those animals nearer the coast than before, or to the market value of any right to fish over a certain portion of the ocean, when all other oceans are open to you, and all other fisheries.

Your Honors, of course, recollect that the mackerel fishery, taken at its best, — I don't confine myself to the inshore fishery; I mean the mackerel fishery of the Bay and the Gulf, at its best, the whole of it, — is of a greatly decreasing and precarious value. I speak only of the salted mackerel that is sent into the United States. The lake fish are fast becoming a substitute for salt mackerel. I will call your Honors' attention to two or three rather striking proofs which were not read previously by Judge Foster.

[Then follow references to testimony in support.]

Then there are other fresh fish that are taking the place of the salt mackerel. The question is not between British mackerel and American mackerel, but it is between mackerel and everything else that can be eaten: because, if mackerel rise in market price, and in the cost of catching, people will betake themselves to other articles of food. There is no necessity for their eating mackerel. The mackerel lives in the market only upon the terms that it can be cheaply furnished. This tribunal will recollect that interesting witness, Mr. Ashby, from Noank, Conn.; how enthusiastic he was over the large halibut that he caught; how his eyes gleamed, and his countenance lightened, when he told your Honors the weight of that halibut, the sensation produced in Fulton Mar-

ket when he brought him there, and the very homely, but really lucid way in which he described the superior manner by which they were able to preserve those fish in ice, and the way they were brought into market; and how the whole horizon was dotted with vessels fishing for halibut, and other fresh fish, with which to supply the great and increasing demand in the New York market. There is also the testimony of Professor Baird, who speaks of various kinds of fish. It is not worth while to enumerate them all, but he speaks especially of a fish known as "mullet" on the Southern coast. So long as slavery existed, it is undoubtedly true that there was very little enterprise in this direction. It suffered like everything else but cotton, rice and sugar, staples which could be cultivated easily by slave labor. Almost every other form of agriculture, almost all kinds of maritime labor, ceased. The truth was, the slaves could not be trusted in boats. The boats would be likely to head off from South Carolina or Virginia, and not be seen again. The vessels that went to the ports of the slave States were Northern vessels, owned and manned by Northern people. Southern people could not carry on commerce with their slaves, nor fishing with their slaves. Slavery being now abolished, the fisheries of the Southern States are to be developed. The negro will fish for himself. He will have no motive for running away from his own profits. The result has been that this mullet has come into very considerable importance. Professor Baird has his statistics concerning it, and he has certainly a very strong opinion that that fish is in danger of excluding salted mackerel from the Southern markets (indeed, it is almost excluded now), and that it will work its way up to the

Northern markets. Some of the Southern people think very highly of it, as the best kind of fish, think it has not its superior in the ocean; but, supposing that to be local exaggeration and patriotic enthusiasm, yet certainly it is a useful and valuable fish, and the demand for it is rapidly increasing. Professor Baird says, on page 460, that one million barrels of mullet could be furnished annually, from the south shore of Chesapeake Bay to the south end of Florida, if they were called for.

Your Honors will recollect, as a striking illustration of the truth of the power of propagation, the statement of Professor Baird in regard to the River Potomac, where a few black bass, some half dozen, were put into the river, and in the course of a few years they were abundant enough to supply the market. Fish culture has become a very important matter, and what we call in New England our "ponds," small lakes and rivers, are guarded and protected, and every dam built across any river where anadromous, or upward-going fish, are to be found, has always a way for their ascent and descent; so that everything is done to increase the quantity, kind, and value of all that sort of fish, making the salted mackerel less important to the people, and in the market.

Then the improved methods of preserving fish are astonishing. I think the evidence on that point was principally from Professor Baird, who has described to us the various methods by which fish, as well as bait, may be preserved. He told us that for months, during the hottest part of the Exhibition season at Philadelphia, during our Centennial year, fish were kept by these improved chemical methods of drying, and methods of freezing, so that after months, the

Commissioners ate the fish, and found them very good eating. There was no objection whatever to them, although, of course, they were not quite as good as when they were entirely fresh. So that all science seems to be working in favor of distribution, instead of limitation, of what is valuable for human consumption; and the longer we live, and the more science advances, the less can any one nation say to the fishermen of another, Thus far, and no farther! We turn upon such an attempt at once, and say, "Very well; if you choose to establish your line of exclusion, do it. If you choose to throw all open, do so. We prefer the latter as the generous, the more peaceful and safe method for both parties. If you prefer the former, take the expense of it, take the risk of it, take the ignominy of it! If you give it up, and it costs you anything to do so, we will pay you what it is worth to us."

I certainly hope that after our offer to open the books of any merchant in Gloucester, or any number of merchants, to the other side, it will not be said that we have selected our witnesses. The witnesses that we brought here, both fishermen and owners, said that the bay fishery was dying out. They show it by their own statistics, and the statistics of the town of Gloucester show how few vessels are now engaged in the bay fishery; that they are confining their attention to cod fishing and shore fishing, with weirs, nets, pounds, and seines.

We did not bring the bankrupt fish-dealers from Gloucester, the men who have lost by attempting to carry on these bay fisheries, as we might have done. We did not bring those who had found all fishing unprofitable, and had moved away from Gloucester,

and tried their hand upon other kinds of business. We brought, on the other hand, the most prosperous men in Gloucester. We brought those men who had made the most out of the fisheries, the men who had grown richest upon them, and we exhibited their books; and as we could not bring up all the account-books of Gloucester to this tribunal, we besought the other side to go down, or send down a commission, and examine them for themselves. I certainly think we have a right to say, that we have turned Gloucester inside out before this tribunal, with the result of showing that the bay fishing has gradually and steadily diminished, that the inshore fishery is unprofitable, that the bay fishery has been made a means of support only to the most skilful, and by those laborious and frugal methods which I have before described to this tribunal.

I have no instructions from my country, gentlemen of the Commission, and no expectation from its government, that I should attempt to depreciate the value of anything that we receive. We are not to go away like the buyer in the Scripture, saying, "It is nought; it is nought"; but we have referred to a Commission, which will stand neutral and impartial, to determine for us; and no proclamation of opinion, however loud, will have any effect upon that Commission. My country stands ready to pay anything that this Commission may say it ought to pay, as I have no doubt Great Britain stands content, if you shall be obliged to say, what we think in our own judgment you should say, that you cannot see in this extension, along the fringes of a great garment, of our right to fish over portions of this region, anything

which equals the money value that the British Dominion and Provinces certainly receive from an obligation on our part to lay no duties whatever upon their importations of fish and fish-oil. But while we are not here to depreciate anything, it is our duty to see to it that no extravagant demands shall pass unchallenged, to meet evidence with evidence, and argument with argument, fairly, before a tribunal competent and able. We do not mean that our side shall suffer at all from too great depreciation of the evidence and arguments of the counsel for the Crown, as we feel quite sure that the cause of the Crown has suffered from the extravagant demands with which its case has been opened, and the extravagant and promiscuous kind of evidence, of all sorts of damages, losses, and injuries, which it saw fit to gather and bring before this tribunal, from the fisherman who thought that his wife had been frightened and his poultry-yard robbed by a few American fishermen out upon a lark, to the Minister of Marine and Fisheries of the Dominion, with his innumerable light-houses and buoys and improved harbors. We are to meet argument with argument, evidence with evidence, upon the single question submitted; and that is, as I have had the honor to state before, "Is there a money value in this extension of our right, or rather this withdrawal of the claim of exclusion, on the part of Great Britain, greater than the value which Great Britain certainly receives from our guaranty that we will lay no duties whatever upon her fish and fish-oil?"

Now, may it please your Excellency, the question is not whether two dollars a barrel on mackerel and one dollar a barrel on herring is prohibitory, because we had a right, before making this treaty, to lay

duties that should be prohibitory, if those were not. If two dollars were not, we could lay as much as we pleased; so that it would be an imperfect consideration of this case, it has been all along an imperfect consideration of this case, to ask the question whether two dollars a barrel is prohibitory, whether two dollars a barrel on mackerel or one dollar a barrel on herring can be overcome by any commercial method or enterprise of the Dominion and the Provinces. The question has been between the right to be secured against laying duties indefinitely, on the part of the United States, on the one hand, and this extension of the right of fishing a little nearer to the shores, on the other. We could, if we saw fit, make a kind of self-adjusting tariff, that whenever fish rose above a certain price, then the Dominion fish might be admitted, and otherwise not; or we could hold it in our hands, and legislate from day to day as we saw fit.

Before leaving this question of the money value of the withdrawal of the claim of exclusion from a portion of this coast by Great Britain, I must take the liberty to repeat to this Court, that I may be sure that it does not escape their fullest attention, that the right to exclude us, independent of the Treaty of 1818, we do not, and never have acknowledged; and by the Treaty of 1818, we arranged it as a compromise on a disputed question. That claim to exclude is contested, difficult of interpretation, expensive, and dangerous. The geographical limit is not easily determined; in respect to bays and harbors, it is entirely undetermined, and apparently must remain so, each case being a case a good deal *sui generis;* and the meaning and extent of the power and authority which goes with that geographical extension beyond

the shore, whatever it may be, is all the more uncertain and undetermined. Under the Treaty of 1818, my country certainly did agree that she would not fish nor assert the claim to the right of fishing within three miles of a certain portion of this great bay. Great Britain, by the Treaty of 1871, has withdrawn all claims to exclude us from that portion; and we agreed that if there is any pecuniary value in that beyond the pecuniary value of what we yield, we stand ready to make the requisite compensation.

It is extremely difficult, certainly to my mind, and I cannot but think, from conversation and reading, that it must be to others, to determine the pecuniary value of a mere faculty, as we may call it, a faculty according to the Roman law, a liberty, perhaps, of endeavoring to catch the free-swimming fish of the ocean. What is its pecuniary value? How is it to be assessed and determined? Why, it is not to be assessed or determined by the amount of fish actually caught. That may be very small, or may be very large. The market value may be raised or decreased by accident; a war may so cut us off from making use of the privilege, that we should take nothing. It does not follow, therefore, that we are to pay nothing. Some cause, some accident, some mistake of judgment, may send a very large fleet here, at a very great expense of men and money; we may make a very large catch, more than we can dispose of, but the pecuniary value of that catch is no test of the value of the liberty of trying to catch the fish. Then, what is the test? Is the use made a test? Although, at first glance, it might seem that that was scarcely a test, yet I think that, on the whole, in the long run, if you have a sufficient period of time to form a fair judgment, if

your judgment is based upon the use made by persons who are acting for their own interests in a large market, then you may form some judgment from the use actually made. This case has been likened by the counsel for the Crown to one where an individual has hired a farm, and on the farm there is a house or dwelling, and he has not used it. Of course he has to pay for it, whether he uses it or not. It is at his disposal; it belongs there; it is fixed there, and he may enter it when he pleases, and it is of no account whether he does use it or does not. But if the question was, whether a certain region of a city and the buildings thereon were of real value or not, and it was brought up as an argument against them, that they were not wholesome and not habitable, certainly the fact that in the market, for a long period of years, purchasers or tenants could not be found, would be a very strong argument against their value.

Now, with reference to these fisheries, what is the value of the mere faculty or liberty of going over these fishing grounds, and throwing overboard our costly bait, and embarking our industry, capital, and skill, in the attempt to catch the fish? We venture to say, that we have had many years of experience, and that there have been long periods of time when those fisheries have been opened to us, and they have been closed for short periods of time; that from 1871 down to the present time we have also had a fair test; and when we show, by undisputed testimony, that the citizens of the United States, during long periods of time, and as a result of long experience, have come to the conclusion that they are not of sufficient value to warrant them, as merchants and as men acting for their own interests, to make much use of them,

I submit that we have brought before the tribunal a perfectly fair argument, and a very valuable test; because it is not what one man will do with one house; it is not what one ship-master or one ship-owner may fancy about the inshore or the outshore fisheries; but it is a question of what a large number of men, acting for their own interests, in a very large market, full of competition, will do. If, on inquiring into the state of that market, and the conduct of such men, who cannot be governed by any peculiar and special motive bearing upon this case, we have produced a fair and influential consideration, we claim that that is entitled to its fair weight. You might well say, perhaps, of a few fishermen of Gloucester, that so deep was their hostility to the British Provinces, that they would be willing to abstain from using these fisheries, just for the purpose of reducing the amount that this tribunal might find itself called upon to adjudge. But, if there should be one such man, so endowed with disinterested malice, I am quite certain that this tribunal will not believe so of the entire fishing community of buyers and sellers, fishermen and merchants, acting for a series of years, in view of their own interests. If, therefore, we have shown, as we certainly have, that the use of this Bay fishery, as an entirety, the whole of it, deep-sea and inshore alike, has steadily diminished in market value, that our ship-owners are withdrawing their vessels from it, that fewer and fewer are sent here every year, and that they have said, man after man, that they do not value the extension of the territorial privilege, where that extension is always inshore, bringing them into more dangerous and less profitable regions, — that being the case, we ask your Honors to consider all

this as fair proof of the slight value which is actually put, by business men, acting in their own interests, upon what has been conceded to us.

Now, what is this that has been conceded to us, or rather, what is this claim of exclusion from which Great Britain has agreed to withdraw herself during the period of this treaty? What is the privilege? It is the privilege of trying to catch fish within that limit. That is all it is. Now, if in company with this privilege, Great Britain had furnished the fish, so that we should not have to employ vessels, or men, or skill, or labor, or industry, furnished them to us on the wharf at Prince Edward Island, then there might be some analogy between that and a lease. What is it like? Is it like the value of a privilege to practise law? Not quite, because there always will be lawsuits, but it is not sure that there always will be mackerel. Suitors, irritated men, may be meshed within the seine which the privileged lawyer may cast out; but it does not follow that the mackerel can be. On the contrary, they are so shrewd and so sharp that our fishermen tell us that they cannot use a seine within their sight; that they will escape from it. But the lawyer is so confident in the eagerness of the client for a lawsuit, that, instead of concealing himself, and taking him unawares, he advertises himself and has a sign on his place of business. Suppose we were to compare it to the case of a lawyer who had a general license to practise law in all parts of a great city, but not a monopoly; everybody else had the same right; but he was excluded from taking part in cases which should arise in a certain suburb of that city, — not the best, not the richest, not the most business-like, — and which had lawyers of its own, living there, accus-

tomed to the people, who asserted a right to conduct all the lawsuits that might arise in that district. What would it be worth to a lawyer who had the whole city for the field of labor, plenty to do, to have his right extended into that suburb? What would it be worth if that suburb was an indefinable one, not bounded by streets, but by some moral description, about which there would be an eternal dispute, and about which the lawyer might be in constant trouble with the policeman? What would be its value? Who can tell? Or a physician or merchant. Suppose a merchant is asked to pay for a license to buy and sell, to keep a retailer's shop; everybody else has the same right that he has, and half the people are doing it without any license; but he is asked to pay for a license. What is it worth to him? Why, not much, at best. But suppose that the license was confined to the right to deal in Newfoundland herring. While everybody else could deal with other fish, his license extended his trade to Newfoundland herring alone. Why, his answer would be, "There are plenty of herring from other places that I can deal with. There is a large catch in the Gulf; there is a large catch on the Labrador shore; and what is it worth to me, with my hands full of business, to be able to extend it a little farther, and include the dealing with this particular kind of fish?"

None of the analogies seem to me to hold. Your Honors can do nothing else than first to look at the practical result in the hands of business men; and the result is this: to those who live upon the shore and can go out day after day, and return at night, in small boats, investing but little capital, going out whenever they see the mackerel and not otherwise, and coming

back to finish a day's work upon their farms, — to them it is profitable, for almost all they do is profit; but to those who came from a distance, requiring a week or a fortnight to make the passage, in large vessels, which the nature of the climate and of the seas requires should be large and strong and well manned, who have the deep sea before them, and innumerable banks and shoals, where they can fish, — to them, the right to fish a little nearer inshore is of very much less value. That is the position of the American. The other is the position of the Englishman. And the fact that we have steadily withdrawn more and more, from that branch of the business, is a proof that it is of little value.

Then, beyond that, I suppose you must make some kind of estimate, for I am not going to argue that the faculty is of no value. I suppose the right to extend our fisheries so far is of some value. I can find no fair test of it. But recollect, Mr. President and gentlemen, as I say again, that it is but a faculty, which would be utterly useless in the hands of some people. Why, it has been found utterly useless in the hands of the inhabitants of this Dominion. What did they do with it before they took to their day and night boat-fishing? What has become of their fishing vessels? Gone! The whole inshore and outshore fishery became of no value to them, until they substituted this boat-fishing, which we cannot enter into. Then, having before you this very abstract right or faculty, obliged to disconnect from it everything except this, — that it is an extension of the field over which we had a right to work, — you can get nothing, I think, upon which you can cast a valuation. Nor is it strictly analogous to a field for labor, because

a field for labor is a specific thing. When you buy it, you know what it will produce; and if you sow certain seed, you will get certain results; and then, having deducted the value of your labor, and skill, and industry, and capital, and allowed yourself interest, the residue, if any, is profit. That depends upon the nature of the soil with which you have been dealing. But nothing of that sort can be predicated of the free-swimming fish. They are here to-day and there to-morrow; they have no habitat; they are nobody's property, and nobody can grant them.

I have dealt with this subject as I said we were to deal with it; not to depreciate it unreasonably, but to analyze it, and try to find out how we are to measure it. And having analyzed it in this way, — which I am sure is subject to no objection, unless I carry it to an extreme; the methods which I have used in themselves are subject to no objection, — it cannot be strange to your Honors that the people of the United States said, through their government, that in securing from Great Britain her withdrawal of this claim of exclusion from these three miles, we did it, not for the commercial or intrinsic value of the right, so much as because of the peace and freedom from irritation which it secured to us.

And that leads me to say, what perhaps I should have otherwise forgotten, that in estimating the value to the people of the United States of the right to pursue their fisheries close to the shore in certain regions, you are not to estimate what we have gained in peace, in security from irritation, from seizures, and from pursuit. Those are the acts and operations of the opposite party. It is the value of the right to fish there, alone, that you are to consider. Why, if

you pay to an organ-grinder a shilling to go out of your street when there is sickness in your house, it does not follow that his music was worth that price. Nobody would think of considering that a test of the value of his music, if a third person was appointed to determine what it was. So, here; what we were willing to do to get rid of a nuisance, of irritation, of dangers of war, of honest mistakes, and opportunities for pretended mistakes, — what we were willing to pay for all that, is no proof of the price at which we set the mere liberty of being there peacefully and in the exercise of a right.

Your Honors will be glad to know that I am now going to take up the last point of importance in our case; and that is, the value of the free trade which this treaty has given to all the people of the Provinces. Recollect what that value is. It is true that in 1871, when we made this treaty, our duties were two dollars a barrel on mackerel and one dollar a barrel on herring; but our right was to make these duties whatever we pleased, — absolute exclusion, if two dollars and one dollar did not exclude. We had a right to legislate with a simple view to our own interests in that matter; and neither the Crown nor the Dominion could be heard on the floor of Congress. But we have bound our hands; we have pledged ourselves that we will put no duties on any of their fish of any kind, fresh or cured, salted or otherwise, or their fish-oil. They may, so long as the treaty lasts, be imported into any part of the United States without any incumbrance or duty whatever. Now, that the United States is the chief market for the mackerel of these Provinces, I suppose it cannot be necessary for me to refer to any evidence to remind your Honors. We

have had before us the merchants who deal most largely in Prince Edward Island, Mr. Hall and Mr. Myrick, and we have had two or three or more merchants of Halifax, who did not come here for the purpose of testifying against their own country, and in favor of the United States; and from all this evidence it appears conclusively that, with the exception of some inferior mackerel, ill-pressed or ill-cured, and not much the worse for heat, that may be sent to the West Indies to be consumed by slaves, the entire product goes to the United States. There is no market for it in Canada proper; and the merchants here, the dealers in fish, lie awaiting the telegraphic signal from Boston or New York to send there whatever of best mackerel there is, now that they are free from duty. I therefore think I may safely pass over the testimony introduced to prove that the United States is the great market. Some statistics were prepared to show that a duty of two dollars a barrel was prohibitory. In my view, it is quite immaterial. I cannot see how it is material, because, having the power to lay any duties we pleased, we have agreed to lay none, and the benefit to Great Britain, to these Provinces, and to this Dominion, is the obtaining of a pledge not to put on any duty, high or low, from a people who had the right to exclude the fish utterly, or to make their utter exclusion or their admission dependent upon our sense of our own interests from day to day.

The evidence presented by my learned friend Judge Foster, and by my learned friend Mr. Trescot, to show that two dollars a barrel was prohibitory, on the testimony of these gentlemen from Prince Edward Island, and from the leading dealers in Province-

town and in Gloucester, was certainly abundantly sufficient. I think those gentlemen from Prince Edward Island said that if those duties were re-imposed, they should retire from the business. Mr. James H. Myrick (page 432) in answer to the question, "I understand you to say that if the duty on mackerel were re-imposed in the United States your firm would, except for a small portion of the season, give up the mackerel business and turn to something else?" said, "That is my opinion, decidedly."

Then Mr. Pew, of Gloucester, testifies to the same effect; but I suppose there can be no doubt, under this weight of testimony. But the money charge against Great Britain is for the privilege of exemption from prohibitory duties, whatever may be prohibitory, whether it be two dollars or more.

Now, how was it, with this plain fact in view, that the learned counsel for the Crown were able to produce so many witnesses, and to consume so much time, in showing that they did not, after all, lose much by two dollars a barrel duty? Why, my learned friends who have preceded me have exposed that very happily. I fear if I were to say anything, I should only detract from the force of their argument; but I think it is fair to say, that it will rest on our minds after we have adjourned and separated as a most extraordinary proceeding, that so many men were found in various parts of the Island, and from some parts of the mainland, who came up here and said that the fact that they paid a duty of two dollars on a barrel of mackerel before they sold it in the States, which is their only market, did not make any difference to them. They said it did not make *any* difference. They did not say it made little difference, but

they said it did not make *any*. Now, if they had said, "We can catch the fish so much cheaper, because this is our home; we can catch them so much cheaper, because we catch them in cheap vessels and with cheap materials, close by where we live, that we can afford to undersell, to some extent, the American fishermen; and therefore the two dollars a barrel is not all to be counted to our debit," that would be intelligible. But these fishermen suddenly, by the magic wand of my learned friend, the Premier of the Island, and my learned friend who represents — I do not know in how high a position — the Province of New Brunswick, were all turned into political economists. "Well, my friend," says the learned counsel for Prince Edward Island, with that enticing smile which would have drawn an affirmative answer from the flintiest heart, "My dear friend, about this two dollars a barrel duty: does not that affect your profit in selling in Boston?" — "No," says the ready witness. — "And why not?" — "Why, *because the consumer pays the duty.*" Then the next witness, under perhaps the sterner — but still equally effective — discipline of the counsel from New Brunswick, has the question put to him, and he says, "No"; and when he is asked how this phenomenon is to be accounted for, he says, too, that "*the consumer pays the duty*"; until, at last, it became almost tedious to hear man after man, having learned by heart this *cantilena*, — "the consumer pays the duty," — perfectly satisfied in their own minds that they had spoken the exact truth, say that it did not make any difference.

What school of politicians, what course of public lectures, what course of political speaking, what

course of newspaper-writing, may have led to that general belief, or at least expectation, of those fishermen who came here as political economists, of course it is not for me to say. But I have observed one thing, that even with my limited knowledge of political economy, and under even my cross-examination, not one of those witnesses could explain what he meant by the phrase, "the consumer pays the duty"; nor could he answer one question that went to test the truth of the maxim. "Suppose the duty had been five dollars a barrel, would it have been true that the consumer paid the duty, and that it would not disturb you at all?" Well, they did not know but that, in that case, it might be a little different. "But the principle would be the same?" No, they did n't know how that would be. "Will the demand continue, at that price?" That they did not know, but they assumed it would.

The truth was, as the Court must have seen, that they were simple, honest men, who had a certain phrase which they had learned by heart, which they used without any evil intent, which they supposed to be true, and which, to their minds, cleared the matter all up. They seemed to think there was a certain law, — they did not know what, — a law of nations, a law of political economy, by which it came to pass, that, whenever they brought a barrel of mackerel to Boston to sell, the purchaser went kindly to the custom-house and paid the duties, and then, having paid the duties, was prepared to deal with the owners of the fish on the same terms as if he had not done so, buy the fish, and pay them just what he would pay an American; and by some law, some inexorable law, the duties were paid by this man; and

the duties having been paid by him, the owners might go into the market to sell as low as anybody else. I think the question was not put, but it might have been put to them: "Suppose the duty, instead of being laid by the United States, had been laid by the Provinces. Suppose the Dominion, for some reason or other, had laid a tax of two dollars a barrel on the exportation of fish to the United States?" — where would this political economist from Gaspé and from Shediac have been then? Why, certainly he would have had to pay his two dollars a barrel before his fish left the Provinces, and he would have landed in Boston with his barrel of mackerel, so far as the duties went, two dollars behind the American fisherman.

I suppose it to be the case, that the British subject can catch his fish and get them to Boston cheaper than the American can. I give them that credit on this calculation, and I hope your Honors will remember it when you come to consider what they have gained by the right to introduce their fish on free and equal terms with us. They are persons who can catch cheaper and bring cheaper than our own people. However, without reasoning the matter out finely, we must come to this result: that if the American can supply the market at the rate of twelve dollars a barrel, and make a reasonable profit, and the Canadian can furnish his fish at the rate of eleven dollars and make a reasonable profit, and has two dollars duty to pay, he is one dollar behind, and so on. This is an illustration. It must ordinarily be so. And the only time when it can be otherwise is when the American supply fails, and fish become very scarce. I am sure that when I began the investigation of this case, I should have thought that it was in the main true,

that as fish became scarce on the American coast, and from the American fishermen in the Bay everywhere, the British fishermen coming in there could, perhaps, afford to pay the duty and still sell. But such is not the result. The figures have shown it. That has been proved. The difficulty is, that mackerel is not a necessity. It is not British mackerel against American mackerel, but it is British salted mackerel against every eatable thing in nature, that a man will take to rather than pay very high prices. And it is true that fresh fish are more valuable and more desirable than salt fish; that fresh fish are increasing in number; that they are brought into market in quantities, ten, twenty, a hundred per cent larger than they ever were before, and that the value of the salted mackerel is steadily and uniformly decreasing.

They brought men here, also, who stated, under the same influence, that they would rather see the duties restored, and have the three-mile fishery exclusively to themselves, than to have what they now have. But I observed that the question was always put to them in one form: "Would you rather have the two-dollar duty restored?" The question was never asked them: "Would you rather go back to the state of things when the United States could put what duty upon your fish they might see fit, and preserve your monopoly of the three miles?" No man would have answered that question in the affirmative. I venture to say, may it please this learned tribunal, that no man of decent intelligence and fair honesty could have answered any such question affirmatively. And those who said they would rather go back to the same state of things testified under a

great deal of bias; they testified under a very strong interest, on a subject right under their eyes, which they felt daily, and which they may have been made to feel by the urgency of others. They did not suffer at all. It was not they who suffered from the attempt to exclude us. It was amusement to them, though it might have been death to some of us; and they imagined that if they did not have the duty to pay, which they all based their answer upon, of course they would rather go back to free trade and exclusion, for in their minds it amounted to that. They had not the duty to pay, although one was laid; and of course with no duty to pay, they would rather go back to that old state of things, and have the exclusive right to fish within three miles. I think that illusion may be safely predicated of nearly all the witnesses brought upon the opposite side, by the counsel for the Crown.

A good deal of time was taken up on each side in presenting extracts from the speeches of politicians and parliamentarians, and men in Congress, as to what was the real value of free trade in fish, and the real value of the right to fish within three miles. Some extracts were read by the learned counsel for the Crown from speeches made by certain members of the American Congress, who had a point to carry; and some arguments, much stronger, were produced by us from members of the Dominion government, who also had a point to carry. I do not attach the very highest importance to either of them. I hope I am guilty of no disrespect to the potentates and powers that be in saying that, because I have always observed that men in public life who have points to carry will usually find arguments by which to

carry them, and that their position is not very different from that of counsel, not before this tribunal, but counsel in court, strictly speaking, who have a point to maintain, and who have a verdict to get, because, woe to the statesman whose argument results in a majority of negatives, because he and his whole party, under the Dominion system, go out of power. It is not so with us. Our members of Congress speak with less responsibility. They do not represent the government in the House, nor do they represent the opposition in such a sense that they are bound to take charge of the government the moment those in charge fail of retaining public approval. Our politicians, even in Congress, are a kind of "free-swimming fish." They are rather more like a horse in a pasture than like those horses that are carrying the old family coach behind them. They feel more at liberty.

When we consider that the Dominion parliamentarians speak under this great responsibility, and meet an opposition face to face, who speak under equal responsibilities, when we consider that fact, and the number of them, and the strength of their declarations, all to the effect that the Provinces could not survive our duties any longer, and that in giving up to us the right to fish within the three miles, much was not surrendered, I think your Honors, without reading it all over, or comparing these arguments, argument for argument, may say at once that whatever weight is to be attached to them, far more weight is to be attached to the utterances of the British officers than to the few American politicians who may have lifted up their voices on this subject, in their irresponsible way. Moreover, — your Honors cannot

have forgotten it, — the fishermen of Provincetown and Gloucester remonstrated against this Treaty of 1871. They remonstrated against it as hostile to their interests. Be it so. They were good judges of their interests. They stated that taking off the duties would make the fish cheap. They thought so; and they did not consider that the right to fish (and they were fishermen, and knew their business) within the three miles was any compensation for that. And the remonstrance was made at the time, and it was earnest. The men went to Washington to enforce it. While men dealing in fish remonstrated against this concession, the officers of the British Crown, who were responsible, and whose constituents were fishermen and fish-owners, along a certain line of the Provinces, were contending earnestly for the treaty, as beneficial, absolutely, to the Provinces.

Well, it has been said that they knew all the time that there was money to be paid. They knew no such thing. They knew there might or might not be money to be paid, because this tribunal does not sit here to determine only the *quantum* that the United States shall pay, but first and foremost to determine whether anything shall be paid, and as to that, these officers of the British Crown could not pass any judgment. It certainly has abundantly appeared in this case, that the exportation of fish into the United States, and the value of the fish here, has risen and fallen steadily, and almost uniformly, with the right of free trade, or the obligation to pay the duty. From 1854 to 1866, when there was free trade in fish, and we had the right to fish where we pleased, and they had free trade, and sent their fish to the American markets, immediately their mackerel fishery increased in

value. Their boat-fishing, instead of being a matter of daily supply for the neighborhood, developed into a large business. The boats were owned by merchants, large quantities were shipped from them, and the business increased twofold, threefold, tenfold, as one of their own witnesses has stated, stimulated by the free American markets. I am reminded that the witness said it had increased an hundredfold. Your Honors will perceive my moderation in all things. The witness to whom I refer is the fellow citizen of our friend the Premier of the Island, Mr. John F. Campion, and I think he recognized him immediately upon his appearance on the stand: —

"Q. You say that the number of boats and men engaged in the shore fishery have increased; has the catch increased to any appreciable extent? A. It has increased to the same ratio as the boats.

"Q. In quite the same ratio? A. Yes.

"Q. To what extent did you say the number of boats had increased — 100 per cent? A. I would say that this has been the case within the last ten years."

"*One hundred per cent*," says Mr. Campion, from Prince Edward Island. He says this increase has taken place within the last ten years; but he does not undertake to define how far that increase began before 1866, whether it continued in the interval between 1866 and 1871, and how far it was resumed afterwards. But we find that five years after the conclusion of the Washington Treaty, the boat-fishing had increased one hundred per cent; and we know that it is the freedom of trade in fish that has made the boat-fishing of those islands; that has brought about their increase in size, which every witness has testi-

fied to who has been asked the question. I do not know whether my learned friends have asked the question or not, but we have asked it, and it having been testified to by two residents there, Mr. Hall and Mr. Myrick, and the counsel for Great Britain, having had ten days allowed them to bring rebutting testimony, brought none, we may therefore consider that matter as settled, that their growth has been largely in boat-fishing, — in the number of boats, the number of men employed, the quantity of the catch, and the amount of capital invested, — and that an examination will show that it is to the freedom of trade in fish that they owe it entirely.

I will read a few words to your Honors from Mr. Hall's testimony, who has had very large experience, living — or if not living, doing business — on the northern part of the bend of Prince Edward Island.

Then we have the testimony of Mr. James R. McLean of Souris, P. E. I., called by the other side, and coming from the strongest point in favor of compensation, that is, the bend of the Island.

There has been put into my hands what may be called an "account stated" on this subject of the balance between what is gained by the Provinces by the removal of the duties, and what we gain by the extension of our right to fish. The principle on which it is made up is most unfavorable to us. I do not think it is a sound one; but some persons may. At all events, it is the most unfavorable to us: —

GREAT BRITAIN

To UNITED STATES, *Dr.*	
To saving of duties on fish and fish-oil for 12 years, averaged from the returns of '74, '75, and '76, from Appendix O	$4,340,700.00
Cr.	
By value of mackerel caught within 3 miles of coast for 12 years, at $3.75 per barrel, allowing one-third to have been taken within 3 miles of the shore, and assuming the catch for each year as equal to that given in the Port Mulgrave returns for 1874 (63,078½ bbls.). . .	$1,046,177.50
Balance due United States	$3,394,522.50

We were obliged to take the Port Mulgrave returns for the year 1874, because, as your Honors will recollect, nothing could extract the returns for 1875 and 1876 from the hands of the British counsel. No words of advice, no supplication, no bended knees, — nothing could get from them those returns, so favorable to the United States; and we took the returns of 1874.

But, supposing it to be true that the exporter does not pay all the duties, — of course nobody believes that he pays nothing; but give him the fairest possible chance, supposing he pays one-quarter, and the consumer pays three-quarters; the result then is that against $946,177.50 credited to Great Britain, we put one-quarter of the United States duties remitted, $1,085,175, and it leaves a balance of $138,997.50 in favor of the United States.

So that, bringing this matter as far as statistics can bring it, getting the value of the fish in Prince Edward Island, irrespective of the labor put upon it afterwards, assuming one-third of the fish to be caught

within the three miles, and to be of equal value with those caught outside, which certainly is not true; and supposing that of the duty of two dollars a barrel, only one-quarter is paid by the exporter, still the balance remains in favor of the United States. If, gentlemen of the Commission, such is to be the mode of treating this subject, by taking values, and balancing one against the other, that is the result.

I do not suppose, myself, it is possible to arrive at any satisfactory result by any such close use of statistics, on the other side or on ours. But a few general principles, a few general rules for our guidance, certainly are to be found in all this testimony and in all this reasoning. You have the United States able to put on what duties it pleased. You have its actual duties at two dollars per barrel, substantially prohibitory, which everybody said was prohibitory, except those deeply-instructed political economists who came here with the impression that some good friend paid the duties for them, to enable them to get into market on equal terms with everybody else. That you have with certainty. Against that, you have the most speculative opinion in the world; and that is as to the value to us of a franchise, or a faculty, or a privilege, or a liberty, to pursue the free-swimming fish of the ocean a little farther than we ordinarily pursue him, with every vessel of ours coming into competition with fishermen from boats, who have every advantage over us, and to ascertain the value of that franchise, privilege, faculty, or whatever you may call it, irrespective of all the capital or industry that must be employed in its exercise.

I came here with a belief much more favorable to the English cause,—I mean, as to what amount, if

any, Great Britain should receive,—than that with which I leave the case. The state of things that was developed was a surprise to many; the small value of the extension of the geographical line of fishing to our vessels,—I mean, to vessels such as we have to use,—to the people of the United States, and the certain value that attaches to the Provinces in getting rid of duties, has given this subject an entirely new aspect, and has brought my mind very decidedly to a certain opinion; and I am not instructed by my government to present any case that I do not believe in, or to ask anything that we do not think is perfectly right; and the counsel for the United States are of one opinion, that when we ask this Commission to decide that there is no balance due to Great Britain, in our judgment, whatever that judgment may be worth, it is what justice requires the Commission should do.

I have finished what is my argument within the time which I intended last night; but, Mr. President and gentlemen, I cannot take leave of this occasion, and within a few days, as I must, of this tribunal, without a word more. We have been fortunate, as I have had the pleasure to say already, in all our circumstances. A vulgar and prejudiced mind might say that the Americans came down into the enemy's camp to try their case. Why, gentlemen, it could not have been tried more free from outside influence in favor of Great Britain, had it been tried in Switzerland or in Germany. This city and all its neighborhood opened their arms, their hearts, to the Americans; and they have not, to our knowledge, uttered a word which could have any effect against the free, and full, and fair decision of our case. We have had the utmost freedom. We have felt the utmost kindli-

ness everywhere. The counsel on the other side have met us with a cordiality which has begun friendships that, I trust, will continue to the last. I can say, in respect to my associates in this case (leaving myself out), that America has no cause to complain that her case has not been thoroughly investigated by her agent and counsel, and fully and with great ability presented to the Court; and I am certain that Great Britain and the Dominion, represented here by an agent from the Foreign Office, devoted to the work before him, assisted by the constant presence of a member of the Dominion government, largely acquainted with this whole subject, and with five counsel, one from each Province of the Dominion, all capable, all indefatigable, with knowledge and skill, cannot complain that they have not been fully and ably represented. But, after all, the decision, the result, depends upon you three gentlemen who have undertaken, two of you at the request of your respective countries, and His Excellency at the request of both countries, to decide this question between us.

It has been said, I have heard it, that your decision will be made upon some general notion of what, on the whole, would be best for the interests of the two countries, without much reference to the evidence or to the reasoning. Mr. President and gentlemen, we repudiate any such aspersion upon the character of the Court. We know, and we say it in advance, not that we hope this tribunal will proceed judicially, and decide in accordance with the evidence and the weight of reasoning, but that we cannot allow ourselves to doubt it. We may venture to congratulate your Honors and your Excellency in advance, that when this decision shall have gone out, whether it

give pleasure or pain to the one side or the other, the question will have been decided upon those principles which it is manifest the treaty determined it should be decided upon, not from some local or national view of policy for the present or future; not for the sake of what some persons hope may by-and-by result in something better than the present treaty; but that you will have confined yourselves to exactly what the treaty asks and empowers you to do, — to determine what is now the pecuniary result of the contrasted articles of the treaty. On such a determination of the controversy, whatever may hereafter follow from it, each of your Honors will know that you have been governed by principle, and by that strict rule of conduct which alone can give a man peace at the last.

LETTERS FROM A FATHER TO A SON

Richd H. Dana Jr

XVI

LETTERS FROM A FATHER TO A SON

Note by the Son

One problem, ever old and ever new, taking each generation substantially unprepared, is the treatment of a son by his father. Of course, each new father ought to be prepared, but rarely is he. What father, having brought up a family with boys, has not wished in the retrospect to have corrected mistakes? A father who feels otherwise is pretty surely a bigot to his own past. I suppose one explanation for this state of unpreparedness is that few realize the real psychological crisis there is in early childhood. Again, the father is usually preoccupied in earning the support of his wife and coming children, in making a home, in establishing his own career and laying the foundations of hoped-for success in hard work.

Besides that, the problem is not a simple one. It is many-sided. A father who thinks he has solved it with his first son finds it far from solved when he applies his first theory to a second boy; and the poor father may have to doubt all his theories when he comes to the sixth child, if he be so happy as to have six.

The old woman who lived in the shoe, had, to be sure, but one solution for all, and that is the humor of the rhyme; but had she taken her multifarious task thoughtfully, she would have found that the forty-second, if that is the number with which her children stopped, would have given her wearied brain a new task.

Complicated as the problem is as applied to different boys, there are yet some general principles of pretty universal application, which are only too often overlooked. Anything, therefore, that will aid a father in solving such problems is worth a sacrifice of personal feelings and the exposure of private failings

by a son who owes so much of what he is not and pretty nearly all he is, to the wise treatment by his father.

My father's first four children were daughters. On the birth of the second, his journal shows how he philosophized himself and his wife into a state of content; but says, nevertheless, "I should like to train up a son." As a preface to these letters to me, I have decided to show what his idea of "training" was; and the more am I led to take this course by the fact that I have told several perplexed fathers, who came to me for advice, the story of my father's treatment of me, and in every case with signal profit, — more than one father having thanked me with tears in his eyes for the reclamation of his son's confidence and affection, brought about by adopting a similar course. Also this will show a side of my father not to be seen in the Biography or Speeches.

At the tender age of eight, I exhibited traits such as have led many a boy, less fortunate in his father, to the career of a criminal and outcast. At this time, I played chiefly with boys from one to two years older than myself, and in justice to my parents' care and forethought, I should add that they were sons of most estimable persons. I had such pride and delight in being taken into their circle, that I stood ready to repay this mark of esteem by utter loyalty to their wishes.

Playing fireman with a garden water-barrow, such as was used in those days, for an engine, we wanted some sign of office, which we thought should be swords; and we could use these swords also, in those ante-bellum days, playing soldier, but for the latter purpose we wanted, above all, a gun. We found that a neighbor had some brass stair-rods not then in use, which we could convert into swords, and also a shotgun, with powder-horn and percussion-cap box, all kept in the L of his house. These we longed to possess, the latter for shooting birds as well as for parading and drilling, to say nothing of satisfying a craving to possess something so important and manlike. I well remember how it was suggested that I should do the breaking [1] and

[1] Lifting a latch in order to enter by a door for an unlawful purpose is "breaking."

entering, and how flattered I felt at being chosen for the task. We all went into a dense copse of fir trees near the house to be looted, and I, leaving the others behind, crept forward along the ground, under cover of the branches, until in plain sight of the L where the coveted things were kept. Watching each window and seeing no one in sight, I got up and boldly sauntered along over the short intervening space, lifted the latch, opened the door, entered, and soon came back with the brass rods and some bright colored chemicals in glass bottles. These latter had fascinated my eye. I had seen Professor Horsford kindly entertaining a party of children with experiments in chemistry. He brought forth wonderful colors from simple mixtures, and told of the marvels that could be produced by chemicals. The chemicals which had caught my eye were not exactly the same he had used, but they were as bright in color, and brought to the imagination vague but exciting possibilities of making gunpowder perhaps, and of I hardly know what else.

Laden with this booty, I was praised for my courage and called a "brick." This stimulated me to fresh venture, and a few days later, following the same tactics from the same copse, I returned to my companions with the longed-for gun, powder-horn and cap-box, which we concealed beneath the trees until, under cover of darkness, we got them to the hiding-place in the shed of the house of a *particeps criminis*. Some week or so later, we learned that the owner was making inquiries among his neighbors about the gun, and that the boys of the vicinity, including ourselves, were suspected. I took the powder-horn and sunk it in a ditch to avoid detection. In all this I felt no guilt; there was an exhilaration, a suppressed excitement, a sense of power in the doing. The only uncomfortable feeling I then experienced was fear of ultimate detection, which, however, I thought remote. Of course, we all promised not to betray one another.

The hardest trial came when I was questioned by my father, who had been told of the loss and the suspicion attaching to our "gang." Here I did feel guilt. My father had always trusted me, and instructed me to tell the truth at all hazard. However,

though I hated to do it, though it gave a wrench to my heart which I distinctly recall to this day, I shielded my fellow thieves with so confident a manner and so straight a look of the eye, that my father did not doubt my word. No thought crossed my mind of shielding my confederates by false accusation of myself, as does the Figlia di Iorio of d'Annunzio. It was only a question of standing by our compact of secrecy, or telling the whole truth in detail. Nor could I have succeeded by confessing my part alone and withholding the names of the others, as Harry did in "Daisy Chain." It was known who were my constant and, at that time, only playmates, they had been seen with me near the locus and about the time, and they had possession of most of the articles. Soon after, I forget just how, my companions were found out. They confessed all, and I was brought to book as well as they.

Here was just cause for moral indignation. I had not only stolen, but had lied with a straight face to a trusting and devoted father. Now, then, what course should this father pursue? On account of the very intensity of his feelings, he decided to wait. He followed the precept of the Koran, — no judge should settle a matter in anger. Some hours later, he called me into his study. What he had been doing before I came in I do not know, but I believe he had carefully thought it out, and I doubt not, judging from his habits, gone on his very knees in a prayer for help and strength and guidance, to be at his best in this crisis of his boy's life. When in his study, I was told to sit down. He kept on writing for some fifteen long minutes, giving me time for reflection. Then he turned from his upright desk at which he had been standing, and spoke quietly, slowly and seriously. To my surprise, instead of fiery wrath, which my school-life had led me to expect, he began with some words of appreciation, saying he had observed my efforts to control my temper, my affection for and obedience to my mother, what he believed to be my real, underlying, good qualities, which, as he told them, were more than I had ever recognized in myself. Then he spoke of what he hoped for me, his only boy, the only grandson of his father, and of the characteristics for honor, integrity and truth in my ancestors.

Then he showed sympathy for my special temptations in this case; how he understood I had been influenced by older boys and that I had felt obliged to stand loyally by them. This was followed by calm yet strong reproof, but of a kind that left open the door of hope. He impressed on me the seriousness of what I had done. He showed how it was my duty to refuse to be flattered into wrong by other boys, how to show my pluck and courage by standing out for what was right and true, and not by doing and standing out for what was wrong and false. Then he spoke of his disappointment in my "falsehood" to him personally. I noticed that he did not call it a "lie," though it was one. He did not shelter a harsh word behind the proverbial "spade." He then asked me to speak for myself. So much had he himself said for me that I had nothing to add. I was reduced to tears of contrition. His patience, love, appreciation, over-appreciation of my good points, his sympathy and consideration, in this one interview, raised in my little soul a reciprocal love and devotion which made my father, from that day, my close friend and admired confidant, for the rest of his life.

This did not work at once a complete reformation, as I shall show. I still had faults to overcome and failures to repent of. The next year, during my father's absence on a trip round the world, I got into a scrape and suffered a gentle whipping, some mortification and, worst of all, the shame and regret of bringing tears to the eyes of a dearly beloved great-aunt. Yet, withal, my father's treatment gave me a fidelity to him, a desire to please him, to realize his hopes, that served as an underlying motive which in the main was supreme. To *him* at least I was loyal, though far from fulfilling all his wishes for me. Judging from this experience of mine, I believe that many a lad has gone wrong, not from love of wrong itself, perhaps even without the consciousness of being bad, but because his love of adventure, of exercising pluck, ingenuity and resourcefulness, and his loyalty to friends, have been accidentally determined in a wrong direction, perhaps for lack of higher ideals presented in a way to attract. This experience of mine has given me a deep interest in Judge Ben B. Lindsey's successful dealing with young delin-

quents in Denver, in the George Junior Republic, in the methods of Miss Alice Freeman at Wellesley, and of Secretary Bolles and Dean Briggs, and in the new plan of students' council now being tried at Harvard. Let me add, for fear of being misunderstood, this "dealing" and these "methods" do not mean mere lazy leniency, but the inspiring with high ideals, a task much more difficult, as it is in the end more profitable, than punishment alone. Nor do I believe that punishment should always be omitted in the scheme of training a son.

Though, as I have already said, often whipped at school, only once did father himself resort to corporal punishment, and that chiefly, I believe, that the sense of force might be behind to help the weak endeavor. The circumstances were as follows. My parents being both away for the day, my elder sisters assumed an authority not delegated to them either expressly or by implication. In some small matter, not involving anything in itself wrong, I refused to submit, and as I continued to oppose what I thought to be both unauthorized and unreasonable commands, they called the servants to assist. I was then just under nine years of age. Finding myself surrounded by this "force majeure," interfering with my liberties, I rushed to my father's wardrobe, got his long sabre and his Colt's revolver, which was loaded and capped, and, cocking the hammer, I aimed the pistol at my enemies and held them at bay all the afternoon. As the daylight faded, my courage began to fade with it. I wished myself well out of the situation my pride would not let me abandon. I knew my father would soon be coming home, and before long I heard the front door open and shut, and his step and voice in the hall. To him I surrendered, side-arms and all. He refrained from words, other than to tell me to take my supper in my bed-room alone. An hour or two later he came up and talked the whole matter over. He had given himself, as well as me, time for reflection and calm. We came to the conclusion (I say "we," as I was consulted) that I had better be punished. When the blows came, they were real and hurt; but there was no anger, open or concealed, none of the "It hurts me more than it does you," and no degradation. I had pleaded guilty and joined in the

sentence. As part of the punishment, I also apologized to sisters and servants, for subjecting them to fear and danger.

Bringing to bear sympathy and appreciation in dealing with a son is apparent enough, but what may escape the reader's notice is the giving of ample time. How many a parent has "meant well, tried a little, and failed much," as the pathetic epitaph near Lakewood reads, because he has been too "busy," forsooth, to give enough time and thought to the most important business of his life. The faults and waywardness of a child are so annoying, they come at such inconvenient times, they are such interruptions, they seem to "pester" one so, that the instinct is to brush them away like a swarm of flies, with some hasty words uttered, perhaps, in the presence of others, leading to injured pride, self-defense, heated argument, and estrangement. What is needed is the assignment of time, at an appropriate place and alone with the child, without hurry or interruption, and as much thought as is required, let us say, to suppress ravages of gypsy moths or to destroy the breeding places of mosquitoes.

When nearly ten years of age, I had the great privilege of making some new, delightful friendships, chiefly with Daniel C. French, now the famous sculptor, William Brewster, the celebrated ornithologist, John Nichols, the successful and upright man of business in New York, and with others less intimate, including the two Russells, the late Charles Theodore, lawyer and Civil Service Commissioner, and Joseph B., the public-spirited, high-minded man of affairs.

As I grew older, at about the age of twelve or thirteen, my father told me those things a son can best learn from his father, warning me against picking up what usually amounts to misinformation on such subjects from other boys on street corners, and urging me to come to him or the family doctor if and when I needed further knowledge, and otherwise to dismiss such subjects from my mind by keeping it busy with interesting topics, whether of work or play. Perhaps such a course was all the more natural and easy for him on account of his high ideals of life. After his death, I met a close friend of his, living in London, who

had seen him intimately on every visit he had made to England. This friend said, "I wish to have the pleasure of telling you that your father was the whitest soul I ever met."

Dr. Hamilton Rice, in a recent address before the Harvard Travellers' Club, about his last trip among the savages at the source of the Amazon and Orinoco, spoke of the good family relations of the natives; and, what specially thrilled me, was his account of how the father trained his son, and how the son was the companion of his father in all his enterprises. In our civilized and complicated life, this close companionship is not so easily arranged. In our case, there were the claims of two families, his father's and his own, living in different places. We were the only two well men of both families, so we often had to be separated, even in vacation; and when at last I got through my education and started with him in the law, as I was the fifth child, he was then becoming old and had to go abroad for his health, after six months only of that delightful companionship in work. I cannot pass over this companionship in work without saying with how much deference he, a man of his legal learning and experience, listened to every suggestion from his juniors, including myself, — nay more, suggestions he courted.

Out of his busy life, he made opportunities to be with me and his other children. He gave time to repeat poetry to us, to explain, in his wonderfully clear way, many things natural and legal, and to tell interesting and amusing anecdotes at table. He contrived to take a long walking trip with me through the White Mountains, while I was on a vacation from St. Paul's School. Sunday afternoons he read with me. We conned Horace's Odes, which were wretchedly presented by my instructor at Harvard, we read Milton's "Paradise Lost" twice in full, and selected parts oftener, "Paradise Regained," "Samson Agonistes," much of Bacon's "Novum Organum," some of Coleridge's philosophy, Edmund Burke's orations, and other poetry and philosophy, interspersed with or followed by most illuminating and delightful talks. We frequently read the Second Lesson or the Gospel for the day in the Greek, Latin, or French testament. As was customary with many men of his own time, he preferred

to re-read, dwell on, and absorb some of the best things in literature rather than seek for the new, or less good of the old.

But Mr. Dana's "training up a son" was by no means an approach to coddling. On all but stormy days, the children were sent out for a short run, usually in the garden, before breakfast. He wished his son to be manly and self-reliant. One evening he found me reading the "Arabian Nights" into what were for me late hours. I had my mind filled with genii and Aladdin lamps and a general upsetting of the laws of nature. I believe I was about eight years old. He told me to go out for some fresh air before going to bed. As I passed down the path, I neared the high gate-posts. Each was topped with a large white wooden ball. On these balls points of light glittering through the foliage came and went, or moved slowly to and fro. Suddenly to my horror, instead of balls of wood, they seemed heads of genii, glaring at me with flaming eyes and ominous smiles. I slowly backed towards the front porch, and then, when near enough to be safe, turned and ran into the house. My father, seeing the situation, ordered me to go out again and conquer my excited imagination, and to do it alone; and alone I walked down the path, passed the posts, which had then resumed their *têtes de bois* with flickering light, but trembling lest the genii should reappear. I took a short run and returned, again alone passed these posts, my misgiving eyes glancing from one to the other, but I presume I was more self-reliant from conquering my fears, though I was mighty glad to get back safe in the house with others about me.

I used to sleep in a finished attic room, leading out of an attic hall. This hall got its daylight through glass panels in the upper part of three doors opening into three attic rooms, one of these rooms being unfinished. In this unfinished room was the gymnasium, with its "horse," ladders, side-weights, etc., piles of trunks, and open eaves leading to dim distances containing for us, when young, dim horrors which even at ten had not entirely disappeared when alone at night time or in my dreams. Mounting the attic stairs bedward, with a lighted candle in my hand, as my head came on the level of the floor, I saw, under a bed in this attic hall, a man, with boots toward me. Back I turned and

began to descend, not too fast at first; for fear of exciting suspicion and inviting pursuit, I moved as if I had merely forgotten something and wished to go back to get it, until I was on the second flight down, and then I ran pell-mell into the dining-room where the elders were all sitting before the fire, closed the door behind me, and told what I had seen. My father said I was growing up to be a young man and must not yield to fear; it was probably imagination, some bundle or the like under the bed; and back I was sent alone, though with the promise of support from a rear-guard in case of need.

Well! I mustered all my courage, or rather bravado, and went back making more than usual noise, stepping heavily like a grown person. When my eyes were level with the attic floor again, I peered round the corner. There was the bed and the floor under it, but no man in sight! I had not even the consolation of seeing a bundle or anything else that could be taken for a man under the bed, not the smallest thing; but this absence of anything was not altogether reassuring. What had become of the man? As I passed the door of the unfinished attic, with its two glaring eyes of upper glass panels, I had a horrible suspicion that the intruder had transferred himself into this unfinished attic, and might be watching me from these same glass panels; nor, after I was inside my own room and had shut the door, was I altogether comfortable at the two glass eyes in that door, which drew my attention with a fatal fascination while undressing and in bed, until I fell asleep.

To this day I feel sure there was a real man under that bed. He must have been warned by my rapid descent of the lower stairs and taken flight while we were discussing the matter in the dining-room. I do not think it can have been all imagination, for I have never imagined an object out of the whole cloth. There has always been at least a sheet hung near a window and flapping in the breeze, or wooden gate-post balls with glittering points of light, or some such basis of my boyish fears.

My father encouraged me to take all the ordinary, small risks of games and sports on land and water with all my companions, and I had my full share of narrow escapes. There was never,

however, any suggestion of extra caution as being the only son and grandson, not even after I had been hauled out of the Botanic Garden pond where I had been fishing, and had been brought home in a wheelbarrow, dripping wet and apparently half drowned, at the age of six; nor after I was partly stunned and nearly drowned from striking my head on the bottom of Glacialis, diving in shallow and muddy water; nor after two serious falls from high trees; nor on being hit by stones in one of the fights between the followers of Engine No. 1 and of the East-Cambridge engine; nor after falling through thin ice while skating; nor after some narrow escapes at the great Boston fire, even though a cousin was killed by a falling building close to where I had just been.

The same cynic may say: "Oh, yes, this is a clear case of neglect on the part of a man absorbed in politics and law!" Lest this may be thought, let me quote from Mr. Dana's journal of June 3, 1855, showing the real anxiety which he kept concealed from his only son, the object of his care. "During the last few weeks, we have had unusual sickness and some perils and deliverances in our household . . . the next day week . . . our dear boy, the darling of our hearts, fell from his nursery window, second story, to the ground, and although he was picked up and found to be in his senses, conscious and apparently unhurt, yet for several days we were anxious about him, but by the great mercy and blessing of God, he suffered no injury whatever. There are two windows to his nursery on that side, one directly over the stone steps to the cellar and the other over the soft grass. He fell from the latter."

He urged on me principles of courtesy, nay, chivalry, towards women. As to religious instruction, the letters and parts of Adams's Life speak for themselves.

He warned me against any aristocratic tendency or reliance on family alone. He said, "Do not be misled by the dear, good women at Chestnut Street" (my grandfather's house); and, dropping quotation marks, as I do not remember his exact words, he continued somewhat as follows. First, as a matter of fact, ours is not a great family, though he believed it to be an

honorable one. The Danas of Piedmont, Italy, if (as at that time he thought likely) we are descended from them,[1] were educated men, several having been professors in the University of Turin in various generations; but they were not noble, there was no "castle," and the town of Dana at the family home was but a hamlet. He said that the first settler in this country, Richard Dana, and his sons, were but farmers and local magistrates. The others in the direct line have, to be sure, been Harvard graduates, and have taken part in the struggles for liberty. One has been a delegate to the Continental Congress, signed the articles of confederation, has been an unaccepted Minister to Russia during the Revolutionary War, and was Chief Justice of Massachusetts. There were in the maternal lines also two colonial governors and a signer of the Declaration of Independence; but none on either side has held any really great position. There has been no President of the United States, no Cabinet officer, no judge of the Supreme Court at Washington. Fully half the people you meet, said he, of the old American stock, have as much, and many have far more, to be proud of. But second, and more important, he told me, is the danger to a young man of relying upon what his ancestors have done instead of doing things himself. In so far as high character, education, and devotion to country in one's ancestors may stimulate a young man to imitate their careers and fear, in words that come from the very dawn of poetry, "to bring shame on the stock of the fathers," these may well help him. It is said, "Blood tells"; but as far as that means anything, it means that it tells in what the descendants are and do, and not in what they are not and do not. In short, a family good name is a blessing or a curse, just as we use or abuse it. These may seem platitudes, said he. Perhaps they are; but, in the words of the Massachusetts Bill of Rights, "A frequent recurrence to the fundamental principles" is "necessary," and, unfortunately, on this subject, only too necessary. So many Americans, and in growing numbers, are turning good family names into claims of superiority and

[1] For various reasons, the theory of Italian origin is pretty much abandoned by the genealogists of the family.

submitting themselves to ridicule. I am sure, said he, you will not be of this number.

As to some of the dangers of our times, he taught me to believe that science, philosophy, art, literature and the brotherhood of man were the glory of the human race; but luxury its debasement.

So much for precept; but how about example? As I have said, Mr. Dana's religious feelings and opinions are pretty well expressed in the Life by extracts from his journals and letters, and there it is also shown how "punctilious" he was in all religious observances. The epithet "punctilious" doubtless would have offended Mr. Dana, for all religion had to him a real meaning. It was a help and inspiration to his life, and there was, in the morning, family prayers, which he kept up with few periods of omission, and the grace said at meals, a simplicity and naturalness that were far from anything sanctimonious or formal, which he ridiculed and abhorred. He attended church twice on Sundays in the earlier years, usually but once in the latter part of his life. In Lent he managed to give some time to weekly services. Bishop Grafton tells how he, as a young man, was impressed by Mr. Dana's stopping on his way to his office, with green bag in hand, joining in the morning service or kneeling in silent prayer for a few moments.

In his daily contact with all the household, he set us an example of being most considerate, thoughtful of the domestics, and to his wife truly chivalrous. Never have I heard an unkind word to his wife, none of the thinly veiled sarcasm, persistent arguing, or unfavorable allusions to "women," none of the painful laying of grievances before guests, none of the funny stories that set wives at a disadvantage, so common, even among those classed as gentlemen, in the far too numerous "Bickerman" and "Retort" families, both in America and abroad.

He kept up the romance of married life to the end. Describing, "after nearly a year," the return from the marriage journey, he writes in the journal[1]: —

[1] The journal is headed as follows: "A correct account of all such my acts, thoughts and feelings as I am willing to have known to anyone into whose hands this may come."

"Those are either vulgar, or weak, or ill-matched persons, to whom what is popularly called the 'honeymoon' is the envied part of married life. Confidence, respect, tenderness and devotion will increase as life goes on, if there is ground to rest such sentiments upon, and capability of feeling them in each of the persons united. A true man and woman may be and sometimes are always lovers. The deference, tenderness, respect and the romantic and chivalrous devotion need never fade away. They never will between two persons really capable of feeling them and calling them out."

On the birth of their first child, he enters in his journal, June 12th, 1842: —

"If ever man had reason to bless God with his whole heart, it is I. He has given me the best, the most tender, affectionate and faithful, as well as superior and charming wife that man ever had. Her life is spared, and He has added to us a daughter."

At the end of the first year, is found this journal entry: —

"S. and I are no less lovers than a year ago. This is the true happiness of married life, when the fervor, the deferential address, and the sentiment and romance of courtship are not worn away. They never need be."

Five months later, we find: —

"Great reason for thankfulness. Carried over land and water . . . and at last finding my dear home and its dearer inmates well and happy."

Nearly two years after marriage, when his wife walked alone out to Cambridge, to render what sympathy and help she could on the sudden death of Mr. Washington Allston, is this to be found in the journal: —

"She never looked more lovely to me than when she entered that room."

Soon after, he writes in the journal: —

"How vulgar and false is the notion that love — romantic and sentimental love — ceases with marriage:" and then follows more in the same vein as what I have quoted above.

Journeying to Hartford, Connecticut, he says: —

"The sail up the river in the boat was most delightful. The

site of Hartford, as viewed from the river alone, is quite picturesque . . . it has become a dear place to me. S. fills it to my mind. Everything about it is significant of her. Here she first saw the light . . . here we first united our love and hopes, and here we were united in marriage."

Hearing praise of his wife's intonation of voice, "the feelingness of it," also "her manners, the grace she showed in little things, her taste in dress," etc., he adds: "How much all this delighted me. It was music to my ear and my soul."

So it goes on in the second volume of the journal. In August, 1843, returning from a short summer vacation, his wife and daughter being still away, he writes: —

"Was glad to enter my home and see the places made dear to me by so many months of happiness and sanctified by the relations of husband and father. Dear S., how you do throw a charm about all that you move in! Yet it was solitary and somewhat sad."

And again: —

"Mrs. Fox sat down and cried when Mrs. Dana did not come. Rarely is it that the head of a house attaches a domestic so to her that she will cry when she does not return. 'So gentle, so lovely, so faithful, so kind!'"

The next year: —

"Hartford is full of her to me. . . . It is a peculiar, *almost an enchanted* place."

Four years after marriage, we again find expressions of deep sentiment.

At the end of a four weeks' journey with his wife to Niagara, Canandaigua, etc., nearly six years after marriage, is this: —

"During the last four weeks we have been constantly together. . . . We have agreed that we have only to be always together to make our sentiment perfect."

At the end of six years of married life, after reading their letters written "when we were merely friends," —

"We can truly say that time works no change in us. Our love is as deep (more deep), as romantic, as anxious, as sentimental as on those days when romantic love too often ends."

Then, after seven years: —

"Dear, dear Hartford. . . . Write letter to S. which takes until past midnight, and then put it in the office that she may get it the next day. . . . How my heart is locked up with hers."

At the end of eight years, in the third volume: —

"Reached Wethersfield at 4½, Sarah looking finely and the children all well! How much happiness, how many things to tell, how many warm friends to sympathize in them all!"

And so it goes on until the journals end; and the sentiment and the tender care do not end with the journals, but keep up, even through years of his wife's nervous prostration and illness, from which she fortunately recovered, and to the last day of his life.

His tender thoughtfulness of others is perhaps best told in Mr. Adams's Biography, in an extract from his journal, showing how, after having started on a journey to visit his wife at Wethersfield, he got out of the cars at "Framingham," took a train back to Boston and went out to Cambridge, thus delaying his journey two whole days, including a Sunday (there were no Sunday trains then), because he feared to disappoint his little daughter, who had expected to go with him, but who, by some mistake of the maid, had not had her things packed and been made ready in time to join him. On another occasion, at the death of his cousin's son, a promising lad of seven, he sat at the deathbed for the hour together, to comfort and console the bereaved father.

As to his sense of fun, and how he enlivened the family with anecdotes and witty stories, I may say these stories and anecdotes were never vulgar nor profane. He sometimes made fun of sanctimonious people, even of well-meaning clergymen or a pompous bishop; but he never permitted jokes on the Bible. All his stories would bear repetition before the highest-minded. He was once, I remember, immensely annoyed by finding that some one had turned one of his anecdotes in a way to make it coarse, and had added some indecent touches not in the original, and, moreover, had told it as one of "Dana's stories."

As to his views on aristocratic tendencies which I have related, it may be asked how he carried these views out in practice. Some

of my father's friends believed him, at times at least, to have had such tendencies. Butler made a great point of the "kid gloves" in Mr. Dana's campaign against him in 1868. Perhaps my father's nearsightedness, his inability to recognize faces readily, a certain dignity of carriage that made him seem taller than he was, his high ideals of professional life, and his not infrequent absorption in thought may account for part of this belief; but in act as well as in precept, there was at least much of the direct opposite in him. Witness his comradeship with the sailors in his two years before the mast, his interest in them afterwards, even going down to Ann Street to look up his shipmate, Tom Harris, when he heard he had come to town, and not waiting for Tom Harris to call on him; his attending at the deathbed of a former fellow sailor though the poor life had been run out in dissipation; his attachment for the poor Kanakas at the hide-homes at San Diego; his real affection for "Hope" who called him his "Aikane"; his sitting up hours of the night, time and time again, at the "Oven" with "Hope" when ill, and the struggles he had in getting the needed medicine which saved "Hope's" life; and how we find Dana inquiring years afterward about "Hope" from a sailor who was returning from California, and his expression of delight in his journal at getting a message from his dear Kanaka. Then there was Dana's offer to escort, "arm in arm," his client, Burns, the fugitive slave, on the walk from the Court House to the United States cutter that was to take him back to Virginia. As to the "kid gloves," taking this literally, few men of his means dressed so simply or cared so little for such things.

When I was going abroad, with many letters of introduction, my father warned me against the idle, fast set in society, drawing a clear distinction based upon character and achievement. In his journals, letters and conversation, it is clear that he very much appreciated the sort of courtesy, consideration and public spirit one sometimes finds in the old families, North and South, at home and abroad. So far as an aristocratic tendency meant a worship of old families *as such*, Mr. Dana had none of it. In his journal, I find this entry: —

"Saratoga, July 23, 1850. . . . In P. M. long conversation with Sedgwick [Theodore] and Slidell [John][1] about their combination of social exclusiveness with political radicalism."

His interest in all the affairs of his children was intense. In the midst of hard and exciting professional and political work, he would ask about his daughters' partners at the dance, or would remember and inquire about some of their classmates, especially the talented ones, what marks they received, what bright things they said.

He was a man of sweet disposition. I have never seen my father lose his temper. I have heard him express great moral indignation at what seemed to him mean or selfish; but in the family, he had a certain humility which was striking when one considers the courage and persistency with which he fought his cases in court and took up and urged unpopular public causes. If corrected (and I suppose every large family has its mentor), he would submit most graciously, even on subjects on which he had a right to pride himself for his knowledge, as, for example, in rhetoric. I remember my father's telling me, some few years after his experience as a member of the Massachusetts Legislature, as we were walking past the State House, that he feared he sometimes lacked charity. He believed he had it for children and for the weak and unfortunate; but that the motives that governed many successful members of the Legislature, or by which they governed others, were so small and sordid, that he often showed his disgust or indignation in a way that was certainly not politic (for that he cared little if his duty was clear). He feared he had sometimes weakened his legitimate influence, and perhaps, after all, said he, "it was not altogether Christian." He said, in substance, that many of these men meant well, but had been brought up to low ideals of politics. As things were, they found that through "log-rolling," trading of appointments and the like, were the chief roads to success, and that along these roads were travelling some of the very men they had been taught to admire.

[1] Of New Orleans; well known in connection with the mission of Mason and Slidell in the Trent affair in 1861.

A relative of my mother's, a woman of much discrimination, once said to me, "On my first visit at your father's house, I was deeply impressed with his intellect; making a second visit, his courtesy was what struck me most; and on the third, as I had come to feel the deeper things of life, I valued most the religious side of his character."

Such were some of the methods, both in precept and practice, with which he tried to "train up a son."

As to my bad spelling, so often referred to in these letters, and which caused my father so much trouble, I may say that it was not the fault of the public schools which I attended, where drill in spelling was most thorough, nor was it caused by my neglect, for I stood occasionally at, and never very far from, the head of the class.

Finally, may I ask the reader to note, as he sees the following letters, the kindness with which rebuke is administered, the fairness, the want of exaggeration of faults, the readiness to admit he was in error, the encouragement, the appreciation and the praise and the personal interest that they manifest.

Indeed, there is so much of appreciation and praise in these letters that I should never dare to be the one to give them to the public, were it not that I trust every considerate reader will remember my point of view, namely, to show a father's training of a son. This has led me to run the risk of being criticised for publishing so much in praise of myself; — remember, I am showing a father's love and cheer.

What I have painted, I have painted not to the eye alone, but to the inward vision.

R. H. D.

The Letters

Shakespeare's House
Stratford upon Avon, *Aug.* 8, 1856.

My dear little Richard, —

You are too young [five years old] to value it now; but, if God spares your precious life, you may, one of these days, look back with pleasure upon a letter addressed to you, by your father, from the very house in which the great Shakespeare was born.

Your affectionate father,
Richd H. Dana, Jr.

Master Richd H. Dana, the 3rd.

Sunday evening [1865].

Dear Richard, —

I want you to return my list of misspelt words, corrected. I also enclose one now, for you to correct.

Dear R., I wish you to take more pains with your letters. They are very good in their matter and substance, but you are not only very careless in spelling, but in beginning sentences with capitals and in making sentences in any way. You are now fourteen years old, and should be able to write a letter which can be shown to anyone.

Write slowly, and correct your own errors.

Good-bye, my dear son.

Your affectionate father,
R. H. Dana, Jr.

Cambridge, *Sept.* 10, 1865.

My dear Boy, —

I am answering your letter to your mother, which

I was glad to find you wrote to her, at once, on reaching school. . . .

We did have a pleasant time, those days of walking, did we not? And the scenery was so grand, and the curiosities so interesting, — the Pool, Flume, Profile, Basin, Profile Lake, and Echo Lake. I hope you will long remember them.

I do all I can afford to do to improve your health of body and your powers of mind. On your part, you must make return by attention to your studies and conduct, to make yourself a virtuous and well-educated boy. I shall look anxiously to your monthly report, to see how you stand in deportment as well as in studies.

The thing you have most to guard against is violent and pettish outbreaks of temper.

. . . At Mr. V. R.'s [P. S. Van Rensselaer's], I spent four days very pleasantly. They have a beautiful place, maintained with a good deal of wealth and style.

My kind regards to Dr. Coit and his brother, and to the other gentlemen.

Write often to us, but pray take more care with your letters. Spell them better, and write a better hand. Good-bye,

Your affectionate father,

R. H. Dana, Jr.

Richmond, Va., *Oct.* 1, 1865.

My dear Boy, —

I suppose you did not know of my purpose of visiting Virginia, until I had sailed. The cold I had during our walk held on so that I was obliged to get a vacation. I sailed from Boston, Sept. 23 (Saturday),

in a steamer, and arrived at Norfolk, Va., Tuesday, 26th.

I saw Fortress Monroe, the Rip-Raps, Newport News, the place where the Rebel[1] ironclad Merrimack sank our wooden frigates Cumberland and Congress, and she was attacked and driven off by the little Monitor.

At Norfolk, I visited the Navy Yard, which is almost entirely in ruins, and where are wrecks of our ships-of-the-line Pennsylvania, Columbus, and Delaware, and our old frigate United States. All these wrecks are to be restored.

All the waters from Norfolk to Fortress Monroe are one large harbor, or roadstead, — making one of the grandest in the world. With free labor and free institutions, Virginia will become a great state.[2]

From Norfolk I went to Richmond, up the James, in a steamer. I passed Jamestown, the oldest settlement in the United States, but long ago abandoned, and now marked by a ruin of a church.[3] I passed, also, the points of military interest in McClellan's campaign of 1862, and Grant's of 1864–5, — Malvern Hill, Drury's Bluff, Dutch Gap, Deep Bottom, Bermuda Hundred, Harrison's Landing, City Point, etc.

Richmond has a commanding and beautiful situation, at the falls of the James, on seven hills, and is a handsome city. . . .

[1] Not believing the states had a constitutional right to secede, their action could be considered only in the light of a "rebellion," and to be justified only in case there was good cause and ultimate success, as with the rebellion of our colonies against Great Britain.

[2] Census reports on growth in population and wealth of Virginia have now fully substantiated this prediction.

[3] Restored in 1907.

I took a letter from the Secretary of War to General Terry, (the capturer of Fort Fisher), now commanding the Department of Virginia, and he sent his Chief of Staff out with me, and I visited the works of the Rebels and of our own troops around Richmond, and some of the battle-grounds, — Newmarket, Deep Bottom, Flussel's Mill, Derbytown Road, etc., etc. I should like to give you a full description of the way the forts, bastions, bomb-proofs, picket lines, etc., are built, and the huts of the soldiers.

I next went to Petersburg, where the great fighting was done, and the closest siege, the capture of which caused the evacuation of Richmond. The works here were close together, in some places the picket lines not over one hundred feet apart. I saw here all the chief places of historic interest.

In Richmond, I saw the deserted halls of the Rebel Congress, looking forlorn enough. General Terry occupies Jeff Davis's Presidential Mansion.

. . . . . .

The sight of all these things makes me deeply grateful for the success of our arms in this dreadful struggle.

At Christmas I will show you the plans, and explain more to you. In the mean time, go on with your good resolutions and good conduct, and be sure of the affection of your father.

R. H. Dana, Jr.

Cambridge, *Oct.* 25, 1865.

My dear Boy, —

Let me congratulate you. Your last letter to me had not one error in spelling, and was carefully writ-

ten. It gives me great pleasure to see you take such pains.

I did not mean that you should write oftener, for I know you have but little time. I only meant that when you wrote, you should take pains. . . .

You were right about the corrections. They were in a letter that came while I was at Richmond, and I had not seen them.

. . . . . .

I am glad you told me about the Isthmian badge. I allow for those accidents and embarrassments boys sometimes get into about paying and subscribing. So long as you make it understood that you are neither afraid nor ashamed to be poor, and to deny yourself or refuse what many others may do, and tell me frankly when you doubt about what you have done, or when you have got into an expense without intending it, I shall be satisfied.

I enclose your report for September. It is very good indeed. Go on so; I shall not ask whether you are first, second, or third. That is *relative*. I wish to see you 9,[1] but ought to wish every other boy was 9 also.

Good-bye.

Your affectionate father,

Rich H. Dana, Jr.

Nov. 1, 1865.

My dear Boy, —

. . . . . .

I enclosed the pickers for your sled.

Your letter of Sunday gave us great pleasure. We are rejoiced to find that you have joined the Confirma-

[1] Highest mark.

tion Class. If you go on now, and form religious habits, at this critical and turning point of your life, you may pass through the temptations and trials of youth with a pure life, a good conscience, a sound body, a well-improved mind, and with the favor of God and men. If you do not do it *now*, the chances are greatly against a youth's ever becoming religious. He is then left to all the worst influences of the world, without the aid of God's grace.

Your last letter had but one mistake. You spelt *amount* with two *m*'s.

. . . . . .

Your affectionate father,
R. H. Dana, Jr.

Cambridge, *Nov.* 12, 1865.

My dear Boy, —

Your last letter was carefully written, in a good hand, which I am very glad to see. I am glad you persevere in writing carefully. You have but one bad error in spelling.

I have not yet received your report for October. It gives me pleasure to know that you like Latin. I wish to see you a good Latin scholar.

Your box of tools came safely and is in the attic.

. . . . . .

Dr. Coit spoke kindly and favorably of you. He says he never urges or presses boys to be confirmed, and never makes a difference in favor of communicants over others, in the way of favors or kindness, — for there must be no *premium* offered. A boy must be confirmed on conviction, and deliberately, so that it may last and take deep root. He was the more

pleased to see you interested in the subject, as it was purely voluntary.

You remember Mr. Worcester, that old gentleman who lived next to Mr. Longfellow, by the pond. He died last week, and was buried from the Church. He was eighty-one years old, and was distinguished for his great Dictionary and small books on history and geography.

. . . . . .

Good-bye.

Your affectionate father,

R. H. Dana, Jr.

The late elections have all gone in favor of the Republicans. The half-loyal Democrats are thoroughly put down by the people.

Cambridge, *Nov.* 19, 1865.

My dear Son, —

I enclose your report for October. It is all good except the elocution. Is the elocution low because you forget the words, or because you do not speak well? Let me know. I must try to help you when you come home.

. . . I had to deliver a lecture at Gloucester. I have a lecture which I deliver this year on "American Loyalty."

. . . When you come home to Christmas, perhaps we can let you go to a grand oratorio, like the Messiah. It will give you new ideas of music, — its majesty and power.

We shall all be glad enough to see you, when you come for vacation. I hope to see you improving in

all that goes to make the good, conscientious, kind, and intelligent man.

Your affectionate father,

R. H. Dana, Jr.

Sunday evening, *Feb.* 18, 1866.

Dear Richard, —

No one has written you this week, so I write you, that you need not think yourself neglected.

. . . . . .

I was glad to see you go off in good heart, and to hear that you got back in good order, without loss, and were returned to your work encouraged as to your studies. Especially do we take comfort in the thought and time you give to religion, and the efforts you make to lead a moral and upright life. That is the only thing to be depended upon. Everything else may fail. Friends may — and will — die, money take wings, health fail, but the favor of God and consciousness of honest efforts to do right will give a man peace at the last.

Your grandfather [R. H. Dana, Sr.] has been very much depressed by Aunt Sarah's death, and has suffered from a heavy cold, so that we all felt anxious lest he should be called to follow her. But he has been steadily improving for the last three or four days, and we all feel encouraged about him. Aunt Betsey appears beautifully. She is so tranquil, and so resigned, and so full of hope and religious trust, that it is consoling to see her and talk with her. She has been a truly self-sacrificing and devoted woman all her days. She has done everything for me and Aunt C. and Uncle E.[1] from our childhood.

[1] My father's sister and brother.

One of your sisters, in turn, stays in Chestnut Street.

Mamma sends her best love, the others are away or abed.

Professor Child has been here, and inquired with interest for you. You did not send back the last *corrigenda*.

Good-bye, my dear boy.

Your affectionate father,

R. H. Dana, Jr.

Feb. 26, 1866.

My dear Son, —

I write a word to tell you that your mother has just learned that you have given away your birds' eggs. She did not know it until yesterday, and it has given her great distress. She says she has associated you with that collection, and [cannot] bear to have it go away. She shed a great many tears over it, and said that if you should die, or leave her, she should always want them to remember you by. You recollect, too, she did a good deal to help you get some of them. It was generous in you to give them to your friend; but I did not think at the time — as you did not — of her attachment to them. I could comfort [her] only by promising to write to you and ask you whether you cannot properly get them back. Willy Brewster [the ornithologist] is a generous boy, and will understand that you are not recalling your own gift, on your own account. You might send him this letter, if you thought best, and ask him to keep your eggs separate until you come back in the summer.

Think about this, and let me know how you feel about it. The truth is, it would have been better if

you had asked your mother's consent, but neither of us thought of it.

Your affectionate father,

R. H. Dana, Jr.

Cambridge, *March* 25, 1866.

My dear Son, —

You wrote me an excellent letter. It gave me and your mother great comfort. I know it is hard to say in a letter all one feels on sacred or delicate subjects; yet you made us understand that you are thinking and feeling seriously on the great subject of religion.

I wish I had had, when a boy of your age, the teachings and exercises of the Church. But our family were then all Congregationalists and held certain views of God and religion known as Calvinism, which were very repulsive and hard. And we young people took no interest in the Church. There were no interesting services, — no Easter, no Lent, no Good Friday, no liturgy. You have great privileges in all these respects, and religion, though made serious, as it ought to be, is not austere and repulsive.

I hope Dr. Coit will think you ready for confirmation. Yet we submit it all to his better judgment.

You must not be discouraged when you fail in your attempts to do God's will. Recollect, God does not look so much at what you *do* as at what you really *try to do*. The best service is imperfect in His sight. But He blesses the endeavor.

Your February report is very good, and so is your examination. They are both most encouraging.

We are all well. I gave your love to them all.

Your affectionate father,

R. H. Dana, Jr.

CAMBRIDGE, *Apr.* 17, 1866.

MY DEAR BOY, —

. . . . . .

Your mother and Charlotte . . . will come up two or three days before the confirmation and stay about a week.

I will come up a day or two before, but cannot give more than two days to it, as I am very hard pressed with work here. You need not engage me a place, as I can board in Concord, for the short time.

Your mother wants me to remind you that she asked you to buy a present for [your sister] Rosamond at the Fair,[1] as it was Rosamond who did all the work in getting up the articles we sent you. . . .

We are rejoiced to hear of your steady, decided efforts for a religious life. Of course, there are failures. It is a contest. The war never ends in this life. Victories and defeats succeed each other, but the final conquest and peace is not on earth.

Good-bye.

Your affectionate father,

R. H. DANA, JR.

We shall be very glad of the mayflowers.

Apr. 24, 1866.

DEAR RICHARD, —

. . . . . .

I can't imagine your losing a fur cap. I should as soon think of losing a bureau or bed. You need not pay for your ball-cap. I will give you the money.

. . . . . .

Don't make yourself *nervous* about your spiritual

[1] Missionary Society Fair at St. Paul's School.

condition. You must be natural and cheerful, and try to cultivate grateful feelings towards God. They will help to keep you in obedience, as much as direct efforts. But we shall soon be up to see you, and talk with you personally.

Good-bye.

Your affectionate father,

R. H. Dana, Jr.

October 14, 1866.

My dear Boy, —

A course of faithful efforts not only gives you the satisfaction of a good conscience and a peaceful mind, but the pleasure of knowing that you are giving comfort to others, — to your parents, whose happiness in later life is to depend a good deal on your course. . . .

I have resigned my office of United States Attorney because I could not adopt the President's [Johnson's] policy and approve his sentiments, and preferred to be in an independent position. . . .

It gives me great comfort to know that you are happy in your studies and games and school and teachers and classmates. This is a great blessing. Few schools give boys so much satisfaction. After all, too, the mind gives color to all about it. . . .

Your affectionate father,

R. H. Dana, Jr.

Nov. 23, 1866.

My dear Boy, —

It would give us great pleasure to see you at Thanksgiving, and especially your Aunt Betsey and Grandfather would be gratified; but I still think that it is so near to your regular vacation that it would

rather take off the edge of your pleasure and of our expectation to come down for that day and go back.

I think you had better *stick it out* until the Christmas holidays, and have that to look forward to. It is some expense for me, which it is best to save. If I find your Aunt Betsey has set her heart on it, I will send for you, but my opinion is against your coming.

Mr. Appleton[1] has got home. He left his yacht in England, for the winter.

Judge French[2] has given up his Agricultural College, and come back to the Boston Bar.

. . . . . .

We are all well. How blessed it is to live in a Christian family, and under religious influences, and to be conscious that one is really trying to serve and obey God! May you ever keep that state!

Your affectionate father,

R. H. Dana, Jr.

Advent Sunday, *Dec.* 2, 1866.

My dear Boy, —

It is twenty-two years ago to-day that the Church of the Advent was begun by Dr. Croswell. He came to Boston early in November, and organized the parish, and held the first service on Advent Sunday. That led to its being called the Church of the Advent. I proposed the name, and suggested the cross over the altar, and the words "Lo I Come" for the motto. So far as I know, it is the first church in this country or England that ever bore the name. . . .

Dr. Croswell baptized you, and when he entered

[1] Thomas G. His yacht, the *Alice*, was the first boat so small that had ever crossed the Atlantic.

[2] Father of my friend and playmate, Daniel C. French, the sculptor.

the three names in the Parish Register, all alike, yours and your grandfather's and mine as sponsors, he said, "May there never be wanting a Richard Henry to stand before the Lord!" I want you to remember these things. . . .

You were duly remembered by us all at Thanksgiving, and missed. We were all well, and had a pleasant time at Aunt Betsey's.

Good-bye, and may God's blessing rest upon you.

Your affectionate father,

R. H. Dana, Jr.

February 3, 1867.

My dear Boy, —

. . . I missed you very much. This was not only because you are the only boy, but because we had begun to get acquainted and I liked to talk to you and read with you. I was very sorry to be so very much engaged while you were here. I do not recollect ever having so little leisure. I wished to read with you, as a practice in reading, and to get you interested in subjects and to try you in elocution. But I seemed to have scarce an hour. . . . It seemed as if I might have become acquainted with *your mind*, to know more of your feelings and opinions. But, perhaps, if God spares both our lives, we may become better acquainted next summer. . . .

Your affectionate father,

R. H. Dana, Jr.

March 10, 1867.

My dear Boy, —

Your last journal, down to the examination, was a good one, and I did not let any one read it, but read

to the family such parts as I thought you would not object to their hearing. I wish you to feel entirely free in writing, and be sure that nothing will be seen by others except upon my judgment.

Do not let it be a toil to you, yet stick to it as closely as you can, for it is a good exercise, morally and intellectually. You have improved in spelling. The enclosed list is all the errors — and one of those is not a mistake in letters — in sixteen pages of manuscript.

As to self-examination, I think you have now arrived at an age when you can lay out your faults into classes, putting together those that are cognate, and examine yourself by them. I have great faith in this process, gone through with at the beginning of a day, in anticipation, as well as at the end of a day, in retrospect.

. . . . . .

I have a speech in the Legislature, which has attracted a good deal of attention in other states, on the repeal of what are called the Usury Laws; i. e., the laws limiting interest on money to six per cent. I favored the repeal of all limits, leaving money to find its level, like merchandise. I am also giving two lectures per week, at the Lowell [Institute], on International Law, beside my professional duties and attendance on the Legislature, and so am very busy.

Your affectionate father,

R. H. Dana, Jr.

March 31, 1867.

My dear Boy, —

. . . In speaking, do not make gestures, unless you *feel that you must*, — unless nature prompts them.

And speak slowly, deliberately, and forcibly. A speech without a gesture may be a good one. You have great moral helps in your school. You do not know how little is done for the religious character of boys in most schools.

Your affectionate father,

R. H. Dana, Jr.

[The following letter was in reply to one from me, written when sixteen years of age. I had told how, in conversation, I sometimes left false impressions, for example, of having read a book I had not really read but had only heard about. After receiving father's letter, I made a point of correcting every false impression I might have left, though I no doubt bored others with small matters which gave them no concern.]

Sunday evening, *April* 7, 1867.

My dear Son, —

. . . Failure in truth comes usually from want of moral courage. People do not *dare*, especially when facing another or when taken by surprise, to say what may injure themselves, or hurt another. So they take to shifts, evasions, equivocations, and even direct lies. I know persons who can say the truth in letters but not face to face.

Sometimes falsehood comes from malice or pride. Then it is deliberate and not the result of fear. . . . Recollect that ordinarily want of truth is an effect and not a cause. There is some fault leads to it, as fear, or pride, or malice. You must search for the *cause*.

But also make it a serious point of self-examination every night and prayer every morning, — *exact truth*. Correct yourself in little things, and if you have told

any one what is not true, go to him and correct it. This will mortify your pride and be a good discipline.

It is a noble thing in you to confess this so fairly, and I argue the best for you from it.

Your affectionate father,

R. H. Dana, Jr.

Sunday evening, *May* 12, 1867.

My dear Boy, —

Your mayflowers came in good order, with a letter to your mother. I am very glad you sent them. . . .

I think $7 was too much to spend at the fair, for a boy of your age. I have no doubt the others spent as much or more, but the boys are most of them rich, or have rich parents. Did you not, from the $7, buy anything permanent, or anything to give to either of your sisters? You should remember that Rosamond took a good deal of pains to get up things, and you should have remembered her by a present.

. . . You had [better] begin now to write your journal again. It is a good task, and helps you in freedom of expression, as well as in observance of yourself. . . .

We had a superb Easter at the Advent, and the church was crowded, people standing in the passages.

. . . . . .

Your affectionate father,

R. H. Dana, Jr.

June 14, 1867.

My dear Boy, —

We enjoyed highly our visit to St. Paul's. Nothing could have been pleasanter, and we were rejoiced at finding you so well, and content, and respected by

your teachers. Dr. Coit spoke in the best terms of you.

I remember, perhaps not exactly, a few lines, which I have no time to look up, — from Horace,[1] I believe,

> Os homini sublime dedit, coelumque tueri
> Jussit, et erectos ad astra [2] tollere vultus.

I want you to commit this to memory, and say it, when you are walking with bent shoulders and eyes on the ground. Christian humility does not require a man to be prone or downcast.

I shall try to be up on the 25th, but it is uncertain.

Your affectionate father,

R. H. Dana, Jr.

Do not trouble to write a journal during the rest of the term, as your studies will be hard.

Manchester, Mass., *Sept.* 19, 1867.

My dear Boy, —

. . . . . .

We have had one of the Masters of Rugby staying with us for two days, Mr. Lee Warner. We have liked him much.

. . . . . .

I wish you would occasionally write your mother instead of me. It will gratify her.

Your affectionate father,

R. H. Dana, Jr.

Manchester, *Oct.* 1, 1867.

My dear Boy, —

. . . . . .

Your few kind words to your mother gave her great pleasure.

[1] From Ovid. *Metamorphoses*, Book I, 85, 86.

[2] *Sidera* in the original.

We are both glad to know that you are attending to geology and mineralogy. It is well to know the earth on which we live, — its physical history, its powers, actions, and capabilities. This knowledge will make you an attentive observer, wherever you travel, and will give you objects of interest in even the dullest and most unpromising places. Geology, in its larger and higher aspects, is a noble study for thought. You should know the earth, stars, trees, flowers, and birds. Some men go through life as if they were deaf and blind. Such tastes lead one into the country, and out of the artificial city life, and are good for the health of the body and spirit.

This morning, at breakfast, sitting and standing erect were talked about, and we all agreed in the hope that Richard would be careful and keep his figure erect. Pray don't go drooping and prone, but erect, manly. . . .

The occasional recurrence of the Holy Communion forms an excellent opportunity for a *renewal of life*, for, as a mechanic might say, tightening up the screws, or, as they do on the railroads, striking the wheels to see if any are unsafe for the next journey, and oiling the rough and grating places. I am glad to see you so using it. . . .

Good-bye, my dear son.

RICHARD H. DANA, JR.

CAMBRIDGE, *Oct.* 27, 1867.

MY DEAR BOY, —

We have got your letter to your mother, in which you tell her of your sickness.[1] We are all very sorry

[1] I suffered much from occasional attacks of slow fever and forms of indigestion, from which I never fully recovered till I had gone through

to hear of it. Sorry for the discomfort and pain you may suffer, for your loss of the sports and walks, and for the putting back in your studies. When you get this, just put a piece of paper in an envelope and send to me, to say how you are. Don't trouble yourself to write a letter unless you wish to do so.

. . . . . .

Take good care not to get sick. Do not study too hard. No learning or rank will make up for a loss of health and vigor of body and brain.

. . . I promised to send you the *Nation*, so I have begun to do so. It may be a little too old for you, but I think you will find things there to interest you.

. . . . . .

Your affectionate father,
R. H. Dana, Jr.

Manchester-by-the-Sea,
Sunday, *Sept.* 20, 1868.

My dear Son, —

I have taken my first leisure Sunday here, to write you a letter. One Sunday I was at Windsor,[1] and another at Newport.

We have just had service. All there but Sally, who is still in B. or C., and you, and your Aunt C., who has her Roman Catholic service for herself and the servants. Your grandfather read the lessons and I the prayer, sermon, and epistle. . . .

You have noticed that I have invited all the young men to read [the Lessons], for I think it does them good to be treated as within the body of believers in such common exercises. . . .

training on a college crew. Since my rowing experience, I have never had returns of such troubles.

[1] Windsor, Vermont, with Mr. William M. Evarts.

As to your request for the *Nation*, I do not feel sure that it is best for you. You had better not get interested in party politics. You are in danger of getting excitement and confidence without real knowledge. By and by, you will read histories and works on the constitution of states and political economy, and will be better grounded in principles from which to judge of passing questions.

By the way, a teacher ought not to be arguing and enforcing his opinions upon boys. I am sure Dr. Coit would not like it.

. . . . . .

As to the bonds, I do not know who the teacher is to whom you refer; but either he has some sharp point of technical law in his head, or he does not appreciate the nature of the public faith of a nation. The *borrowed money of a nation* is always a sacred debt, governed not by *rules of municipal law*, which govern all other debts, but by *rules of honor*. We borrowed the money when we were in straits, and gave bonds for it, promising to pay so many dollars on each bond. The Republicans say we are bound in honor to pay in gold or silver dollars, or in paper as good. Paper money is a mere *promise to pay*. Now, when we borrow money and promise to pay it, can we *pay it* by giving a *written promise* to pay? It is only an extension of the time of payment. It is, in short, the act of a bankrupt. This nation is not bankrupt, and is bound in honor to pay. The Democrats thought it would be a popular thing to raise a cry against the *bondholders*, but it has failed. Our people mean to pay back honestly their borrowed money.

Do not study too hard. If you are pretty well next vacation, you had best have a Greek teacher every

other day.[1] All send love to you, and are much obliged to you for your full letters.

Good-bye, my dear boy.

Your affectionate father,

R. H. Dana, Jr.

Boston, *Nov.* 27, 1868.

My dear Boy, —

Don't sell the sled. You are right as to the feeling. Never sell a present. Never give one away, unless in some case of distress when you have nothing of your own to give.

If your skates are good, only not as handsome or nice as you would like, keep them. If they are not good, sell them and buy another pair.

. . . . . .

We were all at your Grandpapa's at Thanksgiving. . . . Your health was duly honored.

In haste,

Your affectionate father,

R. H. Dana, Jr.

Tuesday, p. m., 31 *May*, 1870.

My dear Richard, —

I have just received your note, but your mother says you have not answered one of the questions she asked you to answer *at once*. Now, Dick, don't be wool-gathering, but answer them *by return mail*.

. . . . . .

6. Tell me which is the best hotel in Concord for us to go to. We — Mamma, one of the girls, and I — shall come up Wednesday noon, I hope.

[1] To make up loss of lessons caused by illness.

Now answer at once these six questions, and you need say no more.

Your affectionate father,
R. H. Dana, Jr.

30 Court Street, Boston, *May* 12, 1870.

Dear R., —

I enclose a good monthly report. I have written Dr. Coit in favor of your being examined at the June instead of the September examination, and in favor of your entering freshman.[1] . . .

Your affectionate father,
R. H. Dana, Jr.

Portree, Isle of Skye,
Aug. 24, 1870.

My dear Son, —

I write you from this strange place, because I possibly may not be back before you enter college.

Your course at St. Paul's has been such as to entitle you to my entire confidence. At the same time, the college course of four years is one of such moment, and so decisive of one's character and future, that I am naturally desirous of saying a few words to you as you enter upon it. I am the more moved to do so by a sense that it is within possibility — though I am not given to entertaining fears — that I may never see you all again.

If I should not, you will see that great responsibility lies on you as to your mother and five sisters,

[1] Dr. Coit preferred to have boys stay one extra year at school and enter sophomore, so as to avoid what he considered the special dangers of the freshman year.

— as your grandfather can live but a short time, and there is no uncle or brother. But if I do, as I doubt not, return, I have had so many warnings that my anxious and hard-worked life may end suddenly that your position may at any time be a grave one.

You know that in such event your first duty is to your mother. For advisors, you will go to Mr. Parker and Judge Hoar, who are my firm friends as well as business trustees.

I took an expensive Holworthy room for you, in order that you might have the great advantage, whoever may be your chum, of a place by yourself, for reading and meditation. It is of inestimable value. Now, I wish you to bear in mind why it was done, and use it accordingly. Let me propose this to you, — very likely you would do it, of yourself, — when you take possession of your bed-chamber, consecrate it by an offering to God in prayer. Ask that it may be to you a sanctuary for prayer, for devout reading and thought, and for self-examination and penitence.

You will also find it a place of retreat from company. And, on that point, you must begin right. At Harvard, you will find a good many idlers and gossipers, for it is little better. Such men are cankers of one's time. Never hesitate to say that you are engaged, — that you must study, — and your bedroom gives you a retreat.

My only fear about your room was that you would have the appearance to others of starting on a scale of expense larger than I wish you to keep up. It is necessary that you live as economically as possible, for my burdens, with your mother and sisters and you, will be very heavy. And anxiety — not *work* —

wears one out. Besides, it is better for *you*. Self-denial and the habit of refusing others give both strength of character and independence.

Don't pay much attention to the apparent opinion of classmates as to one another, as to who is or will be this or that, especially at first. The only question is this, — what will a man be in respect of character and acquirements *at the end*. And as to that, you know that I have no ambition about your relative rank. First, take care of your health. If you are not strong to labor, our family must go down, in poverty and obscurity. Keep health, if you are the fiftieth scholar. If you come out with character, health, and knowledge, that is all.

Do not get drawn into young girls' society. It is possible that you may become, or may think you are, interested in some one. Think what you are to do on earth. Man is meant *to be* and *to do*, and not to be tied down. You have four years of college, and then of a profession, — through all which you must be *free*, to do whatever will be best for your future. Don't let your good sisters make a ladies' man of you. Take care to use your Sundays at home profitably.

If you get into any trouble, by your own fault or by accident, come to me at once. I know and can allow for the temptations of youth; and, surely you need not fear that I shall be hard or unsympathetic. Remember that, and treat me as your *friend* as well as father.

Good-bye, my dear boy. There is nothing to make you anxious, but everything, with watchfulness, to encourage you.

Your affectionate father,

Richard H. Dana.

BOSTON, *July* 11, 1871.

DEAR R., —

. . . You will be tempted by this incessant and absorbing interest[1] and the constant presence of others. But never let your reading or devotions go by or be slighted. This is to be one of your trials, my dear boy.

Your affectionate father,
R. H. DANA, JR.

BOSTON, *July* 15, 1872.

MY DEAR BOY, —

. . . Pray be careful about your training. Do not overdo. A gentleman who saw you here last week thought you looked a little overdone.

I care very little which boat is a few inches or feet ahead, but any, the slightest, injury to your organs, or brain, or blood vessels would be a lifelong distress. Ten persons speak to me of the risk, to one who speaks of the result.

You know I am not a croaker or fearful. And I have confidence in your discretion and self-restraint. Only, don't let them fail you.

Your affectionate father,
R. H. DANA, JR.

BOSTON, *Aug.* 24, 1872. 4 P. M.

DEAR RICHARD, —

I congratulate you on the race;[2] for, though not the victors, it is something to be second out of six. . . .

[1] Freshman boat-races on the Connecticut above Springfield, won by the Harvard, on which I rowed stroke.

[2] Intercollegiate university race at Springfield. I was rowing stroke of the Harvard "varsity" crew.

Besides, my dear boy, it may be better for you in the end, not to have been victorious. It is a discipline to your moral character. Perhaps you may be able to thank God for some of these little disappointments and mortifications. An uniformly successful youth is not the best presage for life.

I think the Harvard men will be generally very proud of the result,[1] although short of what it might have been.

. . . . . .

Your affectionate father,
R. H. Dana, Jr.

Boston, *Aug.* 26, 1872.

My dear Boy, —

. . . But, my dear matriculated Harvard student, "knee buckles" is not spelt "nee buckles," and "whom" is the objective case, not "who," *e. g.* "whom we are expecting," — not "who we are expecting." You must remember that there is a prejudice in favor of spelling and grammar which it is not wise to cross.

. . . . . .

I enclose two letters of introduction for you in Philadelphia. I wish you would stay over a few hours there, and call upon Mr. Binney and Judge Hare. Mr. Binney is ninety-four years of age, I think, and in many respects may be called "the first citizen of the Republic." He was a classmate of my uncle,[2] at

[1] Amherst first, Harvard second, Yale 1 minute, 16 seconds behind Harvard.

[2] Probably Francis Dana, who was in the class ahead of Mr. Binney, or Edmund T. Dana, who was two classes below. Though not classmates, they were in college at the same time, and knew Mr. Binney.

Harvard, a friend of my father, and a most kind and courteous friend to me. It is an honor to you to know him, and he will esteem it an attention on my part to introduce you. Judge Hare is his son-in-law, and a lifelong friend of mine.

. . . . . .

If Mr. Wayne McVeagh is in Harrisburg, call on him, in my name.

Your affectionate father,

R. H. Dana, Jr.

Steamer Olympus, off Queenstown,
July 18, 1873.

My and our dear Friends all, —

. . . . . .

Professor Child is invaluable, — never sick, self-sacrificing, obliging, and doing something for every one in need, getting up singing and other entertainments, and every afternoon has all the children about him, telling them fairy stories.

. . . . . .

Richard H. Dana, Jr.

Liverpool, *July* 21, 1873.

My dear Boy, —

. . . . . .

Now, my dear boy, what shall I say of the race? We heard the news, which was in the *Times* of Saturday, — Yale (1), Wesleyan (2), Harvard (3). I am sorry for you, for your faithful efforts, your conscientious work for two years, deserved success. But Harvard *averages* better for the two years, I suppose, than any college. Of course, there is a secret history, which I shall hear. As I told you, if you come out in

good health, unharmed, I am grateful to God. The all but chance result of a close race of many boats is of no real moment. And, perhaps, the effect on *your character* may be better than if you had led the race. And that is the great point with you and me and us all. What will you be when you begin the work of the world? That is the question, in God's sight and in the opinion of men. I know you feel all this and appreciate it, and I need say no more to such a man as you are, — commanding the *respect* as well as the affection of his father.

. . . . . .

Your affectionate father,
RICHARD H. DANA, JR.

BEX [SWITZERLAND], *Aug.* 10, 1873.

MY DEAR BOY, —

. . . . . .

We . . . reached London on Friday, 25th July, and stayed there a little over a week. In the course of that time, L. [one of his daughters] saw both houses of Parliament in session, heard Mr. Gladstone's speech on the Duke of Edinburgh's annuity, and heard a few words from other public men in each house, and saw most of the eminent public men, such as Lord Granville, the Duke of Argyll, Marquis of Ripon, Marquis of Salisbury, Earl of Derby, Lord Chancellor Selborne, the Archbishop of Canterbury, etc., etc. Then she dined at Lady Frederick Cavendish's with Lord Lyttelton and William *H.* Gladstone, and lunched with Lord and Lady Kinnaird, and on Sunday afternoon heard Canon Liddon preach at St. Paul's, and the Sunday before heard Dr. Vaughan at the Temple and Dean Stanley at West-

minster Abbey. All three are good speakers, but Canon Liddon is a master of elocution. . . .

It was a joyful meeting, for which we should hold grateful hearts to God.

S. and R. had come from Leuke Bad a few days before, so our circle was complete, with the exception of the dear son and brother. But, I brought them your last photograph, which was new to them, and served somewhat to make up for your absence. . . .

Your affectionate father,

R. H. Dana, Jr.

Paris, *August* 31, 1873.

My dear Son, —

. . . . . .

I do not think naught of success, even in jumping over a pole, where it depends on qualities brought to bear; and I acknowledge that boat training and racing are a discipline and test of qualities, moral and mental, as well as physical. But I assure you that Blaikie's tribute to you, in the *Herald*, as you appeared the night after the race, gave me more satisfaction — I mean true, real satisfaction — than I should have received from the mere fact that your boat was a little ahead of the others. Which boat was ahead is a trifle. What character you have at twenty-five or thirty years of age, is of unlimited importance to you, and of far more interest to me. You have my respect and my entire sympathy in all you did. . . .

Good-bye, my dear boy, and may God bless you and keep you "under the shield of faith."

Your affectionate father,

Richard H. Dana, Jr.

P. S. . . .

The extract you sent me from Mr. Walker was very gratifying. He is a gentleman, and appreciates high-toned conduct in others.

You have the sympathy and respect of all of us, for we feel that you have acted a thoroughly manly and generous part, and that is the great point. The result confirms the opinion I have always had that a big university race, in which so many boats take part, and in which the "schools" are admitted, would prove unsatisfactory. The sooner they are abandoned, the better.

. . . . . .

I am glad you are at work on the Washington. Read some poetry also, — Shakespeare and Milton and Horace. Some of Burke, *e. g.* "Economical Reform," "Letters to a Late Noble Lord," "Conciliation with America."

Again good-bye, my dear boy.

Your affectionate father,

R. H. D., Jr.

Oxford, *Sep.* 12, 1873.

Dear Dick, —

. . . . . .

I think the Springfield muddle is described in this — Harvard beat, and Yale won.[1]

. . . . . .

Your affectionate father,

R. H. Dana, Jr.

[1] This was the year of the double, or so-called "diagonal," finish line. How Harvard crossed the real finish line first and then stopped rowing, how the judges sighted along a wrong line below the right one, how the eferee, relying on the report of the judges, gave his decision in favor of

Oct. 20, 1873.

DEAR R., —

I send you a memorandum I have had written, from my dictation, on the subject of your debate. Preserve it, — as I may never make another. Don't debate from it; but read and ponder, and then *lay it aside*, and speak from your own mind, having digested and assimilated it all.

. . . . . .

You should form habits of filing important papers; and I think it best to destroy at once what I do not care to keep.

Affectionate father,
R. H. D., JR.

Oct. 30, 1873.

DEAR R., —

. . . . . .

I hope your relations with that society[1] are re-established. It gives me pain to think that you have not been able to serve it to advantage. Pray do, for the rest of your course in college.

I would rather have had you president of St. Paul's Society than of any club in college, — on the ground of duty and character.

. . . . . .

Affectionate father,
R. H. D., JR.

Yale, though the flags had been given to Harvard by the Regatta Committee, and how, on discovering the judges' error too late to change his decision, he published a card over his signature, saying "The race was not decided upon its merits," is told in the *Harvard Book* (University Press, 1875, vol. ii, pp. 244–246), with diagram taken from the note-book of Mr. Harris, the engineer who laid out the course, explaining the error.

[1] St. Paul's Society, at that time very inactive.

June 19, 1874.

Dear R., —

. . . . . .

If you get this letter before your declamation, do not make any gestures because you think them necessary in speaking. Make none unless you feel them. And try to express as much by voice and as little by gesture as possible. Yet, as yours is a speech of some passion (suppressed) there are passages where gesture speaks well.

. . . . . .

Never mind the prize. That is often an accident, and sometimes an injustice. But get the experience of such a speech.

Your affectionate father,

R. H. D., Jr.

July 8, 1874.

. . . . . .

I should like to show myself among your friends on the 16th,[1] but it would not be right for you and me both to be away from Boston at the same time, in the present state of Chestnut Street.

R. H. D., Jr.

Boston, *July* 11, 1874.

Dear Richard, —

. . . . . .

I have read Bulwer, but not "The Parisians." Although Bulwer began as a dandy, and some affectations and dandyisms hung about him, yet there is always good, deep, serious thought and striking generalizations, which interest me.

Things continue in such a state at Chestnut Street

[1] The day of the university boat-race at Saratoga.

that I do not feel it right for me to leave Boston, while you and all my family are away. So I must let your mother and C. go alone. . . .

You know my perverse sentiments about the intercollegiate regatta system. I do not care which of ten boats is half a length ahead. But I like to have you succeed in what you have spent so much labor and thought upon, and moral force; and my moral sense would be satisfied to see Yale punished for her low tone and cunning and bullying of the last ten years. So, if you succeed, you will find your father greatly pleased and sympathetic; and, if you do not come out first, your father will take it easily, and thank God for your safety, health, moral energy, and character, and feel that a defeat may, in the Providence of God, put you higher in His sight, and even in the things of this world, at thirty years of age than a victory. . . .

R. H. D., Jr.

Boston, *July* 20, 1874.

My dear Boy, —

I should have written you sooner, but the intervening of Sunday prevented my getting any trustworthy information until this morning.

You will be glad to know that the special correspondent of the *Advertiser*, Allen, is a Yale man (as is the editor); that Allen was at the raft and heard all that passed between the Yale and Harvard crews after the race; that he has given a faithful account of it, representing the Yale men as foul-mouthed blackguards, and highly commending the self-command and dignity of Harvard. He says the forbearance of the Harvard crew was all that prevented a

general row. He says the language used by Yale is not fit for print. The other Boston papers are substantially to the same effect, and your crew have the sympathy and applause of all people. The few Yale men here are ashamed and silent.

I. As to the race, it is plain that you were fouled by Yale, — indeed such is the decision of the umpire. I see no room for doubt that the fouls were intentional. That is the general opinion here.

II. These fouls delayed and embarrassed you so long as to give you no fair chance against Columbia and Wesleyan. Whether you would have beaten Columbia or not but for the foul, no one can *know*, but it seems probable.

I have a fear that this crowding and fouling of Harvard was an understood thing between Yale and Wesleyan; or, perhaps, not pre-arranged, but readily fallen into.[1]

Harvard stood very high for honor, magnanimity, and courtesy, as well as being (probably) the best boat on the lake, and Yale is disgraced.

Still, all this is very hard to bear. If, as Scripture says, "It is well for a man that he bear the yoke in his *youth*," you have had your share of misfortune. Twice, in succession, you have been deprived of the fair results of years of patient thought, hard labor, self-denial, and self-restraint, by accident, the mis-

[1] Whether pre-arranged or not, the Yale crew not only fouled, but kept the Harvard crew from rowing until Columbia and Wesleyan, which had been behind, had gained a lead of some six lengths, which lead Harvard was not able to overcome when once she got clear of Yale, though gaining all the rest of the way. This delay was the more provoking as up to the time of the foul Harvard was rowing well within her powers, at thirty-four strokes per minute. She had not spurted, while both Yale and Columbia had.

take and ignorance and fraud of others. It is a great discipline, and a great trial. But, my dear boy, you will [find] that the prizes of life go much in the same way. Accident, fraud, mistake, ignorance, and violence are powerful and constant agents, and Springfield and Saratoga results will represent a large portion of the public results of life. In all I said to you before you went, I wished to prepare you for the disappointments and dissatisfactions that I knew awaited you.

It is well that youth is hopeful and trustful and buoyant; but I have seen too much of life to expect fair results from the action of great numbers, under great excitement, where no great principle is clearly, undeniably, and evidently at stake, . . . and there is [no] time for sober second thought. I trust this will end the intercollegiate regatta.

You, my dear boy, have done nobly, and all your friends feel so.

Tell me if the umpire was the man Yale nominated, and you objected to, as one-third professional, etc. If so, how was he got in? His decision is illogical, but I suppose it means, "I must condemn Yale, but will give Harvard as little as I can."

Write me what you mean to do, and when you go and where!

Affectionate father,
R. H. Dana, Jr.

Boston, *Aug.* 25, 1874.

My dear Boy, —

. . . . . .

Don't publish a word, or take any notice of newspaper accounts, whether Blaikie's, or any one else. You have a vulgar, forgetful, scatter-brained public

to deal with.[1] Then, if you deny or explain a single thing in the papers, it will be treated as an admission of the truth of everything else that has appeared, and your enemies will sneer at it, and perhaps not print it, but *allude to it.*

You have my entire approbation and true sympathy. . . .

R. H. D., Jr.

Boston, *July* 27, 1874.

Dear R., —

. . . . . .

I think the public now understands clearly that Wood decided that Yale was in fault for the [foul], and Harvard exonerated, as he (1) refused Yale's claim, (2) decided that she caused it by crossing into your water, (3) gave you your place in the race, which you would have forfeited if you had fouled Yale. He has not a trained mind, and is no writer, so he expressed himself bunglingly as to the disallowing of your claim as to the effect on the race.

His decision was in two parts, — *first*, to settle the fact; second, to determine the consequences of that fact. The fact he decided clearly enough, — that Yale was, and you were not, in fault. The first consequences he decided clearly enough, viz.: that you had your place, and as Yale had no place to lose, she did not need to be formally deposed. As to whether the case came under the Rule XIV, and the construction of the Rule, he was not logical and perhaps un-

[1] Compare the words of Washington, who believed that the people "mean well," "but it is on *great* occasions *only*, and after time has been given for care and deliberate reflection, that the *real* voice of the people can be known."

sound; but that is for Harvard only to find fault with. If he ought to have given you a new chance, or, if he did not, should have refused under Rule XII, it does not affect his decision that Yale only was in fault. The public will see this as soon as a public ever does anything, — in time.[1] . . .

Affectionate father,

R. H. Dana, Jr.

Boston, *Aug.* 5, 1875.

My dear Boy, —

. . . . . .

You have means enough [letters of introduction] for seeing the *upper crust* of England, — its educated, wealthy, and governing classes. But I wish you to study England thoroughly, in its lower and middle strata as well as the upper. If you see only those to whom you have letters, you will make it but a pleasure trip. It will be like taking a mince pie as a specimen of the products of a country. I wish you to make acquaintance of some dissenters, some republicans, some of the manufacturing and working classes, and see how they feel and think and talk. It is right to see castles, cathedrals, colleges, and ruins, and know how nobles and gentles think and act, but you must

[1] As to the umpire, he was a professional who, we were told, kept a gymnasium in New York City, which some of the Columbia students frequented. We had objected to his appointment, but were outvoted.

As to his decision, he held Yale responsible for the foul. That, by Rule XII, should clearly have entitled us to have the race rowed over again, omitting Yale, but he refused Harvard's claim for a new race, because of Rule XIV, which states that "every boat shall stand by its own accidents occurring during the race." The referee argued that the foul was not Harvard's fault and was therefore its "accident." Of course, the words "own accident" in that rule, meant an accident wholly one's own, such as breaking an oar.

not leave the other undone. I wish you to see two things I have never seen, the mines and the manufacturing towns. You must, now or next year, get admission to a coal and a copper mine, and see how the miners live and work, and visit one or two great hives of manufacturing towns, as Manchester, Newcastle, Wolverhampton. You should also see something of the way in which farm laborers live, on the worst as well as on the best estates.

You will, of course, attend all the debates in Lords and Commons that you can, and hear some jury trials. There will be trials at Guildhall, or wherever the City Assizes are held, and in the country. Also, give a day or two to the county courts, held by one judge, and see how the parties there enter, and are summoned, then their cases tried without counsel. The tenure of lands, the rights of tenants and farmer, and the condition of farm laborers are one great question in England, and the education of the poorer classes is another.

The Abbey, St. Paul's, Temple, Tower, Mansion House, Bank, Exchange, Whitehall, Parliament Houses, Westminster Hall, National Gallery, (Trafalgar Sq.), British Museum, South Kensington Museum and its appendages (two days, at least), Crystal Palace, Zoological Gardens, St. Barnabas, All Saints, Margaret Street, St. Clement Danes, (Dr. Johnson's), and some other of Wren's churches are things I now think of, without looking at any book. See also Lincoln's Inn, Doctors' Commons, and the Heralds' College.

Good-bye, my dear son.

Your affectionate father,

R. H. Dana, Jr.

Boston, *July* 12, 1875.

My dear Son, —

. . . . . .

I intend to send you the *Nations*. They will keep you well up in American affairs.

Again, my dear boy, I advise you to keep a diary, on sheets of paper, sending them home by each mail, putting in it nothing you are not willing all should read. We will see the sheets numbered and kept. They will be a comfort in after years, as well as a convenience. This will also save you a great deal of trouble in writing home. The diary will go round and satisfy all. Then you can write a short note to any of us for particulars. Don't try to express feelings, or describe fully, for it will become a *bore*, you will get behindhand. Send *something* off once a week. When you get into company, — as dinner, breakfast, etc., — give names of all present.

I do hope you are now done with boating. Of course, you will wish to see something of the British systems, in order to benefit the Harvard general system of boating, but I hope you will dismiss it from your *thoughts*, and give yourself to the study of the political and social conditions of the countries you visit, and the conversation of the most intelligent men and women, and to the great works of art, in architecture, painting, and sculpture, and the historic monuments. You have a noble opportunity. Make the most of it! Do not begrudge expense, when it enables you to see things or persons worth seeing and knowing, and make a set-off in lodgings, table, wines, and purchases of matters of taste. That is the way Sumner did. He saw everybody and everything worth seeing and knowing, and lived humbly

and avoided the company of aimless, money-spending youth. . . . You must do all you can to *fit yourself* for the career of a jurist and statesman, so that it shall not be your fault if you are unemployed. . . .

Don't let anything drive you from your plan of spending weeks in Paris, in learning to speak and write French with all the ease possible. Take a tutor, who will talk with you and read aloud to you and make you read and write. Get a good tutor. It will be the best investment you ever made. . . .

When you see any persons to whom I introduce you, take care to say all you can as to my feelings about them, etc. God bless you my dear son.

Your affectionate father,

R. H. Dana, Jr.

Manchester, *July* 18, 1875.

My dear Son, —

. . . You must not mind an anxious father suggesting little things for your correction, — I mean, you must mind, but not be annoyed. [Then follows a series of suggestions on matters of manners, carriage, etc.] I have only a natural desire to see you *perfect*. I have confidence that you will do right and best possible in the weightier matters, of mind, religious, scientific, political, legal, and social study.

Affectionate father,

R. H. D., Jr.

Intervale House, North Conway,
Aug. 26, 1875.

Mr. R. H. Dana, 3d.

My dear Son, —

We are so affected by your having struggled to write your journal up to time that we regret all the

censures we put upon you for your delays. We have received the sheets up to and including Aug. 9th at Birmingham, and your letter from that place.

I have letters from Harcourt[1] and Phillimore,[2] both of whom speak of you in the kindest terms. I can truly congratulate you on your social success. It has been of the highest order. As fashion, I care nothing about it. But as part of a liberal education, it is a great privilege to have seen and conversed with the leading men and women of an empire, on familiar terms, at the beginning of life. While it is true that your introductions opened the doors to you, you would not have been invited so often, and had so much done for you, if you had not made a favorable impression by your intelligence and manners.

. . . . . .

I send or shall send letters to Bancroft Davis, our Minister at Berlin, and to Mr. Marsh, our Minister at Rome. D. is son of George D. of Massachusetts, and nephew of George Bancroft. Marsh you know about. If I write to Chabrol, he was a guest of mine, breakfasted with us to meet Agassiz *et al.*, and a young gentleman of the highest character and finest manners. I think he is a Legitimist. He is a member of the Assembly.

Kapnist I saw a good deal of years ago, in Boston. He was often at my house, — a very clever man, in the employ then of the Russian Government. His subject was political administration, including judicial. I believe his failing is that while he learns everything he does nothing.

[1] Sir William Vernon Harcourt.

[2] Sir Robert Phillimore, Bart., writer on international law, admiralty judge, etc.

Calvo [1] has published an International Law. Bluntschli is a leading author on International Law. . . .

Your affectionate father,

R. H. Dana, Jr.

Manchester-by-the-Sea,
Oct. 1, 1875.

My dear Boy, —

Your letter to your mother, in which you express, so pathetically, the pain my first letter gave you, and showed how you took to heart the censure I put upon you for not writing us oftener, really gave me compunctions. Your mother and sisters say that when I think any one in fault, I use, in writing, more severe terms than I am aware of. I dare say this is true. But in extenuation it is to be said that, after your first letter, from Fenton's, we had heard nothing from you for two weeks. Then I knew that you did not like writing letters, and was aware that youth rarely credit how much their parents depend upon them for their comfort and satisfaction. But you have been so very considerate and faithful ever since, in your letters and postals, and have sent your journals so punctually, and so fully written, that I feel like reproaching myself for having given you any pain or discomfort. As I have before told you, your journals hit a good mean between bareness and such fullness as may make them a toil to you. Your Inveraray journal was excellent, and has been read by all your family with great satisfaction and delight. Especially to those who have not been abroad, it reads like a novel. . . .

I have written to Sir W. V. Harcourt, Sir R. Philli-

[1] Carlos Calvo, writer on history and international law; born 1824.

more, and especially to Lord Spencer, thanking them for their attention to you. Perhaps I may do the same to the Argylls.

Some one asked one of your classmates, or your schoolmates, Thomas, if these things might not turn your head, to which he replied, "Oh, no! Dick is n't that sort of a fellow, at all." I was greatly pleased to hear that, and, my dear son, I believe it to be true.

. . . . . .

I am truly glad you liked the Kinnairds so much, and that Lord Coleridge and Lord Tenterden were so attentive and instructive, and I am particularly pleased by your visit to Sir John Taylor Coleridge at Ottery St. Mary's. He has always been one of my best friends, and is as good an example as you can find of the Christian gentleman. . . .

I am now greatly interested to see how you are affected by France. Let me repeat my hope that you will give full time to the speaking and writing of French, and not leave Paris until you are able to talk French with ease, and to understand Frenchmen *when talking to one another*, however long it may take you, and whatever it may cost. . . .

361 Beacon St., *Oct.* 11, 1875.

My dear Boy, —

. . . . . .

I meant to have you live in a French family, where only French is spoken, and have a French tutor. And pray eschew English and Americans. In Italy and Germany they will do you no harm, for you will not try to speak Italian or German: yet, even in those countries, I trust you will associate as much as possible with the people of the country. There is a

pleasure in meeting American friends, and especially college friends and Boston people, but I look to you to show the strength of purpose to be very sparing of intercourse with the best of them. You are on a course of study and work, and must stick to it. . . .

Make the utmost of your French introductions, read the French journals, and get your ear used to it; but the *tutor* is the one indispensable thing. . . .

If I enclose a letter to M. Duvergier de Hauranne, know that he is of rank and old descent, and was a good deal at our house in Cambridge, and wrote a book on America, which he sent to me.

Your affectionate father,

R. H. Dana, Jr.

Boston, *Oct.* 22, 1875.

My dear Boy, —

Your journals are greatly prized by us. You work easier, as a new ship does after a little sailing, and I hope it is less trial to you to write. If you knew how eagerly they are looked for and read by us, and then by Rutland and Wethersfield and Sally, it would encourage you in writing them. I am glad you have met Mohl[1] and Marmier. I do hope you will see the Calvos, *père et fils*, and especially Chabrol. I wish I had felt authorized to give you a letter to Laboulaye. . . .

You must excuse my apparent censures, for it is all done from my intense interest in you, and devotion to your welfare.

Your devoted father,

R. H. D., Jr.

[1] M. Mohl, a member of the Academy. Mme. Mohl kept up the last of the "Salons" at Rue de Bec.

Boston, *Nov.* 1, 1875.

My dear Son, —

Your letters and journals are so punctual and faithful that we hardly know how to express to you the pleasure and comfort they give us. This is delightful to us and useful to you, for it is to you a good lesson in writing, and your style is working loose, and becoming so easy that we feel sure that the writing of the journals is not distressing to you.

Your last two journals put you just where I wished you to be, and satisfy me fully, — in a good, well-educated French family, with a daily tutor besides, and, as you say, your lessons in painting are lessons in French.

. . . . . .

I greatly regret that you have not seen Laugel.[1] No man in Paris could be more useful to you. He is a writer, private secretary to the Duc d'Aumale, and his wife one of the cleverest of women. And I wish you could have seen le Viscomte de Chabrol. When in America, he was the best possible specimen of a young noble. It was he who, at our house, insisted in giving the *pas* to Agassiz, and when A. said, "I recognize your rank," replied, "What have I to offer to merit but my rank?"

Hear some French preachers. (Chabrol is a member of the Assembly.)

Was it not amusing to hear Frenchmen express the opinion that Bismarck is overrated?

. . . . . .

Your affectionate father,

R. H. D., Jr.

[1] I saw M. and Mme. Laugel later.

Boston, *Nov.* 9, 1875.

My dear Boy, —

. . . . . .

I am glad you are to stay in Paris through November. Indeed, I do not care how far into November you stay, for you will gain faster in your French every day after the first four or six weeks. And you do not know how invaluable it will be to you in the Levant, Egypt, Constantinople, Greece, and the Adriatic. Besides, I look to the future. If you get familiar with French, you will keep it up, and be able to use it later in life, when knowledge of it may be of great service to you.

. . . . . .

In my last, I sent you a letter to Mr. Marsh, and will send one to General Stone in Egypt. I will get your mother and sisters to write you about Avignon, Nismes, and Arles, which must be seen, at least two of them. Then, if you go by way of Lyons, try to see the French manufacturing systems at work, and go up the hill of Fourvières, which Everett says has no superior in Europe for view.

. . . . . .

The late elections bring the Republicans back, so that the Presidential election is a neck and neck matter, and both parties are on their good behavior, — which is the best state of things possible.

Your affectionate father,

R. H. D., Jr.

Boston, *December* 15, 1875.

My dear Son, —

. . . . . .

Your French journals have interested me extremely, for I do feel sympathy with the French and hope for

their future, and much that you tell us of them is new, while, in England, most was familiar. I knew you would like and value Laugel. M. Marmier[1] has been very, very kind and attentive. A virtuous, kind Frenchman is a very attractive person.

. . . . . .

Make the most of Mr. Marsh, and he will get you into the Italian Parliament, and introduce you to political leaders, who usually speak French if not English. Everything historical, in art and architecture and monuments, will interest you deeply in Rome, and so will *all* art, but, at the same time, try to learn what you can of present Italy, social, political, and religious. Minghetti's speech shows that they have got hold of the "Alt Catholic" idea that the contest is with the Curia and not with the Church Catholic.

. . . . . .

We have just had a great municipal triumph. Cobb has made an excellent mayor, and received an address from some twenty-five hundred of our best citizens asking him to serve again. The lower element combined against him, in the interest of ring rule, and raised a good many popular war-cries against him. They succeeded in carrying both political conventions. Their candidate was a young lawyer, named Halsey I. Boardman, a Republican, of no professional standing, but of considerable municipal experience in the Common Council, etc., a lightweight, of no character, and ready for ring rule. The Republican Convention nominated him by one majority, and the Democratic by a very large majority, on an arrangement dividing all offices, as

[1] A member of the Academy and a friend of Longfellow.

aldermen, etc., between the parties. It was the most ominous thing that has happened in our municipal affairs. All bad men seemed in it, and a good many respectable Democrats and Republicans were influenced by the obligation of *regular* nominations. The "Citizens" held a meeting of about two hundred selected men, and made out a general ticket of Republicans and Democrats with Cobb at the head, and organized war in each ward, and the young men took hold with vigor and tact. It was a fair trial of strength between good government, order, respectability, and property on the one side, and the lowest elements, aided by politicians and wire-pullers and mere partisans, on the other.

The election was yesterday. We threw the largest vote ever thrown in a city election, and Cobb is re-elected by a majority of nearly three thousand, and the Citizens' ticket for aldermen, school board, etc., by nearly the same.

This is a striking result, and most encouraging, when we consider that Boardman had the regular nomination of both parties. It is also encouraging that every newspaper in Boston supported Cobb except the *Globe*, which is erratic and Butlerized. Our new ward, No. 11, gave Cobb the largest majority, nearly eleven hundred. It embraces all between Arlington Street, Columbus Avenue, and the Charles River. Roger Wolcott was an inspector, and I saw several of your friends acting as vote-distributors. The merchants say the result is worth millions to Boston. It *proves* that Boston can be relied upon.

. . . . . .

Your affectionate father,

R. H. D., Jr.

BOSTON, *Jan.* 30, 1876.

MY DEAR BOY, —

Your letter and journal were dated at Palermo, and, as you were thence to go to Athens, we must expect a long interval before hearing again.

I have taken great satisfaction in your journals in the south of France, Italy, and Sicily, for I feel that all you see there must be so much more novel and strange to you than Great Britain and even France, especially as I have never been in the south of France, or over the Cornice Road, or in Genoa or Leghorn, Naples or Sicily.

I was glad to have you recognize so fully the advantage your French was to you. You know how stoutly and persistently I fought for my plan of having you devote some weeks to talking French, against a good deal of discouragement. Many, even Lowell [James R.], seemed to think a few weeks would not do much for you. I *know* that six or eight weeks' devotion to French, in a good French family, to a person as far advanced as you were, made just the difference between your speaking French, or not trying to speak it, all over Europe. It is the first strokes in swimming. If a man can really swim six strokes, he will venture into deep water, and swim better and better, while if he cannot really swim consecutive strokes, he will keep in shoal water. I hope you will keep up your French all the time you are on the Continent, by talking, reading, and writing.

Your journals improve in ease and fulness. The writing them is a good rhetorical exercise for you, the best, and "La sempre fedelissima" will always see to your spelling, which candor compels me to say needs a good deal of seeing to.

You are observant of nature, science, and art, — of things that stimulate inquiry and reasoning, but you are not observant of things otherwise. You must try to cultivate more attention to sounds and words and names. You must try to remember the names of persons and places, and notice how they are pronounced. The right pronunciation and application of proper names is one of the marks of an educated man. . . .

Your affectionate father,
R. H. D., Jr.

361 Beacon St., Boston,
Friday, *Feb.* 20, 1876.

My dear Son, —

. . . I commend your spirit in taking second-class passage, but I would not do it in steamers. There, the distinction is great, marked, and shuts you off from all intercourse with the other passengers. On railways there is no objection to it. . . .

Your Athens journal is intensely interesting. It is a vision of — not romance, but long ago reality of the noblest kind. And are you not glad you read so much Greek in college?

I am glad you went to Egypt. It is too curious to be lost, and is losing its old-world characteristics fast. . . .

Don't give up an important matter of instruction or feeling for a small saving. Save rather, as you have done, in walking, boarding cheap, in plain dress, and in buying nothing merely ornamental, and nothing in the way of art, however beautiful. . . .

Your affectionate father,
R. H. D., Jr.

Boston, *March* 28, 1876.

My dear Son, —

I suppose the vote this evening will be against me.[1] I have no hope of confirmation. The combination of Cameron and Morton, the two leaders of the Committee, in the Senate, and of Butler and Beach Lawrence outside the Senate, and the readiness of the Democrats to vote so as most to trouble the Administration will be too much for the gentlemen "outside politics." . . .

I should have liked the rest, leisure, and dignity of the post, and the chance it would have given me to study international law, and the change of life for me and your mother. "But a Disposer whose power we are little able to resist, and whose wisdom it behooves us not at all to dispute, has ordained in another manner, and whatever our querulous weakness may suggest, a far better."

The conduct of the Committee Mr. Fish calls, in a letter to me, "scandalous," and in a letter to Judge Hoar by a harder name. The press and the people have confirmed the nomination, whatever the Senate may do. Mr. Fish says that no nomination, for years, has been received by the people so well. It has been defeated by the vile Cameron, whom Lincoln dismissed from the War Department for fraud, the infamous Butler, the unscrupulous, vindictive Beach Lawrence, acting through secret committees and secret sessions.

Don't let this make you any the less patriotic. It only shows you how much more the country needs

[1] In the United States Senate, on confirmation of his appointment as Minister to England. See *Biography*, vol. ii, pp. 362–377.

the services of good men, — how much the rising generation has to do for their state.

Good-bye, my dear boy.

Your affectionate father,

R. H. Dana, Jr.

Did you [see] the spontaneous request of nearly all the members of both branches of the Legislature, Speaker, President of Senate, all judges and ex-judges, mayors and ex-mayors, and citizens of all parties, for my confirmation? It was wonderful!

Boston, *April* 30, 1876.

My dear Son, —

. . . . . .

Last week we had a State Republican Convention, as you see by the *Daily Advertiser* I sent you. The result was perfect. The Butler, Custom-House, machine men did their utmost to defeat me.[1] They went so far as to put Judge Hoar, their constant enemy, on their ticket. The only effect was to give Judge Hoar some sixty or eighty votes more than I had, while I had some two hundred more than was necessary for a choice, and far ahead of all others. It was a decided rebuke to the Senate, for Hoar and I had each been rejected by the Senate, and an utter defeat of the Butler gang. Think of four such men as Hoar and I, President Chadbourn (Williams College), and John M. Forbes, sent with full powers and authority to fill our own vacancies, and no instructions!

[1] As delegate at large from Massachusetts to the Republican Presidential Convention of 1876.

Massachusetts heads the column. Her delegates are "reformers," and known to be pledged to no man, and with no axes to grind, and claiming no Massachusetts man for any post.

. . . . . .

Your affectionate father,

R. H. D., Jr.

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