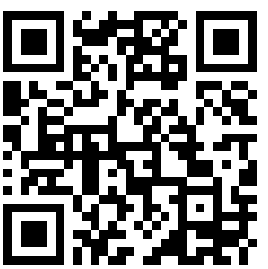
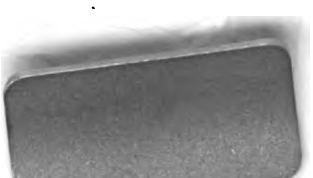


The green bag



THE GREEN BAG

An Entertaining Magazine for Lawyers

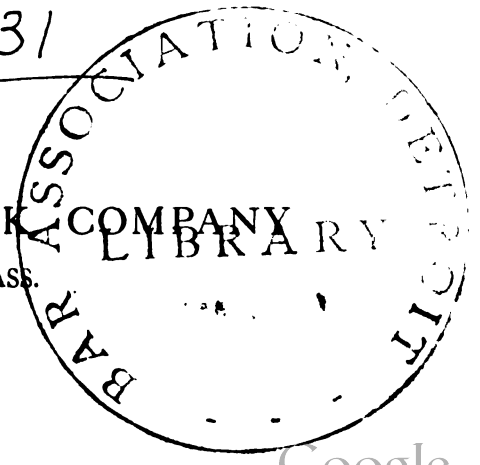
EDITED BY HORACE W. FULLER

VOLUME XI

COVERING THE YEAR

1899

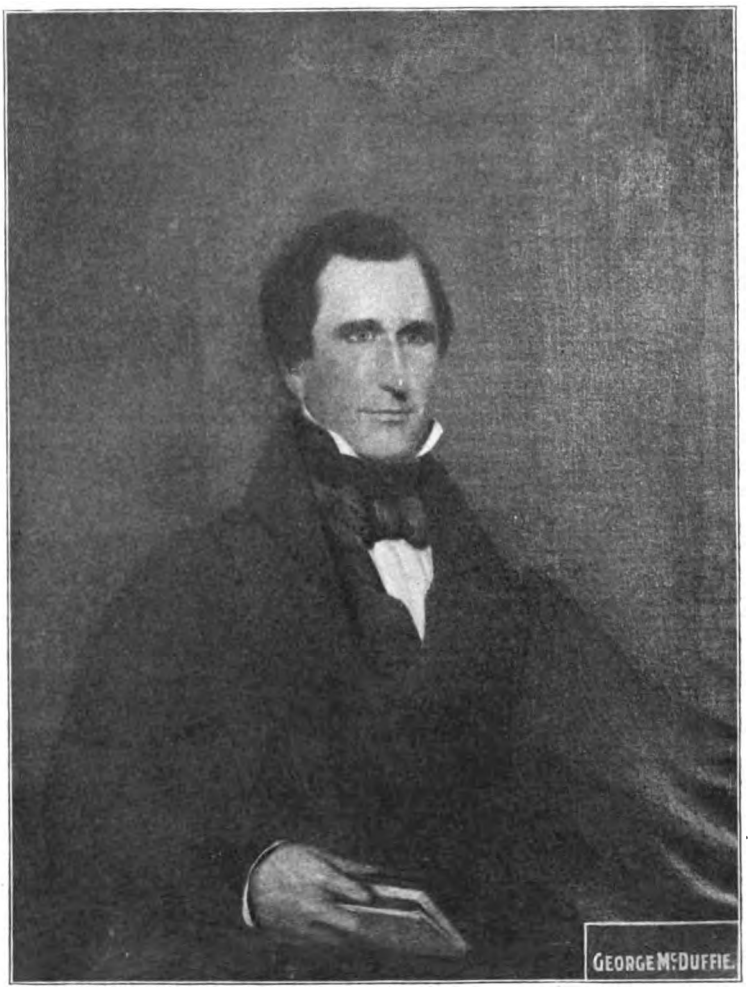
THE BOSTON BOOK COMPANY
BOSTON, MASS.



Press of C. H. HEINTZEMANN, Boston, U. S. A.

LIST OF PORTRAITS.

INDEX TO VOLUME XI.



The Green Bag.

VOL. XI. No. 1. BOSTON. JANUARY, 1899.

GEORGE McDUFFIE.

BY WALTER L. MILLER, OF THE SOUTH CAROLINA BAR.

SO far as I have been able to learn, the life of this distinguished Carolinian has never been written. Consequently, it is a difficult matter to obtain sufficient reliable data from which to prepare a sketch or write a criticism on him. The precise date of his birth seems to be somewhat in doubt. In O'Neall's "Bench and Bar of South Carolina" and in the "American Cyclopaedia" is stated that he was born about the year 1788, in Columbia County, Georgia. In a sketch of Mr. McDuffie written by Mr. Armistead Burt, of Abbeville, S. C., we are told that he was born on the tenth of August, 1790. Of his ancestry the same paper gives us the following account: "John McDuffie and Jane, his wife, were natives of Scotland; and soon after the close of the Revolutionary War came to Columbia County, the State of Georgia, and made their homes in the pine lands, near the line of Warren County, some thirty miles from the city of Augusta. He was better educated and more intelligent than his neighbors, and naturally exerted much influence in the community. He was well known for the vigor of his understanding and the energy of his will. Integrity, courage, generosity, and benevolence were his characteristic qualities, and they commanded the respect and esteem of his neighbors." This good Scotchman seems to have been interested in the education of his children at least so far as a primary training was concerned, and as a consequence we learn that his son, George, was permitted to attend the schools of the neighborhood. These schools, however, were very poor and the teachers employed in them were deficient in preparation and training for their vocation. Here McDuffie learned to read, write, and spell. At this early stage in his career he appears to have impressed his teachers and fellow-pupils with his amiable temper, affectionate disposition, and superior talent. At twelve years of age he was employed as a clerk in a country store by a Mr. Hayes and here he conducted himself in so exemplary a manner as to win the friendship and confidence of his employer. Developing a talent for a larger business than that done by Mr. Hayes, he determined to go to Augusta, where, on the recommendation of his former employer, he obtained a position in the store of Mr. James Calhoun.

Judge Samuel McGowan in speaking of him said that Mrs. Calhoun noticed that the candles were burned down at night, usually after the family retired, and it was discovered that McDuffie was in the habit of studying then, and that it was in this way that the family's attention was called to the boy's ambitious tendencies. Mr. Calhoun, being impressed favorably with the lad's worth and promise, succeeded in interesting his brother, William Calhoun, in him. The result was that William Calhoun proposed to educate him, and consequently, we soon find young McDuffie matriculating as a pupil in the well-known school at Willington, in Abbeville District, South Carolina. This school was then presided over by the famous teacher, Dr. Moses Waddell, who seems to have trained more young men

who afterwards became prominent than any other educator in the whole country. Judge O'Neall, in his account, says that McDuffie was then so poor that he had nothing but a little blue box, in which his scanty supply of clothing was contained. Judge McGowan in mentioning the same facts said that when McDuffie came up to Abbeville District to Dr. Waddell's school, he brought his clothes in a goods box, which Hon. Armistead Burt, who married Mr. Calhoun's daughter, had in his possession afterwards, and that this box was burnt when Col. J. T. Robertson's house was destroyed by fire, several years ago. From the information which I have been able to gather it seems to have been a little, dark blue chest with a lid and hinges.

Although from Judge O'Neall's statement McDuffie's father appears to have been a land-owner, still, he does not seem to have given his son anything with which to commence life. At a meeting of the Abbeville Literary Club several years ago, Major Burt, to whom I have already alluded, gave a talk on McDuffie and in the course of his remarks he vigorously combated the idea that McDuffie owed much to the Calhouns, or any one else, so far as pecuniary aid was concerned, for his education and start in life; — he further contended that McDuffie's success was due to his own indomitable will and pluck, and that he was emphatically a self-made man. In speaking of his education he also said that McDuffie mastered the Latin grammar in six weeks' time. Owing to his family connection with the Calhouns and his intimacy with McDuffie, Major Burt was peculiarly well situated to know the facts. However this may be, we find that thus early in his career McDuffie attracted the attention and enlisted the sympathy of warm-hearted people who, in turn, put him under the tutelage of a veritable Gamaliel in the educational world, Here too is a lesson for American youth which they would do well to learn, — that they can't begin too soon to cultivate habits of industry and that, if they do so, they are likely to receive their reward. And there is a lesson here for grown up people also, — this is an age when colleges and universities are being handsomely endowed by liberal philanthropists, and this is all very well in its place, but we need something more than this, — we need more observing and kind-hearted people, like these Calhouns, to seek out and encourage poor but aspiring boys and girls and to put around them environments that will tend to a healthy development.

While in attendance upon the Willington school, McDuffie devoted himself with great assiduity to his books. He mastered the Latin grammar in ten days. Within a fortnight after he commenced Virgil, from Friday evening to Monday morning, he prepared for recitation eleven hundred lines, a feat which absolutely astounded his teachers. He took an active part also in a debating society where he gave evidence of that remarkable power as an orator which afterwards characterized him to so eminent a degree. Nor did his superior talents excite the envy of his schoolmates. So amiable was he and so manifest and decided was his superiority over them, that they entertained no feelings of envy or jealousy towards him. Among McDuffie's schoolmates at Willington, and indeed one of his most intimate friends, was Augustus B. Longstreet, who afterwards became president of the South Carolina College and the author of "Georgia Scenes." Those who have read the book just referred to will remember the amusing and interesting query which so puzzled the members of the debating society: Whether at public elections should the votes of factions predominate by internal suggestions or the bias of jurisprudence? We are told that McDuffie and Longstreet together composed the subject. Says Mr. Burt: In the sketch McDuffie is called Mr. McDermott, and Judge Longstreet says of him: "He

was a man of the highest order of intellect, who though he has since been known throughout the Union as one of the ablest speakers of the country, he seems to have added but little to his powers of debate since he passed his twenty-second year." So industrious was McDuffie at the Willington school and so devoted was he to his book that we learn that he soon distanced all competition, and in a very short time was prepared for college: and at the commencement in December, 1811, he entered the junior class, and was soon acknowledged as the first man in it," graduating afterwards with the first honor. As is so often the case in the history of young men, the subject which he selected for his graduating speech, namely, the "Permanence of the Union," was indicative of his trend of thought and a prognostication of the profession which he would adopt and the life which he would follow. It is interesting to observe the comments which Judge O'Neall makes on his selection of this subject, which were as follows: "It is a little remarkable, that his opening speech on the threshold of life, should have set before the country his belief in the permanency of that Union which many of his speeches, in and out of Congress, subsequently, so much jeopardized. I do not wish to judge Judge O'Neall too harshly, for he seems to have held Mr. McDuffie in high regard, but it does seem to me that his comments smack a a little of that acerbity which not unusually characterizes contemporary criticism. However this may have been, the young graduate must have made a good speech, for we are informed that it was printed at the request of the students.

McDuffie graduated from the South Carolina College in December, 1813, and he did not tarry long before commencing the study of his profession and entering on his life work. In May, 1814, he was admitted to the bar, Judge O'Neall being a member of the same class with him. It is the exception and not the rule now for young men to be admitted to the bar after so short a course of study. A two years' course is usually prescribed, and the advocates of a three years' course are growing in number.

McDuffie located at Pendleton, South Carolina, and commenced the practice of his profession there. He had the fate common to most young lawyers — few clients came at first. Whether or not he applied himself to his books at this time we are not informed; but he must have become impatient, for we soon find him branching out in politics by running for solicitor, only however to be defeated. This apparent misfortune, in reality was a blessing, for it is said to have proven a turning point in his life, and his efforts to rise were soon after crowned with success. He was offered and accepted a co-partnership with Colonel Eldred Simpkins, of Edgefield, a lawyer who had a fine practice and a splendid library. He now rose rapidly in his profession and stood high, not only in professional but in social circles as well.

In 1818, he represented Edgefield District in the legislature. He seems to have made a good record there, taking an active part in the discussions and impressing the members favorably with his business habits.

In 1821 he succeeded Colonel Simpkins in Congress. At that time he was only thirty-three years old. Our fathers were wiser than we in selecting candidates for high office. They were willing to intrust the affairs of state in the hands of young men. Henry Clay was only twenty-nine when he became a United States senator, and Robert Y. Hayne only thirty-one. Calhoun was a member of Congress at twenty-eight, Webster at thirty-one, Blaine at thirty-three, and John Randolph at twenty-six. We have been too much disposed, latterly, to wait until men have reached middle age before putting them in office. This is a great mistake. It is better to elect them when they are in their hopeful manhood than after they have reached their prime.

In December, 1834, Mr. McDuffie was elected governor of South Carolina and major-general of the militia of the State, and these offices seem to have been bestowed upon him as a recognition of his political services and as a mark of popular favor. O'Neall says he was proud of his military title, though some time before that, when O'Neall himself received a similar appointment, McDuffie ridiculed it as "mere pomp and parade." From this time on he seems to have been popularly known as "General McDuffie."

In 1842 he was elected to the Senate of the United States, which position he held until his resignation in 1846.

He died in Sumter District, South Carolina, March 11, 1851.

In 1829 he married a Miss Singleton, a young lady of refinement and wealth. She, however, lived only a short time, leaving surviving her an only daughter, who afterwards became the wife of General Wade Hampton.

A lady friend, who knew Mr. McDuffie well in the latter part of his life, says that prior to his marriage he was engaged and devotedly attached to a young lady in Philadelphia, and she also informs me that on one occasion she herself sang for him a ballad, which was popular at the time, called "Go, Forget Me," which affected Mr. McDuffie to tears, and he remarked to her that it was a favorite song of his Philadelphia friend, and that she used to sing it for him.

Hon. H. W. Sparks, in his "Memories of Fifty Years," describes the personal appearance of McDuffie as follows: "McDuffie was not above the middle size. His features were large and striking, especially his eyes, forehead and nose. The latter was prominent and aquiline. His eyes were very brilliant, blue, and deeply set under a massive brow — his mouth large, with finely chiseled lips, which, in meeting, always wore the appearance of being compressed." From those who remember him I learn that he was a little above the average height and somewhat inclined to be slender, and that his hair was black and remained so until his death.

O'Neall says that he was very abstemious, seldom touching wine and never strong drink. If was the custom at that time in the South for nearly everybody to keep a decanter on the side-board, and visiting friends were almost invariably invited to take a drink. Mr. McDuffie seems to have been no exception to this rule. His favorite drinks were porter, claret, and other light wines, though in winter he would sometimes take a hot whisky punch just before retiring. All agree, however, that he was very temperate, and that he never indulged to excess. To his temperate habits O'Neall attributes his living as long as he did with the shattered constitution which he had in the latter part of his life. His habits in this respect were all the more remarkable when we remember that he was actively engaged for years in politics, where he was constantly surrounded by temptation.

He was fond of playing backgammon and enjoyed also a game of draughts or whist, in both of which he excelled.

He was passionately devoted to music, and his daughter often played for him. While traveling in Europe she bought for him a large and elegant music box, and often when he became irritated and excited, it would serve to calm and soothe him.

He dressed very plainly. He was a small eater, and, being a dyspeptic, was extremely careful in his diet. He did not use tobacco in any form.

After he became a member of Congress he resided in the south-western portion of Abbeville District, where he had an elegant residence. It was situated on an elevated spot of ground some two miles from the Savannah river and was called Cherry Hill, and one of his plantations has since been generally known as "The McDuffie Place."

It is said that from the top of his house with the use of a spy-glass one could see in the distance Abbeville, South Carolina, and Washington, Georgia. It is to be regretted that this historic residence no longer remains, having been destroyed by fire some years ago. A few miles distant is Orange Hill, the residence of Major Burt, who was for many years a member of Congress and was at one time speaker *pro tempore* of the House of Representatives. Mr. McDuffie's house had four large rooms, above and below, with spacious halls between them, and with upper and lower piazzas extending all around the building except on the rear side. The site was a very commanding one, and from one of the piazzas you had a splendid view of the Savannah for about a mile. A long avenue lined on either side with shade trees led up to the house. He usually kept a riding horse, a carriage, and a pair of carriage-horses. He had a large tract of land and looked carefully after it. But he was not regarded as a successful farmer. While he made good crops, it was due to his overseers and hands. He was fond of farming, and is said on one occasion to have delivered a splendid address before the South Carolina Agricultural Society. Like Andrew Jackson, Henry Clay, and George Washington, he is said sometimes to have sworn to his own hurt and that of his reputation.

So far as I have been able to learn, he never made any profession of religion, though he attended regularly the Presbyterian church at Willington where a Reverend Mr. Davis preached.

He is said to have been remarkable for his quiet manner and taciturn disposition, though at times he was full of zest and life. He was a man of strong feeling and nervous temperament.

About 1818, Mr. McDuffie fought a duel with Colonel William Cumming and received a wound in his spinal column which affected his nervous system and ultimately undermined his constitution and embittered his life. He is said never to have been the same man after this duel that he was before. The ball was never extracted, and the wound having been a severe one made him exceedingly irritable, and in fact before his death he became a melancholy wreck both in body and mind. By fighting this duel he may have vindicated his honor, but it was at a fearful sacrifice.

He was throughout his life an exceedingly industrious man and he could not bear to have lazy people about him. Often when at home at Cherry Hill, he would sit up half the night engaged in reading or writing; but still he would always rise early and sometimes would kindle the fire himself before the servant came in. A writer in speaking of him says: "In all the relations of life this great man was faithful to his duties—a devoted husband, a sincere friend, a kind neighbor, and a considerate and indulgent master to his slaves." It is said that firmness, sincerity, and truthfulness characterized him in an eminent degree.

He took a deep interest in the subject of education, was for a while a trustee of the South Carolina College, and had a good deal to do with the re-organization of the faculty of this institution in 1835, while he was serving as president of its board of trustees.

When McDuffie first entered Congress, he was in favor of a liberal construction of the Constitution, and Mr. Calhoun seems to have been like him in this respect, for he favored a system of internal improvements. But, in the case of both of them, their minds underwent a change and they afterwards became what were called strict constructionists. In speaking of Mr. McDuffie's change of opinion on this subject, Judge O'Neall says that he is satisfied that it was the result of honest conviction. And doubtless the same was true of Calhoun. Henry Clay too we find reversed his position on the

tariff, and now we find that Mr Carlisle has done the same thing on the silver question. After all, public men are very much influenced and controlled by their surroundings and by the interests of their section. It is perfectly natural for them to think that that is the wisest and best course which tends most to subserve their own interest and that of their constituents.

However he may have looked on these questions at first, we find that in 1825, McDuffie, vigorously opposed the spending of money by Congress on internal improvements in the States. He took strong ground in favor of the annexation of Texas, although at first he was opposed to that also. He advocated a change in the mode of electing the president and vice-president so that by no possible chance could the choice ever devolve upon the House of Representatives. At first he was a Jackson man in politics, but later on he took a decided stand against the Hero of the Hermitage. He denounced the removal of the deposits from the Bank of the United States in the severest terms, and spoke of it as "an act of usurpation, under circumstances of injustice and oppression, which warranted him in saying that the rights of widows and orphans had been trampled in the dust by the foot of a tyrant." He was an earnest advocate of a low tariff and many of his ablest speeches were made on this subject.

He was a warm advocate of nullification ideas and views, and in fact shared with Calhoun in the leadership of these measures. In one respect, however, they differed. Calhoun thought that nullification was a constitutional measure; that it was a plan by which grievances could be redressed in a peaceable way. On the other hand, while McDuffie regarded nullification as justifiable, still he looked upon it as a revolutionary measure. It seems to me that McDuffie's view of the matter was the more practical and common-sense one of the two. It is true that we did not have war at the time. The Great Pacificator, Mr. Clay, threw himself into the breach and by his consummate skill and management succeeded in averting war. But such a peaceful solution was exceptional and could not have been counted on again. The idea of one State nullifying a national law while still remaining in the Union was preposterous and in the highest degree chimerical. Even though technically and logically a State might have had such a right, still it would have been practically a disruption of the government and would not have been justifiable except upon the principle of a revolution. If those who framed the Constitution contemplated the exercise of such a right on the part of the States, then it was a reflection upon their wisdom; for they might easily have foreseen that a government founded upon such a principle as that could not last long. While, according to the strict rules of logic, nullification may not have been unconstitutional, still for all practical purposes it was a revolutionary measure and may well have been looked upon as such. It would be well for us if we copied the example which the English people give us of looking over things from a practical rather than from a theoretical standpoint. However, as I have already said, McDuffie was one of the warmest advocates of nullification and made many eloquent speeches in its behalf. When the convention in South Carolina held that the tariff act was null and void, he wrote the address to the people of the United States which was published by that body.

Mr. McDuffie was a fine orator and was exceedingly popular with the masses of the people. He was a power on the hustings and at the bar. He delivered a great many speeches in different parts of the country, some of which are still remembered by our more elderly citizens. One of these was made at Abbeville, South Carolina, in that part of the city which is now known as Klugh's Park. Another of his notable ora-

tions was the one he delivered at Calhoun's Mills, in the lower part of this county, on a Fourth of July occasion.

In Stovall's "Life of Robert Toombs" we find the following description of McDuffie: "The most daring feat of young Toombs, just thirty years old, was in crossing the Savannah river and meeting George McDuffie, the great Democrat of South Carolina, then in the zenith of his fame. An eye-witness of this contest between the champions of Van Buren and Harrison declared that McDuffie was 'harnessed lightning' himself."

Another writer, in speaking of him, says: "His manner when speaking was nervous and impassioned, and at times fiercely vehement, and again persuasive and tenderly pathetic, and in every mood he was deeply eloquent."

As an orator he seems to have possessed a rare magnetic power. I have been told that on one occasion by simply raising his hand, as if by a magician's wand he induced his entire audience to rise, and then, by a downward gesture, caused them to resume their seats.

McDuffie was not only an able statesman and a splendid speaker on the hustings, but he was an eloquent advocate before a jury. Mr. Sparks says: "The rise of McDuffie at the bar was rapid. He had not practiced three years before his position was by the side of the first minds of the State, and his name in the mouth of every one, — the coming man of the South. It was probably owing to the defense made by him of William Taylor for the killing of Dr. Cheesboro that he became famous as it were in a day." O'Neall, too, gives him high praise as a lawyer. After speaking of his success in other parts of his circuit, he says: "At Abbeville he managed successfully Patrick Duncan's cases (commonly called the Jew's land cases) for the recovery of fifty thousand acres of land and upwards. His fee in that matter was in itself a moderate fortune. Business from all quarters and at all courts, civil and criminal, poured in upon him."

Like Henry Clay, Napoleon Bonaparte, and in fact most great men, McDuffie is said to have been a man of vaulting ambition.

Although he was partly educated through the kindness of others, yet, when we remember that he was born of humble parentage, that he had to start out when a boy as a clerk to make a living, and that he had to stop while he was in college and serve for a while as a tutor in a private family, in order that he might procure the means to complete his college course, he may well be styled a self-made man in the popular acceptation of that term. Certainly he was one if we take Mr. Cleveland's definition, — "one who embraces his opportunities and rises over obstacles."

General Edward McCrady, in his admirably written book entitled, "South Carolina under the Proprietary Government," says that in the very formation and early history of this commonwealth there were implanted the germs of an aristocracy. In ante-bellum times and under what we are pleased to term the *old régime*, this aristocratic class held most of the offices, controlled public affairs, and shaped the policy of the State to a large extent. In this respect South Carolina differed from her sister State just across the Savannah. In the latter a man was received upon his merit, and it mattered but little from what parentage he sprang. South Carolina aristocracy, however, was never so exclusive or prohibitive as not to receive into its ranks young men of merit and promise, though of humble birth. McDuffie fully met these requirements, and consequently we are not surprised to learn that he was cordially received into the most highly favored homes and moved in the best society. Dr. B. M. Palmer, in his charming "Life of Thornwell," says that "a man who inherits a good

name and by his life maintains his reputation, is deserving of praise, but that high honor still should be accorded to him who first founds the family name." This higher praise McDuffie deserved.

It has been beautifully said by another, that "giants seem to grow in groups. There are seed-plats which foster them like the big trees of California, and they nourish and develop one another, and seem to put men on their mettle." On the one side of the Savannah, over in Georgia, we find Howell Cobb, Alexander Stephens, and Robert Toombs. "Across the river, in Carolina, dwelt Calhoun and McDuffie."

And now that I have reached a conclusion in summing up the life of McDuffie, I am sure I will be pardoned if I quote from the glowing tributes paid to him by writers who were familiar with his life and who admired him for his splendid intellect, matchless eloquence, high character, and lofty patriotism. Says Sparks: "His fame is too broad to be claimed alone by South Carolina. Georgia is proud of giving him birth, and the nation cherishes his glory." The venerable jurist who wrote the "Bench and Bar of South Carolina," and from whose able work I have so freely quoted in preparing this sketch, in a splendid eulogy paid to McDuffie, reached a climax of eloquence in these words: "With a thousand times more honesty, McDuffie has surpassed the most brilliant efforts of France's greatest orator, Mirabeau. McDuffie, with a head as clear as a sunbeam, with a heart as pure as honesty itself, and with a purpose as firm as a rock, never spoke unaccompanied with a passionate conviction of right, which made his arguments as irresistible as the rushing flood of his own Savannah." Major Burt, to whom I have already referred, gives McDuffie high praise as an orator. Indeed, what he says of him sounds almost like the language of exaggeration. However, though Mr. Burt was one of McDuffie's warmest friends and greatest admirers, still he was a man of discriminating taste and excellent judgment. Then, too, as a leading member of Congress for ten years, and as a prominent member of the South Carolina bar for over fifty years, he had a fine opportunity for hearing the distinguished man of the nation. To McDuffie he paid the following splendid tribute: "Able and graceful as was his written composition, faultless as was his elocution, majestic as was his whole intellect, it was his eloquence that gave him his great superiority. I have heard, and heard often, the orators of the greatest repute in this country during the last half century. Many of them were greatly and justly distinguished for the graces and elegances of rhetoric and elocution; some of them were eloquent. The speeches of Calhoun were philosophical and grand; the speeches of Webster were logical, massive, and masterly; the speeches of Clay and Preston were polished and brilliant. But Greece had but one Demosthenes, Rome had but one Cicero, and America has had but one McDuffie." Hon. W. J. Bryan, in his speech from our Court House steps recently, attributed to Abbeville County a widespread reputation as the birthplace and home of John C. Calhoun; he might well have added that Abbeville has had two other sons whose reputation is world-wide, — one of them the foremost lawyer of the South, James Louis Petigru, and the other the distinguished statesman, worthy of a place by the side of Calhoun, General George McDuffie.

THE REVISION OF THE DREYFUS CASE.

By Seymour D. Thompson.

THE Court of Cassation, the highest civil appellate and superintending court in France, to which was referred by the government of that country the question of the propriety of re-opening the sentence of Captain Dreyfus, and "revising" the case, — to use a term which we get from France, — is, at the time of this writing, conducting an investigation with the view of determining whether there ought to be a "revision" of it. From the conflicting, often inaccurate, and sometimes false, newspaper reports which have reached us of this celebrated case, no very accurate understanding of it can be obtained. Nevertheless, a State trial, although before a military court, which has resulted in endangering a war between great nations, and in threatening the overthrow of the republican government of France, may well claim for a few minutes the attention of American lawyers. We have tried with some diligence to get at the real details of this case, but with very unsatisfactory results. From a professional gentleman residing in that country, we gather that it originated in this way: —

It will be recalled that, in the Franco-German war of 1870, the French had on paper an army of about five hundred and fifty thousand men, but were not able to mobilize at the outbreak of hostilities more than one hundred and fifty thousand. Moreover, the German staff knew everything about France and the French army, down to the position occupied by the smallest detachments; whereas the French knew little about the Germans and the German army. Now, French vanity is never willing to concede that French troops can be defeated by German troops in square up-and-down fighting. Such was not the fact in this case. They were not defeated by the Germans, but were sold out by their generals and beaten by the superiority of the German spy system! The French would therefore organize a spy system of their own in connection with the formidable army which they engaged in reorganizing after that disastrous conflict, so that, not only their army but their spy system, would equal or surpass those of their great enemy. This spy system was the so-called Department of Intelligence of the *État-Major*, or high staff of their army, commonly called the general staff.

The head of this department of intelligence, or spy system, was an officer of the French army calling himself Count Esterhazy. He was descended from the celebrated noble family of Esterhazy, of Hungary, but he is admitted on all hands to be a very unsatisfactory character. He was once tried by court-martial since the Dreyfus affair became flagrant, for crimes connected with his participation in that affair, and acquitted, obviously because his acquittal was necessary to vindicate the infallibility of the French army. He was tried a second time by a military court, and again acquitted of misconduct connected with the Dreyfus affair, but was given his *congé* from the French army by reason of what in our army would be called "conduct unbecoming an officer and a gentlemen," or what would be called in the ranks, general rascality. This ingenious and sham sentence was intended to get rid of an odious character, and at the same time not to imply an admission of the wrongfulness of the conviction of Dreyfus, which had taken place through his machinations.

Now, the conviction of Dreyfus came about in this way: —

Plans were made and changed from time to time for the mobilization of the French army

on the German and Italian frontiers in the event of a war with the *Dreibund*. These plans went into the most minute details, prescribing the particular railway which each regiment should take and at what points on the frontier the different detachments should converge. It was observed that whenever these plans were changed, so far as they respected the Italian frontier, the Italian troops on their frontier were changed from their previous positions, with the obvious purpose of meeting these changes of French plan. This led to the almost unavoidable inference that the secrets of the proposed method of mobilizing the French army were leaking out, and evidently through the treason or negligence of officers of the general staff, and getting into the hands of the possible enemies of France.

As the official spy of the high staff, it became the duty of Esterhazy to find out from whom these important secrets were leaking. We say it became his duty to find out, but we say it in view of the very strong doubt whether he was not the traitor himself. At that time there was attached to the German embassy in Paris, as its military attaché, an officer of the rank of major, whose name we will not print, but will call him S. It will be sufficient to say, concerning him personally, that he is one of those very able men that have made the general staff of the German army the most powerful body of men in the world, with the single exception of the Roman priesthood, and that he is now understood to be commanding a regiment at Berlin. This man, Major S., had the weakness — or the strength, as you may choose to call it — of other strong men. He fell desperately in love with a French woman of the average character, and his love was warmly reciprocated, and she gave him the tenderest possible proofs of that fact. This woman lived in apartments with a single servant, a maid, the latter a perfectly respectable girl. Major S. was, from time to time, admitted to the apartments of his mistress at night, Esterhazy caught on to this fact, and determined to use it for what it was worth, either for the purpose of discovering the real traitor through whom the leakage of military secrets was taking place, or else — what seems equally probable — for the purpose of diverting suspicion from himself and casting it upon some scapegoat. To this end he had one of his creatures make love to the maid of the mistress of Major S. This love affair progressed so favorably that Esterhazy's creature actually married her, and thereby obtained an entrée to her room in the apartment of her mistress. One night, while this attaché of the German embassy was in the bedroom of his mistress, "fondly locked in beauty's arms," and — as he thought — "safe from all but love's alarms," — the servant of the mistress actually locked them both in from the outside and gave the tip to the creatures of Esterhazy. They immediately — to use a police phrase — "raided" the apartments of Major S., actually burglarized his apartments — burglarized the sacred precincts of a foreign embassy, — and there ransacked the pockets in his clothing and other receptacles, and found one or more incriminating documents, which they immediately photographed and returned to the places from whence they were taken. They then decamped, leaving his door locked and everything just as he had left it.

When this disclosure was made to General Mercier, Secretary of War, and through him to the government, the government had upon its hands the task of doing two things, the one an affirmative act, the other an act of negative concealment: (1) to discover, convict and punish the traitor; and (2) without letting the German government know that the French government had deliberately burglarized the German legation. The latter was a matter of great importance; because, although the French had developed their military system to a supposed superiority over that of Germany, and had — just as

they had in 1870 — a superior military weapon with which to fight, — yet, after all, fighting is done *by men*, as was seen in our late war with Spain; and the French government was not ready to provoke a fight with Germany; for the cicatrice was yet raw and red made by the German sword at Woerth, at Gravelotte and at Sedan. How to do it was a question for the French government; how to do it and save his own bacon was a possible question for Esterhazy.

On the high staff and attached to the intelligence bureau there was a captain of the French artillery by the name of Dreyfus (three-foot). Dreyfus had the fortune or misfortune — for it seems to be a misfortune in France, though not in England or America — to belong to that ancient and venerable race from which we Christians have derived our religion and much of our law and civil polity. But while the fact of having descended from the race of Abraham, of Moses and of Jesus, ought to be a badge of pride, yet in France, where among a portion at least of the people the bigotry and intolerance of the Middle Ages still prevail, it is a symbol of degradation and disgrace. It seems strange that a people with such quick intelligence as that of the French should find themselves unable to take a just view of the character and position of the Jew. As against Christendom he is guilty of two offenses: he refuses to abandon his ancient faith and adopt the new religion promulgated by a reformer of his race; also he is a trader and a financier, quick in invention, fertile in resources, artful in diplomacy and in management; and he accumulates faster than his Christian neighbor. His race has a history which reaches back as far as history reaches back. The civilization of that race was ancient and venerable at a time when our Celtic, Germanic and Scandinavian ancestors were living in mud huts and eating raw pork in the swamps and forests of Batavia, of Germany, and of Denmark. Every office, civil, military or ecclesiastical, springing from the needs or uses of civilization has been filled by members of that race, with spotless integrity and with consummate skill. General Grant, when conducting his campaign in northern Mississippi, in the fall and winter of 1862, issued an order expelling "the Jews as a class" from his lines, because some trading Jews had insinuated themselves beyond his outposts for the purpose of buying cotton, thus necessarily conveying intelligence of his movements to the enemy. When he ran for the presidency the first time, the Jews remembered it and turned upon him, and he apologized for it. General McClellan, applied to on the question of the courage of the Jewish soldiers in his army, wrote that he had no reason to suppose that they were any less courageous than their decidedly belligerent ancestors. When the Russian army camped at San Stefano, six miles from the walls of Constantinople, the British prime minister, Benjamin Disraeli, descended from an Italian Jew, arrested their onward march by ordering the British fleet to pass the Dardanelles and aline itself opposite the Russian camp, and by ordering a detachment of Sepoy troops to proceed from India to Malta. At the last Jewish New Year there was encamped a large body of troops at Montauk Point, near New York. Many of them were of the Jewish race and faith. These latter were allowed furloughs, that they might visit the city and celebrate the anniversary. Many of them had climbed the hills in front of the Spanish fire at Santiago. One of them had been promoted by Colonel Roosevelt for gallantry on the field of battle. In their service-soiled uniforms, and under the flag which their valor had borne to victory, they formed a battalion in the great procession, and, as they marched through the streets, the clouds shook with the plaudits of the people. The legal profession, held in honorable estimation among men, has been rendered more illustrious by members

of that race. The greatest equity judge in the history of the English Court of Chancery, with the single exception of Lord Hardwicke, is not only admitted, but asserted, by the English bar to have been Sir George Jessel, an orthodox Jew. Judah P. Benjamin, an exiled American, though born a British subject, placed himself in a few years at the very head of the bar of England, and left behind him a work on a department of the commercial law which will survive as a masterpiece for generations to come. Members of that race will be found in the front rank of the legal profession in every American city. Simon Sterne, one of the first lawyers of New York, was the secretary of Mr. Tilden's committee of one hundred that overthrew the Tweed ring. Edward Lauterbach is, at the time of this writing, in the front rank of a movement to preserve the independence of the judiciary of New York from the control of a political "boss." Any attempt at a catalogue of eminent American lawyers would include such names as Julius Rosenthal and Adolph Moses, of Chicago; Nathan Frank and David Goldsmith, of St. Louis; Napthaly, of San Francisco; Jonas and Lazarus, of New Orleans; an honorable list which would reach into every considerable city of the union. Nevertheless, because he was a Jew, it was easy in France for the real criminals to make a scapegoat of Dreyfus, or for his co-criminals, if he was guilty, to unload the whole responsibility for the crime or crimes upon him.

Among the documents extracted from a pocket or a waste basket in the apartment of Major S., the German military attaché, when it was burglariously entered, as already stated, was a paper giving the details of the last plan which had been determined upon by the French high staff for the mobilization of their armies on their eastern frontier in the event of a war with the *Dreibund*. This document was in the handwriting of some one, and was signed with the initial "D." It is inconceivable that any one engaging in a treasonable correspondence would use his own handwriting; it is impossible to imagine that a member of the Hebrew race would be so reckless or simple-minded. The fact that this document, called the "*Bordereau*," [1] was not typewritten, but was chirographic, almost demonstrates the innocence of Dreyfus. Notwithstanding this, Dreyfus was charged with being the author of it, and upon this charge was tried by court-martial. The photograph of the document, which was taken in the apartment of Major S., was not produced in court against Dreyfus; neither he nor his counsel was permitted to see it. What was produced was a copy of it — we understand, a pen copy, an attempted facsimile made by Esterhazy. Upon the objection of Dreyfus and his counsel, Maitre Demange, the court, as is the custom with military tribunals, retired for deliberation. In their ante-room the secretary of war, General Mercier, visited them, and there exhibited to them the photographic copy of the *Bordereau*, and made explanations to them such as cannot be secretly made to judges, even by a government official, in the just, orderly and decent administration of justice.[2] Upon the inspection of the document and the explanations thus made to them in secret, they convicted Captain Dreyfus. After a conviction so infamous, so contrary to every obvious suggestion of judicial propriety, of the victim whom they had determined to immolate, he was taken out before a battalion of troops, paraded in front of the *École Militaire*, and there publicly degraded from his military office. The insignia of his rank, even his buttons, were cut off, his sword was broken, and he was sentenced to imprisonment for life upon a hot and malarial island off the coast of French Guiana. A proceeding so outrageous, when related to English and

[1] A word meaning a detailed memorandum.

[2] Some of the accounts say that the visit was made by some of the official subordinates of General Mercier.

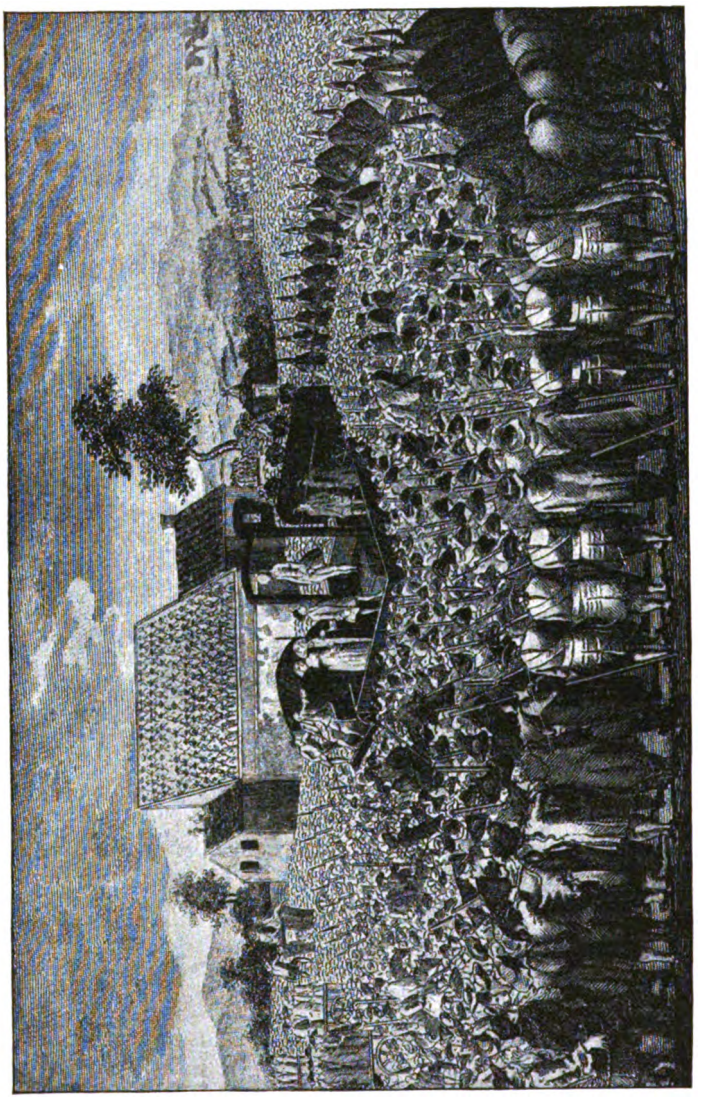
American lawyers, challenges their belief, and incites in their breasts the inquiry whether a nation capable of inflicting such injustice upon its own citizens has a right to live.

M. Zola, the celebrated novelist, denounced in the public prints the injustice of this conviction and was prosecuted for libel by the atrocious government which had fathered the conviction of Captain Dreyfus, and was twice convicted and sentenced to fine and imprisonment. Colonel Picquart, a member of the high staff, denounced the conviction, and for that act of justice is now confined in a military prison. He also has, among the files of the War Office, a so-called secret *dossier*,[1] and is either to be released or court-martialled for forgery!

In the rapid succession of ministers of war, there went into the office a civilian named Cavaignac. This official was a perfectly honest man. He is not to be confirmed with Cassagnac, the editor, duelist, swashbuckler and blatherskite. Cavaignac was of distinguished origin. His father had been a candidate for the presidency of the French republic in 1848 against the celebrated Lamartine, but was defeated. Cavaignac determined to investigate the question of the guilt of Dreyfus, for the double purpose of doing justice and of allaying the revolt which had arisen in public opinion against the infamous proceding by which he had been convicted. To this end he examined the records in the war office, and there he found a document which convinced him of the guilt of Dreyfus. He exhibited this document in a speech before the French Assembly in which he declared his conviction, on the faith of it, that Dreyfus had been justly convicted. For the purpose of allaying the public dissatisfaction, this document was photographed and posted up in all the arrondissements of France. Soon afterwards the appalling news came that this document had been forged by Lieutenant-Colonel Henry, another member of the intelligence department of the high staff. This soldier, who had hitherto borne a high character, and was a devoted member of the profession of arms, confessed the crime and alleged that he had done it under the command of his superior officer. For this, Cavaignac ordered him into arrest and sent him to the fortress of Mont Valerien. There he committed suicide by cutting his throat with a razor, or was assassinated, as some believe. The theory of suicide is altogether the more probable. It seems that the document, which he had forged as pretendedly emanating from Dreyfus, was forged two years after the conviction of the latter and was placed among the archives of the war department for the purpose of vindicating the conviction and the infallibility of the French army, which, it seems, has now to be reckoned with as a separate political corporation.

We have thus put in type a portion of what we have been able to gather concerning this celebrated case, the history of which is yet to be written. We have proceeded with a feeling of uncertainty at almost every step; for how can any certainty of truth be dug out of such a squirming maggotry of fraud, forgery and perjury? What can be said when a government commits forgery in its own vindication? This incident, rank as it is, should not, however, destroy our respect for the French people. Whatever may be thought of their official classes, and especially of their military officialism, they are, on the whole, a gallant, honest, and self-respecting nation. As such, they are entitled to the sympathy of their neighbors—and especially of their ancient allies, the Americans—in their effort to maintain the supremacy of the civil over the military power, and to purge themselves of the rank corruption and gross injustice which fester in the Dreyfus case.

[1] A word meaning a bundle of papers.



EXECUTION OF THE EARL FERRERS, 1760.

THE DEATH PENALTY IN OLDEN TIMES.

By Florence Spooner.

THE punishment of burning has been inflicted by several communities. Examples of it occur in the early ages of the French monarchy. It was enacted at Rome, by the code of the twelve tables, against incendiaries, but nowhere was it adopted with so many variations as among the Babylonians and the Hebrews. At Babylon a burning, fiery furnace was sometimes prepared for the purpose, as in the instance of the young Jews who refused to worship the image of Nebuchadnezzar. Sometimes the criminal was roasted in the fire, as Ahab, son of Kolaiah. In Judea, boiling caldrons and funeral piles were used but these were deemed insufficient torture and previous to killing murderers, melted lead was poured into their mouths which were forced open by partial strangulation. In France, the convict was bound with iron chains to a stake, wearing a shirt dipped in sulphur. This was the most rigorous of ordinary punishments, and yet, though inflicted in cases of witchcraft, sacrilege, blasphemy and heresy, it was not extended to the more heinous crime of parricide. As to the punishment of breaking on the wheel, it is of little moment to ascertain whether this punishment was first inflicted under Commodus, in the second century of Christianity, or at a far later period by Louis le Gros, upon the assassins of the Earl of Hander, or lastly by Emperor Abert, in his war with the Swiss at the beginning of the fourteenth century, on Rudolph of Warth, who made an attempt upon his own life. It was confessedly not admitted into the French code before the reign of Francis I, and it would be satisfactory to be able to impute to the Chancellor of Poyet an idea so worthy of his malignity, but the edict is dated Feb. 4, 1534. The edict was marked not less by its disproportion of punishment than by its general spirit of atrocity.

Hanging had been the penalty of murder, and so it remained. The wheel was not extended to this crime, but confined to cases of highway robbery and burglary. This shocking disparity was corrected under the reign of Henry II. Two modes of effecting this correction offered themselves; either to be satisfied with hanging the highwayman (a punishment, even so far too heavy for the offense) or to break the murderer upon the wheel. The first would have been the milder mode: the latter was adopted. The highwaymen no longer appeared a greater criminal than the murderer but he was still equally punished, and hence, the writers of their times on criminal law place on the same line, both as to punishment and heinousness, highway robbery and parricide. The wheel was avowedly so barbarous an instrument that the judges almost invariably by an applied permission directed the criminal to be strangled before he was placed upon it. In the punishment of beheading a civil distinction was made at Rome between the citizen and the slave, but in France, where no slavery exists, can it be proper by a marked difference in the operation of the law to insult a large majority of the nation, reviving principles of villenage and feudality. In defense of this diversity of punishment, it has been said: you are deceived by appearances, the equality of suffering consists more in the ignominy than in the actual pang, and the criminal of higher extraction by undergoing the same infliction would endure a heavier punishment than his inferior. In China all this was reversed, the great man was strangled, the humbler offender was beheaded. The Jews looked upon beheading as the most ignominious of punishments. To the Greeks it was unknown. The punishment of hanging was known in the first ages of the French monarchy. It

was inflicted upon robbers. By the Saxons the adulteress was compelled to hang herself. She was then thrown upon a funeral pile over which was suspended the body of her paramour.

At Rome it was contrary to law to strangle virgins. The scrupulous Tiberius in his horror of illegality ordered them to be previously violated by hangmen and then to be consigned to the cord.

Any reformer who tried to check capricious innovations of these laws was compelled to remain in public with a rope around the neck until the people formally decided upon its acceptance or rejection. In the latter case the rope was tightened until the reformer was strangled.

Nowadays it is difficult to realise the wholesale way in which our forefathers inflicted death for the most trivial offenses, in the early punishments of England. Now that there are only a few offenses for which death is the penalty people are indifferent. They say that as it affects so few people it is of little or no importance.

Hangings in olden times in England, as may be seen in the illustration accompanying this article, were attended by enormous throngs of the people, who journeyed far and wide to attend a scene of execution.

SIBERIAN PRISONS.

THE Rev. Dr. Lansdell publicly stated, after a thorough visit to Siberia, that should he ever have to change from clerical to convict life, he would choose Siberia and not Milbank or any other English prison, as the scene of labor. I have no hesitancy to say that personally I prefer prison life in Siberia to Sing Sing; and to set the stamp of my approval upon the prison, following the kindly invitations of the chief of police, I was about to transfer my baggage from the hotel of the rich Chinaman to the jail. However, though the prison tempted me by its superior comfort, better food, and bath-tubs, I had to give up the project. Interesting things were to be seen in the town and upon the great river every minute of the day, so I remained with Tai Phoon-Tai, only visiting the prison for my tub every day. As upon my first visit, I was always allowed to walk about the place and visit all the prisoners, and I saw nothing to change my opinion of the cleanliness and the humane condition under which they lived.

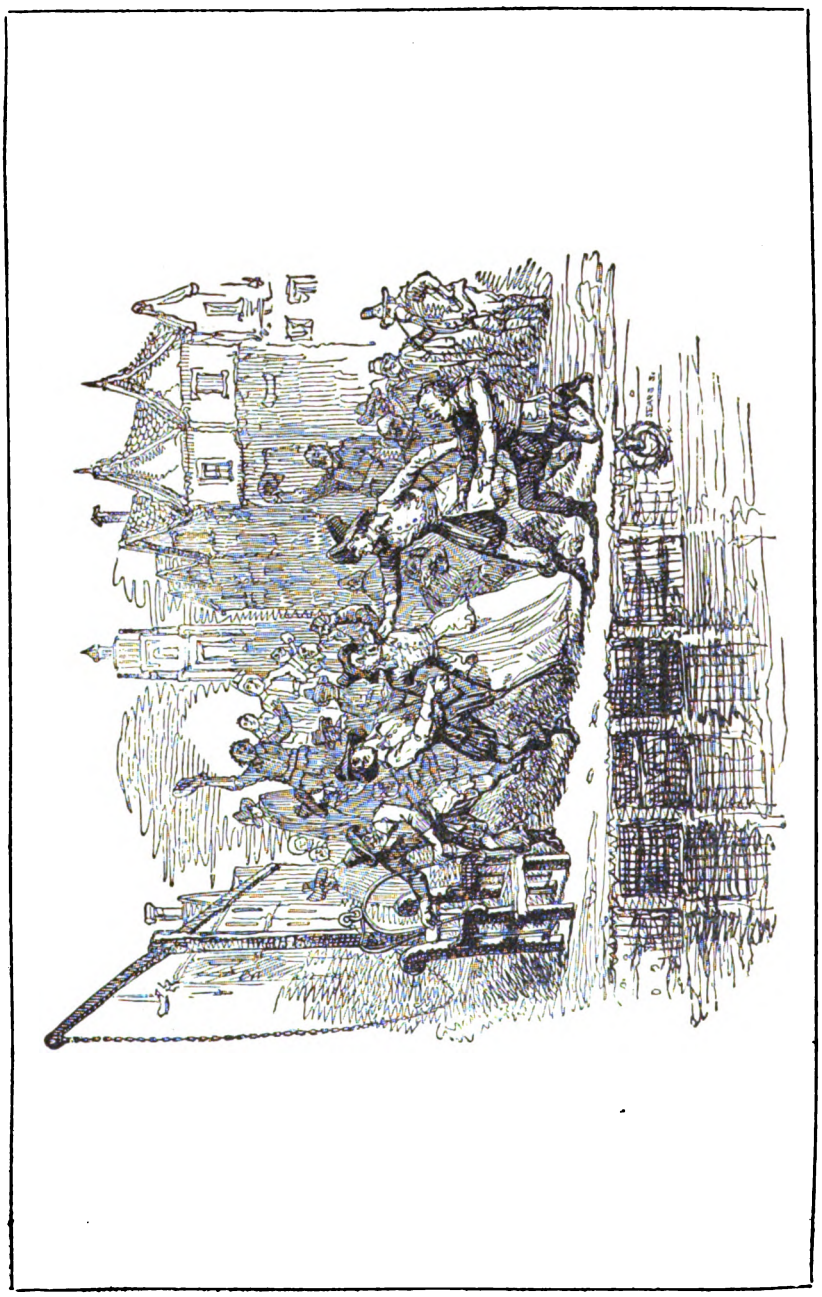
As we passed along the corridor the prisoners, hearing our footsteps, gathered round the grated door, and when the chief of police and the chief warden came in sight, would give the military salute, and shout, "Good-morning, your lordships." Then the chief of police and the warden would look them over, the warden telling his chief exactly what the men had been doing, and what report of their conduct he had to make since the last visit of inspection. For almost every one of his fellows, as he called them, the kindly warden had something pleasant or nothing at all to say, whereupon the chief would draw himself up, and say, turning to the prisoners, "Well, my little brothers, it is well; I am glad to hear good reports of you." And they would invariably reply, in a loud, cheerful chorus, "We are always very happy when your lordship is pleased with us." As we walked along the corridor we came to another and a larger room. The "Good-morning, your lordships," which rang out towards us from this room had a more cheerful ring — a something which cannot be counterfeited or disguised. Before I came to the door and saw that the men who spoke them no longer wore the prison stripes, I knew

that these men were free, and the chief of police told me that they were only awaiting the coming of one of the regular convoys to start for home, free men, having paid their debt to society.

A prison-ship arrived from Odessa in Vladivostok the day before my departure. It was the *Voronzoff*, a magnificent Clyde-built ship, with airy and roomy quarters. She was the finest-looking ship I saw in the far east, and yet I was assured that she was not an exception, but rather the type of the Russian volunteer fleet.

I went on board of the prison-ship well before she came to anchor. Though in from a voyage of nearly fifty days, and after experiencing severe weather continuously for the past two weeks, I found the vessel and the convict quarters as clean and as sweet as are the steerage compartments on our own Atlantic steamers at the end of a voyage of less than a week. Of course I would have these adjectives to be understood in a relative sense only.

There were no "politicals" on board. There were about 1100 convicts, and, judging from their appearance, the great majority of them were criminals of the lowest and most degraded category. I could not conceal my surprise at the smallness of the guard that stood watch over them, and the absence of fear that seemed to be entertained of the possibility of an outbreak. With the exception of three men, who, as punishment for misconduct during the voyage, were chained to the deck, the convicts were free to move about, it appeared, pretty much as they pleased. The guard of soldiers certainly did not number twenty men, who went about generally unarmed; and the sailors of the ship, who were not armed at all, seemed to be on the best of terms with the convicts, with whom they sat and talked, and even played cards. The convicts, judging from their faces, seemed all to belong to one and the same class of confirmed and hardened criminals, but ethnically it was the most varied assortment of types of the races of the human family that I remember to have seen. — From "The Convict System in Siberia," by STEPHEN BONSAL, in "Harper's Magazine" for August.



A FEW NOTES ON DUCKING STOOLS.

By Llewellyn Jewitt, F. S. A., Etc.

II.

At Fordwich, I am informed by my friend Mr. Dunkin, a ducking stool was used on the bank of the river Stour, where it was broad and deep. The chair was strong and massive, with sloping arms, and from its form was probably affixed to a tumbrell.

At Gravesend, a tumbrell cucking stool was used at an inclined plane, called the horse-wash, on the bank of the river Thames; and the following entries occur in the corporation accounts: —

	£	s.	d.
1628, Novem. 9. — Paid unto Meldham for mending the Cucking Stool . .	0	7	0
1629, Sept. 4. — Paid unto the Wheeler for timber for mending the Cucking Stool	0	3	4
1635, Oct, 23. — Paid for two Wheeles and Yukes for the Ducking Stool .	0	3	6
1636, January 7. — Paid the Porters for ducking of Goodwife Campion .	0	2	0
1646, June 12. — Paid two Porters for laying up the Ducking Stoole . . .	0	0	8
1653. — Paid John Powell for mending the Ducking Stoole	0	6	0
1680. — Paid Gattett for a proclamation, and for carrying the Ducking Stoole in market	0	1	6

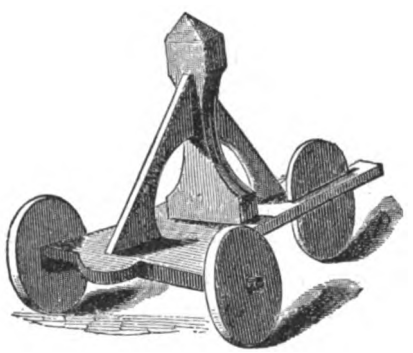
At Kingston-upon-Thames, one of the same kind was used, but in this case the tumbrell was formed with *three* wheels instead of two, as is shown by the following items in the Chamberlain's accounts: —

	£	s.	d.
"1572. — The making of the Cucking Stool	0	8	0
" Iron work for the same . .	0	3	0
" Timber for the same . . .	0	7	6
" Three brasses for the same, and three wheels . . .	0	4	10

This stool was used in 1738, as appears by the following notice: —

"Saturday, October 14, 1738. — Last week, at the Quarter Sessions at Kingston-on-Thames, an elderly woman, notorious for her vociferation, was indicted for a common scold, and the facts alleged being fully proved, she was sentenced to receive the old punishment of being ducked, which was accordingly executed upon her in the Thames, by the proper officers, in a chair for that purpose preserved in the town; and to prove the justice of the court's sentence upon her, on her return from the water-side she fell upon one of her acquaintance, without provocation, with tongue, tooth, and nail, and would, had not the officers interposed, have deserved a second punishment, even before she was dry from the first."

In the crypt of the fine old church of St. Mary, at Warwick, the wheels of a tumbrell are still preserved, and the chair is also in the possession of a resident of the town. The pole of the tumbrell has been destroyed within the last few years. It will be seen by the engraving that it has three wheels, and must have been very similar to the one described at Kingston.



At Beverly, John, Archbishop of York, in the reign of Edward I, claimed the right of gallows, gibbet, pillory, and *tumbrell*, and there are some curious entries in the corporation accounts relating to it.

"1456. — Et sol' j laborar p. mundacone cois sewer jux' cuxtolepit p. exitu aque ilm p. j diem iiij."

(Also paid one labourer for cleaning the common sewer adjoining the Cuck-stool pit, for a passage for the water there, for one day, 4*d*.)

"1556. — iiijd de Johi Robynson cordin pe le Cuckstoole pitt."

(4*d* received of John Robinson, cordwainer, for the Cuckstool pit.)

The punishment of the cuckstool in Beverly was inflicted on brewers and bakers, as well as others.

At Newbury, the following occurs in the Quarter Sessions book: —

"Sessions 19. July 24, Car. 2. } Burgus de Newbury.

"It. We present the Widdow Adames for a common scould.

"Ordered to appear at the next Sessions, being served with processe for that purpose.

"27 January, 24 Car. 2. } Margaret Adames, Widow, hath appeared and pleaded not guilty to her indictment for a common scoold and put herself on the Jury, who being sworn, say she is guilty of the indictment against her.

"Cur. That she is to be ducked in the Cucking Stool according as the Mayor shall thinke the time fitting."

At Lyme Regis was a tumbrell, and in the Court of Hustings book, 1581, it is ordered: —

"The jury present that the tumbrell be repaired, and maintained from time to time according to the Statute";

and two years later the mayor was ordered to provide one before All Saints' Day under a penalty of 10*s*. The cucking stool was kept in the church porch. The following are some of the corporation entries respecting it: —

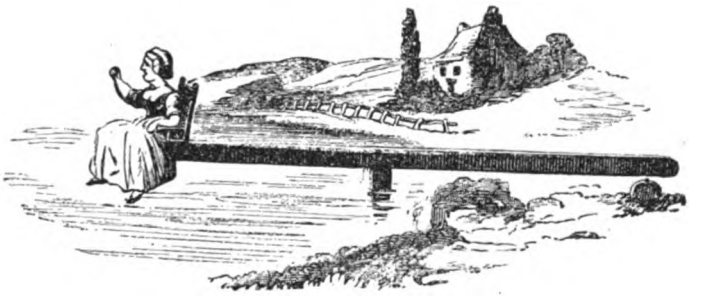
	s.	*d.*
1631. — The bringing the cucking stool out of the church	0	6
1633. — For amending the cucking stool .	0	6
1653. — Paid for a piece of timber for a cucking stool and six boards . .	16	2
1657. — For timber to make a cucking stool .	12	0
1658. — For making a cucking stool, George Baker	5	8
1685. — 30th April. *Item:* We present the corporation for not repairing the cucking stool . . .	6	8

Therefore it is ordered that it be repaired within one month, *subpœna*.

1724. — The corporation was presented for not keeping up a ducking stool as it was formerly allowed by the information of several persons.

It must not be understood that the *Tumbrell* was always used with the ducking stool — far from it. Fraudulent bakers, brewers of bad ale, vendors of putrid meat, sellers of "stinking rabbits, eels, capons, &c.," and other fraudulent people, as well as false-swearers, were carted round the town on the tumbrell, and so to the pillory, which I shall speak of in another article. The *Tumbrell* was the wheel-carriage on which culprits were taken to be ducked, or to be locked in the pillory.

A ducking stool of a different kind was until lately in existence at Broadwater, near Worthing, and is carefully engraved in the Wiltshire "Archæological Magazine." It is of the trebucket form. A post is driven into the bed of the pond, and on the top is bedded a piece of wood, which turns on a swivel and supports a long beam, on one



end of which is the "stool," and at the other end a chain, by which it is affixed to a post. When wanted for use, the beam is turned round to the bank, the woman placed in the "stool" and tied in, and the beam then turned back over the water, and the ducking given on the see-saw principle.

At Rugby was one of this description, which has been destroyed almost within memory. In reference to this example, I am favored by my friend Mr. Pretty, F. S. A., with the following note: —

"The town had the usual appendages to a manor, a pillory, ducking stool, cage, and stocks, and which are noticed in the following items: —

		£	s.	d.
1714.	May 24. Paid Wm. Ladbrook for mending ye pillory	0	5	10
	Spent with the third-burrow ye same time the man stood in it .	0	0	6
1721.	June 5. Paid for a lock for ye ducking stool, and spent in towne business	0	1	2
1725.	Aprii 30. Paid for paving round the pillory	0	1	0
1739.	Sept. 25. Ducking stool repaired. And Dec. 21, 1741. A chain for the ducking stool . . .	0	2	4
1741.	For oyle and colours for the cage and pillory	0	14	2

"The ducking stool was placed on the west side of the horse-pool, near the foot-path leading from the Clifton road towards the new church-yard. Part of the posts to which it was affixed were visible until very lately, and the National School is now erected on its site. The last person who underwent the punishment was a man, for beating his wife, about forty years since; but although the ducking stool has been long removed, the ceremony of immersion in the horse-pond was recently inflicted on an inhabitant for brutality towards his wife."

It was most probably in allusion to this example that Benjamin West, the Northamptonshire poet, thus wrote in 1780: —

"There stands, my friend, in yonder pool,
An engine call'd a ducking stool:
By legal pow'r condemned down,
The joy and terror of the town.
If jarring females kindle strife,
Give language foul, or lug the coif;
If noisy dames should once begin
To drive the house with horrid din —
Away, you cry, you'll grace the stool,
We 'll teach you how your tongue to rule.
The fair offender fills the seat
In suiien pomp, profoundly great.
Down in the deep the stool descends,
But here at first we miss our ends;
She mounts again, and rages more
Than ever vixen did before.
So, throwing water on the fire
Will make it but burn up the higher.
If so, my friend, pray let her take
A second turn into the lake,
And, rather than your patience lose,
Thrice and again repeat the dose.
No brawling wives, no furious wenches,
No fire so hot but water quenches."

At Coventry, at the gate of the Grey Friars, was also one, and in the Leet Book the following entry occurs, under the date of October 11, 1597: —

"Whereas there are divers and sundrie disordered persons (women within this citie) that be scolds, brawlers, disturbers, and disquieters of theire neighbors . . . it is ordered and enacted at this Leet, that if any such . . . do from henceforth scold or brawle . . . upon complaint thereof to the Alderman of the Ward made, or the Mayor for the time being, they shall be committed to the cook stoole lately appointed for the punishment of such offenders. An entry for the 'making the cooke stoole at Greyfrier gate iiijs. iiijd.' occurs in the same vol. as late as the year 1623."

In the reign of Elizabeth there was a ducking stool at Marlborough, probably of the trebucket form, and many entries respecting it occur in the corporation accounts. In 1580 and 1582 it was repaired. In 1584 a new one was procured, and in 1625 a man received for his help at the cucking of John Neal, 4d.

At Devizes the tumbrell was kept in the church tower.

At Beaminster, in 1629, Peter Hoskins, farmer of the manor, was ordered to procure stocks, ducking stool, and pillory, within three months, under pain of forfeiture of five pounds.

At Honiton, Baretti, the lexicographer, relates that in his journey from London to Exeter in 1760, he saw the ducking stool over the water by Honiton, "where they dipped old women supposed to be witches."

At Stoke Abbot, one Edith Copleyn had a feud with another laborer's wife. If she demeaned herself she was to be taken before a magistrate, who was by the court desired to give her the punishment of the *ducking stool*, or some other like punishment.

At Nottingham there were both pillory and cuckstool in the market place, for the punishment of culprits. In 1731, Thomas Trigge, the then mayor, caused a woman to be placed in the cuckstool for prostitution, and left her at the mercy of the mob. The poor creature was so ill-treated and ducked so much that she lost her life. The mayor was prosecuted for it, and the cuckstool taken down.

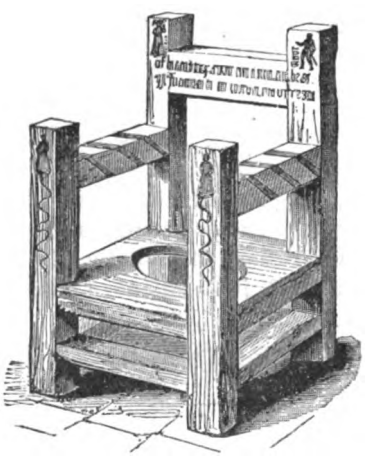
Of examples of the suspended ducking stool, the curious facsimile from an engraving in an early chap-book of the "Strange and Wonderful Relation of the Old Woman who was Drowned at Ratcliffe Highway a Fortnight Ago," at the head of this article is extremely curious. It exhibits the suspended chair affixed to a transverse beam, working in an upright post, in a tumbrell.

It was to these suspended chairs that Gay, in his pastoral of "The Dumps," alludes, when he makes his heroine, Sparabilla, who thinks of committing suicide say: —

"I'll speed me to the pond where the high stool,
On the long plank, hangs o'er the muddy pool;
That stool, the dread of every scolding quean;
Yet sure a lover should not die so mean?"

An excellent example of this kind of chair still exists at Ipswich. It is very strongly made, and has an iron framework by which it could be suspended to a lever or crane, and raised and lowered at will. The seat is formed of bars. Mr. Clark's "History of Ipswich," gives the following note of a scene where the punishment was about to be put in force: —

"It is a strong-backed arm-chair, with a wrought-iron rod, about an inch in diameter, fastened to each arm in front, meeting in a segment of a circle above; there is also another iron rod affixed to the back, which curves over the head of a person seated in the chair, and is connected with the others at the top: to the centre of which is fastened an iron ring for the purpose of slinging the machine into the river. It is plain and substantial, and has more the appearance of solidity than antiquity in its construction. It is thus spoken of by a writer of some discernment: 'In an unfrequented apartment in the Custom House is still preserved the ducking stool, a venerable relic of ancient customs. In the Chamberlain's book are various entries of money paid to porters for taking down the ducking stool, and assisting in the operation of cooling, by its means, the inflammable passions of some of the female inhabitants of Ipswich.' Entries for the payment of persons employed in taking down this instrument do certainly appear, and in the year 1597 three unfortunate females underwent this opprobrious ceremony, but from delicacy we forbear to mention their names. The fee for inflicting this punishment was *1s. 6d.*, and we blush to think it was ever necessary to enforce it."



A good specimen preserved in the middle of the last century at Sandwich, showed by its construction the origin of the punishment. On its arms and back were painted figures of men and women scolding, and using words not over polite or complimentary, while on the cross bar are the words: —

"Of members ye tonge is worst or best,
An yll tonge ofte doeth breede unrest."

The accompanying engraving shows the form of this remarkable chair, and its peculiar ornamentation. It is stated in Boys's "History of Sandwich" (1792) to have been preserved in the second story of the town hall, along with arms, offensive and defensive, of the trained bands.

Of the one at Cambridge, Cole, writing in

1780, says, in his MSS., preserved in the British Museum:—

"In my time, when I was a boy, and lived with my grandmother in the great corner house at the bridge foot next to Magdalen College, Cambridge, and rebuilt since by my uncle Mr. Joseph Cook, I remember to have seen a woman ducked for scolding. The chair hung by a pulley fastened to a beam about the middle of the bridge, in which the woman was confined, and let down under the water three times, and then taken out. The bridge was then of timber, before the present stone bridge of one arch was builded. The ducking stool was constantly hanging in its place, and on the back panel of it was engraved devils laying hold of scolds, etc. Some time after a new chair was erected in place of the old one, having the same devils carved on it, and well painted and ornamented. When the new bridge of stone was erected, about 1754, this was taken away, and I lately saw the carved and gilt back of it nailed up in the shop of one Mr. Jackson, a whitesmith, in Butcher Row, behind the Town Hall, who offered it to me, but I did not know what to do with it. In October, 1776, I saw in the old Town Hall a third ducking stool of plain oak, with an iron bar before it to confine the person in the seat; but I made no inquiries about it. I mention these things as the practice seems now to be totally laid aside."

Of the Canterbury example, my excellent antiquarian friend, Mr. Wright, in an excellent article in his "Archæological Album," gives the following extracts from the Corporation accounts:—

"Item, paied for a piece of tymber for the ladder of the cuckying stole, and staves to the same xxd.

"Item, for slyttyng of the seid pece of tymber in iij. calves, with the ij. shelle calves, viijd.

"Item, for a pece of tymber for the fote of the ladder, cont. xij. fote, xvd.

"Item, paied for the plank and stanchons for the stole, iijd.

"Item, paied for a pynne of yron waying xij. li., and ij. plates waying vij. li., price li. jd. ob summa, ijs. iiijd.

"Item, paied to Harry Shepard and hys mate, carpenters, for iij. dayes and di. having and makyng of the cucking stole, takyng by the day xiid., summa, iiij. vjd.

"Item, paied to Christofer Wedy for caryage of the seid tymber to the saw-sluye, and from thense to the place where the seid cucking-stole stondeth, etc., iiijd.

"Item, paied for the di. c. of iij. peny nailes, jd. ob.

"Item, for a grete spykyn, to ij staples, and a haspe for the said stole, iij.

Summa. xs. vd. ob.

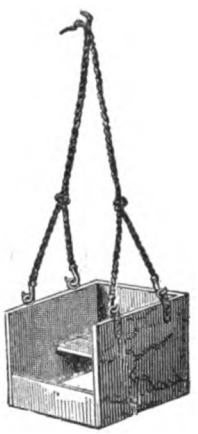
Costes for makyng of the Cokyng Stole.

"Item, paid to Dodd, carpenter, for makyng of the cokyng-stole and sawing the tymbre, by grete, vs. vijd.

"Item, a pair of cholls, iijs. iiijd.

"Item, paid for ij. iren pynnes for the same, waying v. li. at ijd. ob. the li. xiid. ob."

A very plain example, said to be the one formerly in use at Worcester, is here engraved. It is simply a box without a bottom, and with a seat, or shelf, in it, and it has four staples, by which it would be suspended by cords to the beam or pulley.



At Banbury an excellent example was in use, and was placed, with the pillory, by the horse-pond in the market-place, and others are recorded at Shrewsbury, Litchfield, Liverpool, where it was very lately used in all cases of female admission to the House of Correction; at Edgware, Stafford, Salisbury, and many other places.

Examples, extracts from Corporation accounts, notices of records, and memorandums of allusions from the productions of

the old writers, might be added almost *ad infinitum* to those which I have thus hastily thrown together; but my object has not been to collect together all that is known on the subject, but to bring to bear a few of the examples, so as to show the extent to which this mode of punishment has been practised in this kingdom, and to explain the different varieties of engines used.

In the latter part of the fifteenth, during the whole of the sixteenth, and more particularly during the entire period of the seventeenth, centuries, as well as in the first half of the eighteenth, the practice of ducking continued throughout the kingdom, and although ducking stools were not perhaps *quite* as plenty as parish stocks, there was scarcely a town without one, and the beauty of many a village green was blotted and spoiled by the disgraceful machine being attached to the side of the horse, or duck pond in its center. There, in the village were the stocks for the men, and the ducking stool for the women, and the pillory for both or either, and when the villagers wished to get up "an excitement" to relieve the dull monotony of their lives, a "ducking" was "as good as a show," or a bull or bear baiting, and if the poor victim *should* die from the effects of the brutal treatment she received, why, all the better — they knew that they had had their amusement to its fullest extent, and had been debarred of nothing of their sport.

I may, perhaps, in a future number, give a few additional notes on the cucking stool, and so introduce some extraordinary accounts which I have met with of the ducking of some "good-wife" or other, as a matter of speculation — for it has even been known that men (!) *have* "presented" a woman as a scold, for the purpose of making money by it, by "going round with the hat" among the bystanders, in consideration of the sport they had given them! Such is human nature. No matter whether the bull-ring, the cock-pit, the bear-garden, or the ducking-pond — no matter whether cruelty was to be practised on the beast, the fowl, the brute, or the woman — a crowd would be gathered together to enjoy the sport — the greater the cruelty the greater the zest with which it would be enjoyed — and people would be found to turn it to pecuniary account. Happy indeed is it for us that we live in an age when such public exhibitions are not tolerated, and when the law — for my fair readers must listen to the fact that it *is still lawful* to order them to the ducking-stool!! — dare not, even if inclination led the authorities, be put in force. He would indeed be a hardy mayor, or magistrate, who would now order a woman to be dragged through the town, and publicly ducked, and I am very much of opinion that the assembled people would turn round, and, very properly, well duck him instead.

A prose satire, "Poor Robin's True Character of a Scold," published in 1678, says — "A burr about the moone is not half so certain a presage of a tempest at sea, as her brow is of storm on land. And though laurel, hawthorn, and seal skin, are held preservatives against thunder, magick has not yet been able to find any amulet so sovereign as to still her ravings; for, like oyl poured on flames, good words do but make her rage the faster; and when once her flag of defiance, the tippet, is unfurl'd, she cares not a straw for constable nor cucking-stool" — and if any hardy mayor now was to order the punishment, he would find not only the scold's tongue, but thousands of "flags of defiance" "unfurled" against him, and would be glad to retire not only from his office, but from the neighborhood where he had attempted to use his cruel authority.

TERRITORIAL SOVEREIGNTY.

By James W. Stillman.

AMONG the important measures which are to engage the attention of Congress during its present session is the proposed territorial government for the Hawaiian Islands which are now under the actual or *de facto* jurisdiction of the United States. Although the writer, in the September issue of this magazine, as he thinks, has clearly demonstrated the unconstitutionality of the recent action of Congress in annexing these islands to this nation by a joint resolution, he concedes for the purpose of this discussion that said action was within the power of that body, and that the islands in question are now a part of the territory of the United States. He also concedes the validity of the general principle that an act of Congress is presumed to be in accordance with the Constitution until the Supreme Court shall have determined it to be otherwise in a case brought before it by a party whose rights are directly affected by such legislation, and in which the constitutionality thereof is necessarily involved; and until a case involving the constitutionality of the joint resolution just referred to shall have been presented to that tribunal for adjudication, and until it shall have been decided to be unconstitutional, it is, and will continue to be, binding upon every department or officer of the Government and upon all the people. As no such case has yet arisen, and as no such decision has yet been rendered, the annexation of Hawaii must be considered as an accomplished fact; and, therefore, Congress now possesses the same power over that Territory which it does over the others.

Among the many interesting questions which have arisen under the Constitution is that concerning the relation of the Federal Government to the Territories. It has been the subject of many debates in Congress, in which some of our ablest statesmen and most eminent constitutional lawyers have participated; it has been treated of in legal works and in periodical literature, and has been formally adjudicated by the Supreme Court. But as that tribunal has the right and the power to reverse its own decisions, having done so in several instances, and as this question is likely to arise again in the near future, it may still be treated as an open one; and, therefore, the writer proposes to consider the provisions of the Constitution under which Congress has assumed to legislate for the Territories, and to determine whether or not this power actually resides in that body.

The words of the Constitution which are usually referred to by those persons who contend that Congress has sovereign power over the Territories are found in Clause 2, of Section 3 of Article IV., which reads as follows: —

> The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Let us examine the language of that clause and determine what it means, if there can be any doubt in regard to its meaning. "The Congress shall have power to dispose of," — what do these words signify? When speaking of territory or of land which cannot be destroyed, they must necessarily mean, to give away, to cede, to sell, or to lease; they can have no other meaning. Also, "Congress shall have power to make all needful rules and regulations respecting the territory," — and here the word "territory" is in the singular number, the only place in which it occurs in the Constitution; and it can have no other meaning than land.

That definition has been given to this word by the Supreme Court in the case of United States *v.* Gratiot *et al.*, 14 Peters, 537, in which it says: —

"The term 'territory,' as here used, is merely descriptive of one kind of property, and is equivalent to the word 'lands.'"

If there be any doubt in regard to the meaning of the word "territory," as here used, it must be entirely removed when the three following words, "or other property," are considered, as they clearly indicate that the word "territory" is intended to signify one species of property, and has no reference to people or to those political communities which are now called "Territories." It is true that the clause provides for "needful rules and regulations"; but these words cannot be properly construed to confer upon Congress the power of either civil or criminal legislation for persons, as they apply only to "the territory or other property belonging to the United States"; and no one will seriously contend that the inhabitants of this portion of the public domain are property within the meaning of the clause under consideration, whatever else it may signify. Rules and regulations respecting property cannot include legislation for people; and the only meaning which these words can have in respect to land is that Congress is authorized to provide for surveying, improving, cultivating, or leasing it; and these rules and regulations can have force only while this territory belongs to the United States. Whenever it is sold it ceases to be property belonging to the United States; it becomes property belonging to individuals. It ceases to be public property; it becomes private property; and Congress when it sells this territory, parts with its jurisdiction over it.

In support of this contention, the writer cites the following sentences from the unanimous opinion of the Supreme Court in the case of Carroll *v.* Safford, 3 Howard, 460, 461. Referring to certain public land in Michigan which had been purchased by the complainant, the court said. —

"When the land was purchased and paid for, it was no longer the property of the United States, but of the purchaser. Lands which have been sold by the United States can in no sense be called the property of the United States."

According to this decision, therefore, the jurisdiction of Congress over the public lands ceases when they are sold to individuals. But it does not follow from this fact that the mere ownership of land by the Federal Government justifies Congress in assuming jurisdiction over the people who occupy it. It is well known that the United States owns large tracts of land within the boundaries of several States; but that fact does not deprive these States of their jurisdiction over the people who occupy this land, nor does it justify either Congress or the Federal courts in assuming jurisdiction over them unless that has been expressly ceded to the Federal Government by the legislatures of these States. (Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S., 525.) And Congress possesses no more power over people occupying public land in the Territories than it does over people occupying public land in the States. So it is manifest that the provision of the Constitution above quoted does not confer upon Congress the power to establish governments over, or to legislate for, the people of the Territories without their consent.

In further elucidation of the meaning of this clause, it may be remarked that if Congress should desire to sell any of the public buildings, ships of war, arms, ammunition or other property of the Government, or to make rules and regulations for the use thereof, it has the power to do so under this provision, as the clause was incorporated into the Constitution for this purpose; but it is absurd to say that the power to dispose of property and to regulate its use includes the power to legislate for persons; as the

power to govern them does not depend on the ownership of the land which they occupy but on their consent to be governed; and the existing Territorial Governments are just ones only in so far as the inhabitants of the Territories have acquiesced in, or have consented to, those Governments.

That the construction which the writer has placed upon this constitutional provision is the correct one is rendered perfectly clear when the language thereof is contrasted with that of Clause 17, Section 8, of Article I., which reads as follows: —

> The Congress shall have power to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places, purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

Mark the difference in the language of these two clauses. In the former, the Constitution speaks of disposing of, and making needful rules and regulations respecting property; and in the latter it uses the words "legislation" and "authority," both of which necessarily imply government for people. Nothing can be more self-evident than that there are separate and distinct meanings to each of these provisions, and that the power conferred by the first is not identical with that conferred by the second, but widely different from it; although, strange to say, Congress has legislated under both of them as though they had precisely the same meaning. Now every word in the Constitution was selected with the greatest care; and there is not a superfluous clause or sentence in it. In that respect it is the most remarkable document which was ever written. Its framers meant exactly what they said; and they said exactly what they meant; and if they had intended Congress to exercise the same authority over the Territories which it does over the District of Columbia and the other places mentioned in the last clause above quoted, they would have used similar, if not identical language in both instances; and that they did not do so is conclusive evidence that they did not intend Congress to exercise such authority over the people of the Territories as it does over those of the above mentioned district.

It is evident, therefore, that if Congress has any power over the inhabitants of the Territories, it does not flow from the first provision of the Constitution above referred to; and consequently, if it exists at all, it is derived from some other clause in that instrument. There have been some eminent constitutional lawyers who have contended that the power in question is conferred by Clause 1 of Section 3 of Article IV., which authorizes Congress to admit new States into the Union. While the writer desires to treat with perfect respect the views of those persons from whom he differs on legal as well as on all other questions, he must nevertheless declare that in his opinion this contention is clearly erroneous. To say that because Congress has the power to admit a new State into the Union, it has also the power to legislate for its people before it is so admitted, is to enunciate an entirely novel principle in constitutional law; and there would be just as little reason in saying that because A. has the right to admit B. as a partner in business, therefore the former has the right to take the latter by force and to hold him as a slave until he shall be so admitted. It is true that Congress has assumed the right and the power to organize temporary governments for the Territories which have heretofore been admitted into the Union; but this has been done, as the writer contends, without constitutional authority; and the mere exercise of a power by any department of the Government does not necessarily imply that this power has been constitutionally conferred

upon it; and there is every reason to believe that the people of these several Territories were as competent to establish their own governments as were the people of the thirteen original States, and that they would have done so if they had been permitted to do so.[1] The writer, therefore, is unable to perceive how the power to admit a State into the Union confers upon Congress the power to govern its people before such admission.

Additional light is thrown upon this question by certain proceedings in the Constitutional Convention on August 18 and 30, 1787; but before referring to them it is necessary to state that the Congress of the Confederation, on July 13 in the same year, adopted an ordinance for the government of the northwestern territory; but James Madison, in the 38th number of the "Federalist," asserted that this act "was done without the least color of constitutional authority"; and it is reasonable to believe that if the members of the convention had intended to continue the exercise of this power, they would have introduced into the Constitution an explicit provision to that effect, so that such future legislation as Congress might deem proper to enact for the government of the Territories might be within instead of without its constitutional powers. Accordingly, on August 18, Mr. Madison submitted to the convention the following propositions among others: —

To dispose of the unappropriated lands of the United States.

To institute temporary governments for new States arising therein.

These propositions were referred to the committee of detail; but before any action had been taken upon them by that committee, the convention, on August 30, adopted Article IV., substantially as it now reads in the Constitution. ("Elliot's Debates on the Federal Constitution," Vol. V., pages 439 and 497.) It will be seen, therefore, that the proposition to authorize Congress "to institute temporary governments in the new States arising in the unappropriated lands" was not accepted by the convention, which fact was equivalent to its rejection. This clearly indicates that the convention did not intend to continue the policy of governing the Territories under the Federal Constitution.

Although in the deeds executed by certain of the thirteen original States, ceding territory to the Confederation, there were clauses granting to it the jurisdiction as well as the soil, this jurisdiction could be exercised only in accordance with such provisions as the Articles of Confederation contained, or with such others as might be incorporated into the new Constitution; and the latter, as has been already shown, provides that Congress shall have the power to dispose of, and to regulate the territory as property only, and not to legislate for the inhabitants thereof, either as citizens or as subjects; and in regard to the territory and the jurisdiction ceded to the United States by North Carolina, on February 25, 1790, and by Georgia on April 24, 1802, and also that ceded thereto by treaties with France, Spain, Mexico, and Russia, all of which occurred since the adoption of the Constitution, the same principle applies with equal force.

There is still another provision of the Constitution which has an important bearing upon the question under consideration; and that is Clause 2 of Article VI., which reads as follows: —

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

It is worthy of notice that by this clause the Constitution is made supreme over the

[1] This was done by the people of California, Congress having neglected to establish a government for that Territory.

States only; and if its framers had intended to extend it to the Territories they certainly would have made an express provision to that effect. The States are referred to in the Constitution no less than thirty times, while the word "territory" occurs therein but once; and there, as already indicated, it means land only. According to the preamble of the Constitution, it was ordained and established "for the United States of America," and not for any other portion of the habitable globe; and it cannot be made to extend to any other country except by the consent of its inhabitants or by a war of conquest. It is binding upon the several States only, because the thirteen original ones gave their consent to it when they ratified it, and the others did so when they voluntarily entered the Union in pursuance of acts of Congress passed for that purpose, — the fundamental principle of our Government being that it rests upon the consent of the governed, having only such powers as they have conferred upon it; and while they had the right to delegate to it unlimited power to legislate for themselves they had no right to, and did not, delegate to it the power to legislate for others. The writer, therefore, thinks that he has clearly established the proposition that the Federal Government has no rightful authority over the people of the Territories.

In support of the writer's contention that the Constitution cannot be enforced beyond the boundaries of the United States except by conquest or by the consent of the people sought to be brought under it, he will refer to a speech delivered by Daniel Webster in the Senate on Feb. 24, 1849. That body having under consideration the annual civil and diplomatic appropriation bill, and Mr. Walker of Wisconsin having introduced an amendment thereto to extend the Constitution to the Territories, Mr. Webster opposed this amendment in a speech of great power, in the course of which he said: —

"The Constitution is extended over the United States and over nothing else, and can be extended over nothing else. It cannot be extended over anything except over the old States and the new States that shall come in hereafter, when they do come in." (Appendix to the Congressional Globe, Second Session of the Thirtieth Congress, page 273.)

According to Mr. Webster, therefore, the Constitution does not and cannot be made to extend to the Territories; and as Congress has no power to legislate for any other persons that those over whom it does extend, it necessarily cannot rightly do so for the people who reside outside of the boundaries of the United States. The act of the Senator from Wisconsin in offering this amendment was a virtual admission on his part that the Constitution of itself has no force outside of the Union, or otherwise his motion to amend the bill in this manner would have been entirely unnecessary. Mr. Webster having clearly demonstrated the impossibility of extending the Constitution to the Territories, Mr. Walker's amendment was finally rejected. This action on the part of the Senate was a legislative declaration that the Constitution is binding upon the States alone, and can have no force beyond their limits.

That the views above expressed by the writer are not original with him must be evident to all who are familiar with the debates in Congress on this question and with articles thereon which have appeared in certain newspapers and leading monthly publications. He will therefore refer to the opinions of two eminent statesmen, both of whom have been candidates for the Presidency of the United States. On March 14, 1850, the Senate having under consideration Senator Bell's compromise resolutions the Hon. Lewis Cass of Michigan delivered a speech thereon, in the course of which he said: —

"There are two positions I have always maintained with reference to this subject — first, that Congress, under the Constitution,

has no right to establish governments for the Territories; secondly, that under no circumstances have they the right to pass any law to regulate the internal affairs of the people inhabiting them." (Congressional Globe, First Session of the Thirty-first Congress, page 528.)

The issue of "Harper's New Monthly Magazine" for September, 1859, contains an article by the Hon. Stephen A. Douglas of Illinois, entitled "The Dividing Line between Federal and Local Authority, Popular Sovereignty in the Territories," in which the author clearly establishes his contention that the Federal Government has no constitutional authority to govern the people of the Territories without their consent, his conclusion being stated in a single sentence at the end of his article as follows: —

"The principle, under our political system, is that every distinct political community loyal to the Constitution and the Union, is entitled to all the rights, privileges and immunities of self-government in respect to their local concerns and internal policy, subject only to the Constitution of the United States." (Vol. XIX., p. 537.)

It will be perceived that so far as the absolute sovereignty of the people of the Territories is concerned, Mr. Cass and Mr. Douglas were of the same opinion; but the latter believed that it is guaranteed to them by the Constitution itself, while the former contended that it is possessed by them independently of that instrument. This doctrine was advocated with great ability and force by Mr. Cass in a speech delivered in the Senate on January 21 and 22, 1850, and published in the Appendix to the Congressional Globe, First Session of the Thirty-first Congress, p. 58, to which the attention of the reader is respectfully directed.

Of course the writer is aware that the position which he has assumed on this question is contrary to certain decisions which have been rendered by the Supreme Court; and although these decisions must be considered as a part of the fundamental law of the nation until they shall have been reversed by that tribunal, or until they shall have been nullified by a constitutional amendment, he nevertheless feels perfectly justified in expressing his dissent from the conclusions expressed therein by the court. It is impossible to consider all of these decisions; nor is it necessary to do so, as there is no material difference between them. He will, therefore, confine his observations to only three of them, these having been cited and approved by the court in all subsequent opinions bearing upon this question.

"In the meantime Florida continues to be a Territory of the United States, governed by that clause in the Constitution which empowers Congress 'to make all needful rules and regulations respecting the territory or other property belonging to the United States.'

"Perhaps the power of governing a Territory belonging to the United States, which has not by becoming a State acquired the means of self-government may result necessarily from the facts that it is not within the jurisdiction of any particular State and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, the possession of it is unquestioned." (The American Insurance Company *v.* Canter, 1 Peters, 542.)

"It is certainly now too late to doubt the power of Congress to govern the Territories. There have been some differences of opinion as to the particular clause of the Constitution from which the power is derived, but that it exists has always been conceded. All territory within the jurisdiction of the United States, not included in any State, must necessarily be governed by or under the authority of Congress. That body has full and complete legislative authority over the people of the Territories and all the departments

of the territorial governments. It may do for the Territories what the people under the Constitution of the United States may do for the States." (National Bank *v.* County of Yankton, 101 U. S. 132.)

"The power of Congress over the Territories of the United States is general and plenary, arising from and incidental to the right to acquire the Territory itself, and from the power given by the Constitution to make all needful rules and regulations respecting the Territory or other property belonging to the United States. It would be absurd to hold that the United States has power to acquire territory and no power to govern it when acquired. The power to make acquisitions of territory by conquest, by treaty and by cession is an incident of national sovereignty." (Mormon Church *v.* United States, 136 U. S. 42.)

The first and the second of these decisions agree in one particular; and that is, that because no one of the States in the Union has any authority over the Territories, this authority must reside in the whole number of them combined under the Federal Government, which is assuming the very point in dispute. But it is difficult to perceive how all the States together possess power over people occupying the public domain which none of them possesses singly; and it would be as unreasonable to say that although no citizen of any nation alone has the right to enslave his neighbor, he and all the other citizens together have the right so to do.

The first and the third decisions refer to the so-called property clause of the Constitution; although in neither of them does the court appear to think that it is sufficient to authorize Congress to legislate for the Territories; and in both, the court refers to the right to acquire territory, as the real source of power to govern its inhabitants after it has been acquired. If the property clause confers the power, there is no necessity for mentioning any other source of it. If, however, it does not, and if the right to acquire territory is the only source, the court agrees with the writer's contention, which is, that there is no constitutional authority for the legislation on this subject which Congress has heretofore enacted. The first decision asserts that the possession of the power is unquestioned; and the second asserts that its existence has always been conceded; whereas the truth is that it has always been questioned by some and denied by others.

In the second decision no allusion is made to the property clause or to any other provision of the Constitution, which fact is an admission that the power in question if it exists at all does so outside and not inside the Constitution; and in that opinion the writer concurs, although he denies that it exists anywhere. He admits that the Government owns and has the right to regulate the use of the land until it is sold to individuals; but he denies that it either owns, or has the right to govern, the people except by their consent. Although the court in several other decisions also asserts the unlimited authority of the Federal Government over the inhabitants of the Territories, it fails to prove that this authority is derived from the clauses of the Constitution above quoted or from any others; and it also fails to show how the jurisdiction of the United States can be made to extend beyond its limits without the concurrence and against the protests of the people sought to be brought under it. It is greatly to be desired that if this question should ever again be brought before that august tribunal, it will offer some more substantial reasons for its decision thereon than it has done heretofore; and, if it cannot do so, it would be displaying wisdom by admitting that its previous decisions are utterly without foundation in law, in reason or in common sense.

Although the Constitution does not forbid Congress to declare or to wage wars of

conquest against other nations, it never yet has exercised that power, the policy of our Government having been opposed to extending either our territory or our dominion by that method. It is difficult to perceive how the conquest of other countries can be made by us consistently with the doctrine enunciated in the Declaration of American Independence from which a quotation will presently be made; for although that famous State paper is not a part of the Constitution, the latter is in perfect harmony with the former; and the Constitution ought always to be construed in the light of the Declaration, particularly when human rights are considered. The language of the Declaration bearing upon this question is as follows:—

"We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

If all men are created equal, and if they are endowed by their Creator with certain unalienable rights, among which are life, liberty, and the pursuit of happiness, as the Declaration affirms, the inhabitants of Hawaii are included therein; and therefore, Congress has no more right to deprive them of life, liberty, or the pursuit of happiness, than it has to do so to any other people upon the face of the earth. Also, if all governments derive their just powers from the consent of the governed, any government which Congress may establish for the Hawaiians without their consent and against their wishes must necessarily be an unjust government. Therefore, before attempting to establish a government for these islands, Congress should first provide for taking a vote of the inhabitants thereof on the question whether or not they desire to be governed by the United States. If that question shall be decided affirmatively, Congress may then proceed consistently with the doctrine of the Declaration above quoted to establish a government; and before it is put into full force and operation, it ought also to be submitted to the people for their approval; and if it be so submitted, and if it be so approved, there can be no constitutional objection to the government thus inaugurated. If, on the contrary, the people of these islands should vote against either of the above-mentioned propositions, the United States Government ought immediately to withdraw its officers from that country, and to leave it to form its own government, and to remain one of the independent nations of the earth. In this manner only, can the policy of the Federal Government be rendered consistent with the Declaration of Independence.

If, however, Congress persist in imposing upon the inhabitants of the Hawaiian islands without their consent and against their wishes, a territorial government, what must and will be the necessary result of that proceeding? Before answering this question it should be remembered that, according to Article XIV., of the Amendments of the Constitution, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." If, therefore, these people are subject to the jurisdiction of this Government, they are our fellow-citizens; and if so, they are justly entitled to the same rights, privileges, and immunities which are enjoyed by all the other citizens. This being true, they ought to be admitted into a full participation in the rights of citizenship, and ought also to be represented in both Houses of Congress; and to compel them to pay taxes for the support of a government in which they have no voice would be one of the worst forms of tyranny. In other words that country ought to be admitted into the Union as a State on

the same footing and with the same rights which are possessed by all the other States. If this be not done, and if these people are to be governed by laws enacted by Congress and enforced by the President, without their consent and against their protests, they, instead of being citizens and the equals of all other citizens, will become a subject province; and the people of the United States will be divided into two classes, one of which will be the rulers and the other the ruled; and what will this be if not a modified form of slavery? Anything different from absolute equality among the people so far as their political and civil rights are concerned is neither more nor less than slavery; and when it is remembered that in order to abolish that institution within our borders we waged a war which cost us millions of dollars and caused the sacrifice of many precious lives, we are reluctant to believe that we are now about to re-establish it in another form, particularly as according to Article XIII., of the Amendments of the Constitution it has been abolished. Let us hope that this question will receive from our legislators the careful consideration which its importance demands of them; and if they will but listen to the voice of reason, they cannot do otherwise than take such action in the premises as will be consistent with the fundamental principles upon which our Government has heretofore been administered.

BUGS AND BEASTS BEFORE THE LAW.

By E. P. Evans.

II.

BEASTS were often condemned to be burned alive; and strangely enough, it was in the latter half of the seventeenth century, an age of comparative enlightenment, that this cruel penalty was most frequently inflicted. Occasionally a merciful judge adhered to the letter of the law by sentencing the culprit to be slightly singed, and then to be strangled before being burned. Sometimes they were condemned to be buried alive. Such was the fate suffered by two pigs in 1456, "on the vigil of the Holy Virgin" at Oppenheim on the Rhine, for killing a child. Animals were even put to the rack in order to extort confession. It is not to be supposed that the judge had the slightest expectation that any confession would be made: he wished simply to observe all forms prescribed by the law, and to set in motion the whole machinery of justice before pronouncing judgment. "The question," which in such cases would seem to be only a wanton and superfluous act of cruelty, was nevertheless an important element in determining the final decision, since the death sentence could be commuted into banishment provided the criminal had not confessed under torture. The use of the rack was therefore a means of escaping the gallows. Appeals were sometimes made to higher tribunals, and the judgments of the lower courts annulled or modified. In one instance a sow and a she-ass were condemned to be hanged; on appeal and after a new trial they were sentenced to be simply knocked on the head. In another instance an appeal led to the acquittal of the accused.

In 1266, at Fontenay-aux-Roses, near Paris, a pig convicted of having eaten a child was publicly burned by order of the monks of Sainte Geneviève. In 1386, the tribunal of Falaise sentenced a sow to be mangled and maimed in the head and leg,

and then to be hanged, for having torn the face and arm of a child and caused its death. Here we have a strict application of the *lex talionis*. The sow was dressed in man's clothes and executed on the public square, near the city hall, at the expense to the state of ten sous and ten deniers, besides a pair of gloves to the hangman.

The executioner was provided with new gloves in order that he might come from the discharge of his duty with clean hands, thus indicating that, as a minister of justice, he incurred no guilt in shedding blood. He was not a common butcher of swine, but a public functionary, a "master of high works" (*maître des hautes œuvres*), as he was officially styled. In 1394, a pig was found guilty of "having killed and murdered a child in the parish of Roumaygne, in the county of Mortaing, for which deed the said pig was condemned to be drawn and hanged by Jehan Pettit, lieutenant of the bailiff." The bill presented by the deputy bailiff of Mantes and Meullant, and dated March 15, 1403, contains the following items of expense incurred for the incarceration and execution of a sow:—

Item, cost of keeping her in jail, six sols parisis.

"Item, to the master of high works, who came from Paris to Meullant to perform the said execution by command and authority of our said master, the bailiff, and of the procurator of the king, fifty-four sols parisis.

"Item, for a carriage to take her to justice, six sols parisis.

"Item, for cords to bind and hale her, two sols eight deniers parisis.

"Item, for gloves, two deniers parisis."

This account was examined and approved by the auditor of the court, De Baudemont, who, "in confirmation thereof affixed to it the seal of the Chatellany of Meullant, on the 24th day of March in the year 1403."

There is also extant an order issued by the magistracy of Gisors in 1405, commanding payment to be made to the carpenter who had erected the scaffold on which an ox had been executed "for its demerits." Brute and human criminals were confined in the same prison and subjected to the same treatment. Thus "Toustain Pincheon, keeper of the prisons of our lord the king in the town of Pont de Larche," acknowledges the receipt of "nineteen sous six deniers tournois for having found the king's bread for the prisoners detained, by reason of crime, in the said prison." The jailer gives the names of the persons in custody, and concludes the list with the "item" of "one pig, kept from the 24th of June, 1408, inclusive, till the 17th of July," when it was executed for "the crime of having murdered and killed a little child." For the pig's board he charges two deniers tournois a day, the same as for boarding a man. He also puts into account "ten deniers tournois for a rope found and delivered for the purpose of tying the said pig that it might not escape."

A peculiar custom is referred to in the *procès verbal* of the prosecution of an infanticidal porker, dated May 20, 1572. The murder was committed within the jurisdiction of the monastery of Moyen-Montier, where the case was tried and the accused was sentenced to be "hanged and strangled on a gibbet." The prisoner was then bound with a cord and conducted to a cross near the cemetery, where it was formally given over to an executioner from Nancy. "From time immemorial" we are told, "the justiciary of the Lord Abbot of Moyen-Montier has been accustomed to consign to the provost of Saint-Diez, near this cross, condemned criminals, wholly naked, that they may be executed; but inasmuch as this pig is a brute beast, he has delivered the same bound with a cord without prejudicing or in any wise impairing the right of the lord abbot to deliver condemned criminals wholly naked." The pig must not wear a rope, unless the right to do without it be expressly reserved, lest some human culprit, under similar circumstances, might claim to be entitled to raiment.

In the case of a mule condemned to be burned alive at Montpellier, in 1565, as the animal was vicious and kicky the executioner cut off its feet before consigning it to the flames, This mutilation was an arbitrary and extra-judicial act, dictated solely by considerations of personal convenience. Hangmen were often guilty of superogatory cruelty in the exercise of their bloody functions. Writers on criminal jurisprudence repeatedly complain of this evil and call for reform. Thus Damhouder, in his "Rerum Criminalium Praxis," urges magistrates to be more careful in selecting persons for this important office, and not to choose notorious violators of the law as vindicators of justice. Indeed, these hardened wretches sometimes took the law into their own hands. Thus, on the 9th of June, 1576, at Schweinfurt, in Franconia, a sow, which had bitten off the ear and torn the hand of a child, was given in custody to the hangman, who, without further authority, took it to the gallows green and there "hanged it publicly, to the disgrace and detriment of the city." For this imprudent usurpation of judiciary powers, Jack Ketch was obliged to flee, and never dared return.

On the 10th of January, 1457, a sow was convicted of murder, committed on the person of an infant named Jéhan Martin, of Savigny, and sentenced to be hanged. Her six sucklings were also included in the indictment, as accomplices; but "in default of any positive proof that they had assisted in mangling the deceased, they were restored to their owner, on condition that he should give bail for their appearance should further evidence be forthcoming to prove their complicity in their mother's crime." About a month later, "on the Friday after the feast of the Purification of the Virgin," the sucklings were again brought before the court; and as their owner, Jéhan Bailly, declined to be answerable for their future good conduct, they were declared forfeited to the noble damsel Katherine de Barnault, Lady of Savigny. Sometimes a fine was imposed upon the owner of the offending beast, as was the case with Jéhan Delalande and his wife, condemned on the 18th of April, 1499, by the Abbey of Josaphat, near Chartres, to pay eighteen francs "on account of the murder of a child named Gillon, aged five years and a half or thereabouts, committed by a porker, aged three months or thereabouts." The porker was "hanged and executed by justice."

Nothing would be easier than to multiply examples of this kind. The records of mediæval courts and the chronicles of mediæval cloisters are full of them. That such cases usually come under the jurisdiction of monasteries will not seem strange, when we remember that these religious establishments were great landholders, and at one time owned nearly one third of all real estate in France. The frequency with which pigs were adjudged to death was owing in great measure to the freedom with which they were permitted to run about the houses as well as to their immense number. They became a serious nuisance, not only as endangering the lives of children, but also as generating and disseminating diseases; so that many cities, like Grenoble in the sixteenth century, authorized the carnifex to seize and slay them whenever found at large. Sanitary measures of this kind were not common in the Middle Ages, but were an outgrowth of the Renaissance. It was with the revival of letters that men began again to love cleanliness and to appreciate its hygienic value. Little heed was paid to such things in the "good old times" of earlier date, when the test of holiness was the number of years a person went unwashed, and the growth of the soul in sanctity was estimated by the layers of filth on the body, as the age of the earth is determined by the strata which compose its crust.

But although pigs appear to have been the principal culprits, other quadrupeds were

frequently called to answer for their crimes. The judiciary of the Cistercian abbey of Beaupré, in 1499, sent a bull to the gallows for having "killed with furiosity a lad fourteen or fifteen years of age;" and in 1389 the Carthusians at Dijon caused a horse to be condemned to death for homicide. The magistrates of Bâle, in 1474, sentenced a cock to be burned at the stake for the heinous and unnatural crime of laying an egg. The *œuf coquatri* was supposed to be the product of a very old cock and to furnish the most active and effective ingredient of witch ointment. When hatched by a serpent or by the sun, it brought forth a cockatrice, which would hide in the roof of a house, and, with its baneful breath and "death-darting eye," destroy all the inmates. Naturalists believed in this fable as late as the eighteenth century; and in 1710 the French savant Lapeyrouie read a paper before the Académie des Sciences to prove that the eggs attributed to cocks owe their peculiar form to a disease of the hen. Animals, also, bore their full part of the persecution during the witchcraft delusion. Pigs suffered most in this respect, and were assumed to be peculiarly attractive to devils, and therefore particularly liable to diabolical possession, as is evident from the legion that went out of the tomb-haunting man, and were permitted, at their own request, to enter into the Gadarene herd of swine. Indeed, the greatest theological authority of the Middle Ages, Thomas Aquinas, maintained that beasts are but embodiments of evil spirits. Chassenée quotes this opinion, and adds that in excommunicating animals the anathema "is aimed inferentially at the devil, who uses irrational creatures to our detriment." Still more recently, a French Jesuit, Père Bougeant, set forth the same view in a philosophical treatise.

It was during the latter half of the seventeenth century, when, as we have seen, criminal prosecutions of animals were especially frequent and the penalties inflicted extremely cruel, that Racine caricatured them in "Les Plaideurs," where a dog is tried for stealing and eating a capon. Daudin solemnly takes his seat as judge, and declares his determination to "close his eyes to bribes and his ears to brigue." Petit Jean prosecutes the case, and L'Intimé appears for the defense. Both address the court in high-flown rhetoric and display rare erudition in quoting authorities. The accused is condemned to the galleys. Thereupon the counsel for the defendant brings in the puppies, [*pauvres enfants qu'on vent rendre orphelins*], and appeals to the compassion and clemency of the judge. Daudin's feelings are touched; as a public officer, too, he is moved by the economical consideration that if the children are deprived of their father, they must be kept in the foundling hospital at the expense of the state. To the contemporaries of Racine a scene like this had a significance which we fail to appreciate. To us it is simply farcical and not very funny; to them it was a mirror, reflecting a characteristic feature of the time and ridiculing a grave judiciary abuse, as Cervantes had already represented in Don Quixote the *reductio ad absurdum* of chivalry.

Lex talionis is the oldest kind of law and the most deeply rooted in human nature. To the primitive man and the savage, tit for tat is an ethical axiom. No principle is held more firmly or acted upon more universally than that of literal equivalents, the iron rule of doing unto others the wrongs which others have done unto you. Hebrew legislation demanded "Life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe." In the covenant with Noah it was declared that human blood should be required "at the hand of man" and "at the hand of every beast"; and it was subsequently enacted that "if an ox gore a man or woman that they die, then the ox shall be surely stoned, and his flesh shall not be eaten." To eat a creature

which had become the peer of man in blood guiltiness and in judicial punishment would savor of anthropophagy. The Kur'ân holds every beast and fowl accountable for the injuries done to each other, but reserves their punishment for the life to come. Among the Kukis, if a man falls from a tree and is killed, it is the sacred duty of the next of kin to fell the tree, and cut it up and scatter the chips abroad. The blood of the slain was not thought to be thoroughly avenged until the offending object had been effaced from the earth. A survival of this notion was the custom of burning heretics and flinging their ashes to the four winds. The laws of Drakôn and Erechtheus required weapons and all other objects by which a person had lost his life to be publicly condemned and thrown beyond the Athenian boundaries. This was the sentence pronounced upon a sword which had killed a priest, the wielder of the same being unknown; and also upon the bust of the poet Theognis, which had fallen on a man and caused his death. Even in cases which might be regarded as homicide in self-defense no such ground of exculpation was admitted. Thus the statue which the Athenians erected in honor of the famous athlete, Nikôn of Thasos, was assailed by his envious foes and pushed from its pedestal. In falling it crushed one of its assailants; it was brought before the proper court, and sentenced to be cast into the sea.

In the Avesta, a mad dog is not permitted to plead insanity, but is "punished with the punishment of a conscious offense" by progressive mutilation, beginning with the ears and ending with the tail. This cruel and absurd enactment is wholly inconsistent with the kindly spirit shown in the Avesta towards all animals recognized as creatures of Ahuramazda, and especially with the legal protection vouchsafed to dogs. Indeed, a paragraph in the same chapter commands the Mazdayasnians, as regards such a dog to "wait upon him and try to heal him, just as they would attend a righteous man."

A curious example of imputed crime and its penal consequences is seen in the custom of the Romans of celebrating the anniversary of the preservation of the Capitol from the Gauls, not only by paying honor to geese, whose cackling gave warning of the enemy's approach, but also by crucifying a dog, as a punishment for not having been more watchful on that occasion. This, however was really no more absurd than to visit the sins of the fathers on the children, as prescribed by many ancient law-givers, or to decree corruption of blood in persons attainted of treason, as in modern legislation. They are all applications of the barbarous principle which, in primitive society, made the tribe responsible for the acts of each of its members. According to an Anglo-Saxon law, abolished by King Knut, in case stolen property was found in the house of a thief, his wife and family, even to the child in the cradle, though it had never taken food, were punished as partakers of his guilt. Cicero approved of such penalties for political crimes as "severe but wise enactments, since the father is thereby bound to the interests of the state by the strongest of ties, namely, love for his children." When the prefects Tatian and Proculus fell into disgrace, Lycia, their native land was stricken from the list of Roman provinces, and its inhabitants were disfranchised and declared incapable of holding any office under the imperial government. So, too, when Joshua discovered some of the spoils hidden in the tent of Achan, not only the thief himself, but also, "his sons, and his daughters, and his oxen, and his asses, and his tent, and all that he had," were brought into the valley of Achor, and there stoned with stones and burned with fire. At a later period these holocausts of justice were suppressed among the Jews, and no man was put to death save for his own sin. Yet, at the request of the Gibeonites, whom it was desirable to conciliate, David did not scruple to deliver up to them seven of Saul's sons, to be hanged for

the evil which their father had done in slaying these foes of Israel. It is as if Bismarck had sought the favor of the French by giving into their hands the descendants of Blücher, to be guillotined on the Place de la Concorde.

The horrible mutilations to which criminals were formerly subjected resulted from an endeavor to administer strictly even-handed justice. What could be fairer than to punish perjury by cutting off the two fingers which the perjurer had held up in taking the oath? It was the popular belief that the fingers of an undetected perjurer would grow out of the grave, seeking retributive amputation, as a plant seeks the light, and that his ghost would never rest until this penalty was inflicted. The Carolina, or criminal code of Charles the Fifth, required that incendiaries should be burned alive: and an old law, cited by Döppler in his "Theatrum Pœnarum," condemned a man who dug up and removed a boundary-stone to be buried in the earth up to the neck, and to have his head plowed off with a new plow. Ivan Basilowitch, a Muscovite prince, ordered that an ambassador who did not uncover in his presence should have his hat nailed to his head: and it is a feeble survival of the same conception of fit punishment that makes the American farmer nail the hawk to his barn door.

That the feeling in which such enactments originated still lies scarcely skin-deep under our civilization is evident from the force and suddenness with which it comes to the surface under strong public excitement, as when Cincinnati rioters burned the court-house, because they were dissatisfied with the verdicts of the juries.

The childish disposition to punish irrational creatures and inanimate objects, which is common to the infancy of individuals and of races, has left a distinct trace of itself in that peculiar institution of English law known as *deodand*, and derived partly from early Jewish, and partly from old German usages and traditions. "If a horse," says Blackstone, "or any other animal, of his own motion kill as well an infant as an adult, or if a cart run over him, they shall in either case be forfeited as deodants." If a man, in driving a cart, tumbles to the ground and and loses his life by the wheel passing over him, if a tree falls on a man and causes his death, or if a horse kicks his keeper and kills him, then the wheel, the tree, and the horse are deodands *pro rege*, and are to be sold for the benefit of the poor.

Blackstone's theories of the origin of deodands are exceedingly vague and unsatisfactory. His statement that they were intended to punish the owner of the forfeited propperty for his negligence, and also his assertion that they were "designed, in the blind days of popery, as an expiation for the souls of such as were snatched away by sudden death," are both incorrect. In most cases the owner was perfectly innocent, and very frequently was the victim of the accident. He suffered only incidentally from a penalty imposed for a wholly different purpose, just as a slaveholder endures loss when his human chattel commits murder and is hanged for it. The primal object was to atone for the taking of life in accordance with certain crude conceptions of retribution. In hierarchies the prominent idea was to appease the wrath of God, who otherwise might visit mankind with famine and pestilence and divers retaliatory scourges. For this reason the property of a suicide was deodand. Thus the wife and children of the deceased, the very persons who had already suffered most from his fatal act, were punished for it by being robbed of their rightful inheritance. Yet this was by no means the intention of the law-makers. Ancient legislators uniformly considered a *felo de se* as a criminal against society and the state, a kind of traitor. The man had enjoyed the support and protection of the civil and political body during his infancy and youth, and, by taking his own life, he shook off the responsibilities and

shirked the duties devolving upon him as a member of the commonwealth. This is why self-murder was called felony, and involved forfeiture of goods. Calchas would not permit the body of Ajax, whe died by his own hand, to be burned. The Athenians cut off the hands of a suicide and buried the guilty instrument of his death apart from the rest of his body. In some communities all persons over sixty years of age were free to kill themselves, if they wished to do so; and the magistrates of Marseilles, in ancient times, kept on hand a supply of poisons to be given to any citizen who, on due examination, was found to have good and sufficient reasons for committing suicide.

It is true, as Blackstone asserts, that the church claimed deodands as her due, and put the price of them into her coffers. But this fact does not explain their origin. They were an expression of the same feeling that led the public authorities to fill up a well in which a person had been drowned, not as a precautionary measure, but as a solemn act of expiation, or that condemned and confiscated a ship which, by lurching, had thrown a man overboard and caused his death.

Deodands were not abolished in England until the reign of Queen Victoria. With the exception of some vestiges of primitive legislation still lingering in maritime law, they are, in modern codes, one of the latest applications of a penal principle which in Athens expatriated stocks and stones, and in mediæval Europe excommunicated bugs and sent beasts to the stake and to the gallows.

A MODEST DEFENCE OF SUICIDE.

SUICIDE, as Lord Beaconsfield once said of free trade, is an expedient, and without wishing to raise it to the dignity of a religion, I would suggest that it is an alternative which can at times be accepted by the individual with advantage to himself, the domestic community, and the state. It is an expedient which most men have contemplated; it is an alternative which no man of reason has weighed, without admitting it, in certain circumstances, to be the only path of honor. The man of resource, of means and invention, treads it in secret, and with dignity; it is only the poor fool, harassed and bewildered, who blunders on it in the full glare of day and publicity, leaving in his wake a trail of botched accounts and domestic troubles, with an aftermath of misery and shame. We have, now, a legal recognition of kleptomania, of the influence of ancestry, of sundry other things which previous generations would have treated with scant consideration; but has not the time arrived for a better and a juster, a more politic, appreciation of the claims of suicide?

Briefly, then, I would suggest a court of suicide to which application could be made, and where all proposals would be considered on points of equity and with regard to personal and public advantage "in camera," and without a jury. The applicant would be required to satisfy the presiding judge or judges that his removal by death would be the best thing in his circumstances (or that it would be upon certain events happening; but of this class I will speak later), and that such a course would not be attended by counterbalancing disadvantages to other persons. Upon receiving satisfactory evidence on these points the court would be empowered to grant the applicant a suicide license, authorizing him to take his own life legally, and without prejudice, at the place

named therein, and (as in the case of a marriage license) at any time within three months of the date thereon, due notice first being given to one of the court's properly authorized medical practitioners. The question of method is one which, in my opinion, could be best left to individual selection, but a medical officer might be attached to the court, ready at any time to advise technically upon the merits and demerits of the various agents, to examine accepted applicants, and to give an opinion on the amount required of any particular poison, or on the requisite length of the "drop," should the licensee prefer that method, and even to supply the selected drug in sufficient and convenient form.

As already indicated, special licenses might also be granted, to come into operation only in case of certain specific contingencies occurring, in which case the special licensee could avail himself of the advantage wherever he happened to be at the time, and even, if such a course would be more convenient, without giving notice of his intention. These might be made operative for a longer period than the ordinary license, say six months, or even more at the discretion of the court.

Still following the precedent of the ecclesiastical courts, it would be highly necessary that all applications should be made in person.

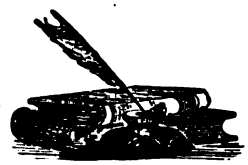
The hearing and other fees throughout should be made as low as possible; indeed there is no reason why a person could not appear in *formâ pauperis*. If the application should be dismissed, the hearing fee would be the only expense incurred, and the pleader would leave no worse than he was before. Perhaps, however, it would be desirable that the court should have the power of detaining, during its pleasure, persons obviously "non compos mentis," or those temporarily suffering hallucinations, and of committing summarily to the hospital all whose suicidal desires were promoted by physical suffering which, in the opinion of the court's medical adviser, could be relieved for the time, and perhaps ultimately removed.

For the sake of those who had no convenience for committing suicide at home, there might be established under the jurisdiction of the suicide court, an annex to some central hospital, where all the more generally required accessories could be put at the disposal of the properly licensed caller. But wherever the place, and whatever the method, when the matter was over, the medical man, who had been previously advised of the event, would arrive, examine the body and make out the necessary certificate, inserting some recognized phrase to show that the deed was a legal one and properly carried out.

One runs no risk of exaggerating the vast beneficial results which would arise from the adoption of the course briefly indicated; it would be practically impossible to overestimate them. Half the disgusting tragedies, so fruitful of weak emulation, would disappear from the newspapers. Think you that Signor X., who lately disposed of himself in a London hotel (much to the proprietor's inconvenience and the dismay of the visitors) by drinking every liquid particle in the room and then probing his brain, through the auricular aperture, with a pair of scissors, would have selected that exceedingly elaborate and painful manner of exit had he been able to go, armed with proper credential, to a good hospital, and there flicker out surrounded by every comfort?

It is impossible within the brief limit of this paper even to suggest a tithe of the advantages which would result from the accomplishment of my suggestion. Suicides, both legal and criminal, would decrease from the first day of the opening of the new court, for while the advantages it offered would be irresistible, its procedure would have a salutary and repressing effect in all but the most deserving cases. — *Year Book.*

The Lawyer's Easy Chair.



. Current Topics, . . Notes of Cases, etc.

∴ ∴ ∴ ∴ ∴ BY IRVING BROWNE. ∴ ∴ ∴ ∴ ∴

CURRENT TOPICS.

SIR FRANK LOCKWOOD. — It appears, from Mr. Augustine Birrell's biography of this lamented lawyer, that there never was a professional personality so attractive and familiar about whom it was more difficult to set down much in print. The volume has not yet come to our hands, but from the London "Law Journal" we reproduce two charming extracts: —

"It was on a petition to the Master of the Rolls for payment out of Court of a sum of money; and Lockwood appeared for an official liquidator of a company whose consent had to be obtained before the Court would part with the fund. Lockwood was instructed to consent, and his reward was to be three guineas on the brief and one guinea for consultation. The petition came on in due course before Lord Romilly, and was made plain to him by counsel for the petitioner, and still a little plainer by counsel for the principal respondent. Then up rose Lockwood, an imposing figure, and indicated his appearance in the case. 'What brings you here?' said Lord Romilly, meaning, I presume, 'Why need I listen to you?' Lockwood looking puzzled, Lord Romilly added, a little testily, 'What do you come here *for?*' The answer was immediate, unexpected, and, accompanied as it was by a dramatic glance at the outside of his brief, as if to refresh his memory, triumphant, 'Three and one, my lord.' There was Homeric laughter in the old Court of Chancery, and it was fitting there should be, for this was not only Lockwood's first brief and first forensic joke, but it was, I verily believe, the last joke ever made in the High Court of Chancery."

This indicates that Sir Frank Lockwood had even more courage than Erskine on *his* first appearance in court, for a lawyer who could utter a jest in the Court of Chancery must indeed have been armed in triple brass, as well as in triple gold. The next shows the ruling humor strong in death: —

"We learn that Lord Halsbury viewed Lockwood's succession to the Bench with an eye of partiality, and that he paid him a visit while he lay ill in Lennox Gardens. Referring to this friendly call, the dying advocate, glancing at his shrunken form, said, 'The Chancellor *must* have felt I should make an excellent puisne judge.'"

Sir Frank must have been a model M. P., for "during the twelve years he represented York in the House of Commons he spoke only fifty times, and Mr. Birrell tells us that 'all his fifty speeches rolled into one would hardly make up a single parliamentary oration of the full-bodied, long-winded, front bench order.'"

VOTING BY MACHINERY. — Nearly every industry has been reduced to operation by machinery — even voting. But a good deal of question as to the constitutionality of this process has been made, and in the last volume of Rhode Island reports is the answer of that court to the official inquiry of the governor on that subject, in the affirmative, one judge dissenting. The machine in question is known as the "McTammany machine" — significant name, both in the prefix and the principal part. It is operated by pushing a button, which makes a hole in a roll of paper invisible to the voter. The majority of the judges deemed this equivalent to a pencil-mark. But one dissented, observing: "It is common knowledge that human machines and mechanisms get out of order, and fail to work, in all sorts of unforeseen ways. Ordinarily the person using a machine can see a result. Thus a bank clerk, perforating a check with figures, sees the holes; an officer of the law, using a gibbet by pressing a button, sees the result accomplished that he sought; and so on *ad infinitum*. But a voter on this voting machine has no knowledge, through his senses, that he has accomplished a result. The most that can be said is, that *if* the machine worked as intended, then he has made his hole and voted." The short answer to this is, that if he *didn't* make his hole he *didn't* vote — just as if his pencil failed to make a mark, although he thought it did.

THE DECAY OF COURTESY. — In referring to a recent paragraph on this subject, in this department, a correspondent calls attention to the fact that, in Judge Dillon's excellent "Laws and Jurisprudence of England and America," that writer shows how it came about that Mississippi was the first State to pass an act for the relief of married women in respect to their property rights. Quoting from an address to the Bar Association of that State, by Mr. R. H. Thompson, its president, he states that "the sources of Mississippi's first married women's law were the tribal customs of the Chickasaw Indians, then residing in

the State, and that its author was a member of the legislature who was about to marry a rich widow, and was himself harassed by creditors." A very grotesque law of New York was also a piece of concealed special legislation, made to fit a particular case. It provided that a person against whom a divorce had been obtained might be permitted to re-marry on showing to the court that five years had elapsed since the decree, the other party had re-married, and his own conduct had been pure and good. The act answered its special purpose, and then lapsed into "innocuous desuetude." It has probably been repealed by the recent Domestic Relations Act — or ought to have been.

ABLE CHARGE. — In the last volume of South Carolina Reports is an account of the memorial services of the Bar on the death of Justice McGowan. He was a gallant soldier of the Mexican and of the Civil War, having been a general in the latter. As a novelty in a meeting of this kind, one gentleman, who fought under him in the late war, gave a glowing account of the conduct, before Petersburg, of his command of two thousand men, which "utterly and completely repulsed and routed" eight thousand veteran Union troops, and drove them a mile "with terrible slaughter." That must have been the ablest charge His Honor ever made. If our gallant foemen had always fought like that — or, rather, if our men had always run away like that — the total result might have been different.

BIRDIE'S LAW TROUBLES. — Once in a great while a case crops out in the law reports of such a character as to entitle it to promotion from dry notes of cases to the rank of a current topic, and such a case is that of Kaufman *v.* Fye, 99 Tennessee, 145. The plaintiff was Miss Birdie D. Fye, and she was evidently a birdie of the goose species, not only on account of her name, but on account of the trouble that she got herself into from an overweening desire to mate. Birdie's father had married a second time, and his new mate did so peck and trouble our Birdie that she left her nest at the age of nineteen, and earned her own living as a seamstress in Cincinnati. In 1894 she became a member, at the advice of "a prominent lady of Chicago whose daughters were members," of McDonald's Matrimonial Agency, and through this medium the parties were placed in correspondence and exchanged photographs. Kaufman was married, to be sure, but was industriously trying to get unmarried. Her photograph being sent to him by the agency, he wrote her that he was "a bachelor, thirty-six years of age, fair, auburn hair, piercing blue eyes, American born, of Scotch-Irish and high German parentage." That he was respected, and considered wealthy. The letter continues, viz.: "Am not looking for wealth, but not objectionable. Claim to be all that any domestic lady is looking for. Live in country. Have some beautiful country houses in Tennessee and Kentucky; native of Kentucky. I am twenty-three miles from Memphis, and I think you would like this country, especially the mild winters and abundance of birds and flowers. Hoping to hear from you soon, etc., etc., I am your unknown friend, W. P. KAUFMAN."

He admitted that he wrote this for pastime, and not with a view to marriage. But Birdie meant business, and overcome by this promise of birds and flowers, she wrote him: —

"Your welcome letter received. I am glad you like my picture. It is not very good of me. My friends say it is simply horrid. The nose don't look like mine, and they say it looks so old, but I never take a good picture anyhow, so what is the difference? So you are wealthy; well, you have the advantage of me there. I am as 'poor as a church mouse.' I have to make my own living, and do so by teaching. I know how to sing and dance, sew and cook, etc. I am inclined to be jolly and good natured, and, if you like blonds, I am good looking. I am fair complexioned, five feet six inches in height, weight one hundred and thirty-seven pounds. I am a German and Catholic, and sing in a Catholic church. May I have your picture? I will return it upon request. Well, my friend, we are so far apart I am going to write you the truth, just like it is. I consider it a waste of time to write a falsehood or misrepresent anything. I like candidness. I am twenty-one years old. My father lives in Cincinnati. He is in the newspaper business, and he got married when I was nineteen years old. I could stay with my step-mother, but don't like to. Please write and tell me more of yourself, and I will, in return, be frank with you in regard to anything."

What Birdie, in a later letter, wanted, was this: "An honorable, jolly, kind, industrious, sober gentleman, Catholic by faith. 'He' and I should harmonize in every particular." More correspondence ensued, and the upshot was that the rascal induced Birdie to spread her wings and pay him a visit at his home in Arkansas. He wrote her glozing words, such as that he did not want "a lady in matrimony to cook and be a slave, but as an artistic and general housekeeper, to know how to superintend cooking, and when help could not be had, to prevent starvation" — "one who can cast everlasting sunshine on the man she loves, and make home happy." Birdie thought she could fill the bill — or rather that her bill could fill these requirements — but she was frank, and explained that she could not come without money for new clothes and traveling expenses, and "odds and ends," say thirty or forty dollars. This looked serious, and Kaufman wrote her in a fatherly strain, cautioning her against the dangers of matrimony; but Birdie was not to have her wings clipped in that man-

ner, and replied that she was coming; she was "fond of Southerners," and she would be — not his sister, but his bookkeeper, and added: —

"There is to be no courting. I am to keep your accounts, do your writing, and work for you just the same as if I were working for a firm in Chicago. I would work for your interest. . . . I am independent natured, and can teach French, German, and if necessary, I could be a governess or seamstress or cook or 'bottle-washer.' If you wanted me for company, I am ready to be with you and make you enjoy yourself. Horseback riding? Oh, my! I would rather do that than eat! I did that when I was a child in Germany; it is delightful. But since I am older, I could not have a chance in large cities. Yes, I am jolly, self-reliant, but careful and conscientious. Please write to me at once, and if you want me to come, send me a ticket. I will start Tuesday evening, December 18, and reach Kingsland Thursday morning."

So Kaufman succumbed, sent her twenty dollars, said he would show her "all the courtesy of a sister" (brother), and that a man who wouldn't love her "would be a wooden man" (a wouldn't man, rather). When they should meet, she arranged that he was to greet her with, "How do you do, old girl?" So they met, and first thing, he kissed her, despite her "somewhat mild protest." Then she asked him if he was not above thirty-six, and he owned up to forty-four years of age. He then, on cross-examination, admitted that he was married, but said his wife had not lived with him for thirteen years, and that divorce proceedings were pending, and he would soon be free. Birdie thereupon said that they never could be married — the rules of her church forbade it; but she remained with Kaufman as his bookkeeper and amanuensis for above a month, when she left him and removed to Memphis. The defendant continued to press his suit (and fain would have pressed her suit), and Birdie at length learned that the defendant not being a Catholic there would be no ecclesiastical impediment to her marrying him. When he learned it, "a great stone was rolled from his heart." He also began to read Catholic books with a view to qualifying himself as her husband. After that they exchanged visits in a perfectly decorous manner, and the wedding day was set. Then came the break. On one of her visits to him he had a cold and a pain in his side, and he asked her to get some hickory bark for it. Birdie forgot to resort to a hickory tree, and Kaufman was very angry. He went away and she mailed him a plaster. But it was of no use. He wrote her reproachful letters, accusing her of failing to meet his requirements "as a domestic helpmate and partner," and of "scolding and fussing around and saying mean things," and of negligence of domestic duties. He gave her high praise as "a true, loving and virtuous girl." She "would fill the bill as a sewing-machine woman or solicitor in the city," but as a wife, he "regarded her as a failure." The hickory bark incident continued bitter, and he dreaded her "scolding disposition." But the rascal, when Birdie sued him, attacked her character, and that too when he himself during the courtship, had repeatedly endeavored to take unwarrantable liberties with her person, and on one occasion of this kind she had struck him, as he admitted, and "knocked fire out of his eyes like electric car wheels." Better not to fool thus with a Birdie of five feet six inches height and one hundred and thirty-seven pounds weight. Birdie's letters, laying out of consideration the essential folly of the formation of the acquaintance, and the still greater folly of her persisting in her wish to marry such a cad, did her credit, and as her scoundrel himself admitted were "full of child-like sympathy and loving-kindness." But the jury gave her a three thousand dollar plaster for her outraged sensibilities, and the supreme court feelingly and gallantly affirmed the remedy. The moral derivable from this painful domestic history, and to be commended to all other little Birdies in the like circumstances is, "don't advertise." Mr. Pickle is entitled to thanks for his report of thirty pages of this interesting lawsuit. Birdie should sing a song of thanksgiving for her escape from this base bird-catcher, and salt down the money, and no man who reads the report of her troubles will think any worse of her; some indeed would be led to admire her pluck and self-respect, and to believe that she did not "scold around" Kaufman any more than was good for him, and all will rejoice that she forgot the hickory bark and long to apply a hickory switch to the back of the fellow who threw away a good wife. But all the same we fear that the average man would suspect that an adult young woman who called herself Birdie Fye was a Birdie fly.

NOTES OF CASES.

ANIMAL SLANDER. — Many years ago we wrote something somewhere about slander or libel being conveyed through a comparison of a human being to an animal other than a human animal. There is a considerable number of cases of this sort reported in the books, the most noteworthy of which is the case of the "frozen snake," a clear reference to Æsop's fable and the blemish of ingratitude. In Price *v.* Whiteley, 50 Missouri, 439, the charge was "imp of the devil and cowardly snail, that shrinks back into his shell at the sight of the slightest shadow, etc." This very badly mixed metaphor was held to be libellous. Stress was laid on the cowardice alleged, and none on the slowness and inactivity of the snail, which have generally been supposed to be its chief characteristics. Another shell-fish case is now float-

ing around in the newspapers, originating, we believe, in Chicago, and holding that it is not slanderous to call a man a "lobster." Undoubtedly it would be held not slanderous, at least in the South, to describe a man as "half horse, half alligator"; indeed, that hybrid nature has often been assumed with pride by certain robust persons. In Richmond *v.* Loeb, 19 R. I. 120, part of the charge made was that the plaintiff was a "lying dog," but also that he was a "swindler." In Blake *v.* Smith, 19 R. I. 476, it was held not slanderous to charge a woman with being "a damned bitch." But it will not answer to call a man (in print) a swine (Solverson *v.* Peterson, 64 Wis. 198; 54 Am. Rep, 607); nor to charge a woman with saying that her mother acted like a cat (Stewart *v.* Swift S. Co. 76, Ga. 280; 2 Am. St, Rep. 40).

ENTICEMENT OF INFANTS. — The Queen's Bench has very recently gone beyond all boundaries heretofore set in England as to tenderness toward infants. In Harold *v.* Watney, 2 Q. B. 320, the defendant was the owner of a fence abutting on a highway. The plaintiff, four years old, in the highway, saw some boys on the other side, playing on a ground where boys were accustomed to play, and put one foot on the fence and was about to put the other on, when being rotten it fell on him and injured him. A nonsuit was set aside. Great dependence was placed on Lynch *v.* Nurdin, the famous case of the horse and cart left unattended in the street. That however was a case of positive allurement in the public highway, Jewson *v.* Gatti, 2 Times L. R. 381, 441, was also cited. That was the case of an area off the public highway, separated therefrom by an insufficient railing. Scene-painting was going on in a cellar off the area. A child leaned on the rail to see the painting, the rail gave way, and she was injured. This was held a case of positive allurement by means of the painting. In the principal case, little was said of allurement, but the rotten fence was pronounced a nuisance, and it was held that the passers had a right to rely on it and to lean against it. The decision may be right on this ground, but it can hardly be sustained on the ground of the two other cases, for the defendant could not reasonably be held to foresee that boys at play on his premises would entice infants to climb his fence.

MANDAMUS TO GOVERNOR. — In People *v.* Morton, 156 N. Y. 136; 41 L. R. A. 231, the New York Court of Appeals held that *mandamus* will not issue to compel the performance of an act by the Governor of a State. The State courts have not been unaminous on this subject. Holding that his ministerial action may be thus compelled are the courts of Alabama, California, Kansas, Montana, North Carolina, Ohio, Maryland, Minnesota. To the contrary, Michigan, Florida, Georgia, Illinois, Iowa, Louisiana, Maine, Missouri, New Jersey, Rhode Island, Tennessee, and the United States Supreme Court. O'Brien, J., dissented in the principal case, observing: —

"Nor can I admit for a moment that the judicial power of this State is so feeble as to be unable to reach with its process, in the enforcement of its lawful judgments and decrees, every citizen within its territory, from the governor to the humblest workman. and one as well as the other. The notion that the rights of a citizen cannot be declared and enforced against a ministerial board of which the executive happens to be a member, because he may call out the military and naval forces of the State to resist the judgment of the court, is too trivial for serious consideration. It is the duty of the court to declare what the law is, without fear or favor, and let consequences take care of themselves. Courts cannot with any self-respect frame their judgments upon the view that some power may refuse to submit to the mandate of the law or may resist it. The sheriff has the power of the county behind him, and the mayor of a great city the police force, but no one ever supposed that their power to resist a mandamus was any reason for refusing it to a party otherwise entitled to it. A legal principle resting on the assumption that the executive will refuse to obey the courts, must necessarily be unsound. It implies a want of that freedom of action on the part of the judiciary which is always necessary for its efficiency. If the courts may be deterred from deciding what the law is in such cases, upon some remote possibility that the executive power will resist the execution of the judgment, it would follow that a mandamus should never go against anyone possessing the physical or political power to resist its commands, but should be confined to those who are too weak to defy it. Such vague or imaginary fears have no proper place in the discussion of questions upon which legal rights depend. I doubt very much that this State ever had an executive that would agree with my brethren with respect to this immunity from judicial authority, and it is to be hoped that itnever will have. The proposition that there is or may be one man in the State so far above his fellow citizens that the courts cannot reach him, in a case like this, where there is no discretion, sounds very much like a voice from the middle ages, or the decree of the Roman senate in its declining days, when it declared the Emperor above the laws."

If O'Brien, J., keeps on dissenting in this robust and disagreeable fashion, it may become necessary to banish him to the Supreme Court of the United States, as was done with Mr. Justice Peckham for the same reason. Dissenters do no harm in that court, for nobody expects it to be unanimous.

The Green Bag.

PUBLISHED MONTHLY, AT $4.00 PER ANNUM. SINGLE NUMBERS, 50 CENTS.

Communications in regard to the contents of the Magazine should be addressed to the Editor, HORACE W. FULLER, 344 Tremont Building, Boston, Mass.

The Editor will be glad to receive contributions of articles of moderate length upon subjects of interest to the profession; also anything in the way of legal antiquities or curiosities, facetiæ, anecdotes, etc.

LEGAL ANTIQUITIES.

Punishment in effigy was legally practised in France and with great solemnity up till the time of the first revolution. If the man condemned escaped, a dummy was put in his cell and the entire routine of the law allowed to take its course. The warrant was read to it, and on the day appointed it was conducted to the scaffold in the presence of all the legal functionaries and with all the circumstance of the law. Sometimes the same person was executed in effigy simultaneously in several cities, but that did not exempt him from actual punishment should he be afterwards caught.

FACETIAE.

"WHAT! Do you mean to contradict yourself?" began peppery little old Naggem, the lawyer for the plaintiff, when it came his turn to have a "go" at the defendant himself upon the witness-stand. "After stating, on direct examination by my brother, that the plumbers worked three whole days at your house, do you mean to turn round here and say they *didn't?*"

"But I didn't state that they worked three days at my house."

"Yes, you did!"

"No, I didn't!"

"What *did* you say, then?"

"I said they were *there* three days."

A CASE was being tried in court, and the particular question at issue was the number of persons present when a certain event occurred. An honest but simple-minded German was in the witness-box.

He had never taken an oath before, and was not a little disconcerted. The lawyer who conducted the cross-examination saw his opportunity, and badgered him with questions, after the manner of his kind.

"How many did you say there were present?" he shouted, bringing his fist down upon the table as though the fate of empires trembled in the balance.

"Vell," meekly answered the witness, "off course I gould not chust say, but I dinks dere vas betveen six and sefen."

"Tell the jury what you mean by that!" roared the lawyer. "How could there be between six and seven? Were there six or were there seven?"

"Vell," answered the witness, "maybe I vas wrong. There vas more as six, but dere vas not so much as sefen. One vas a fery leetle boy."

NOTES.

LANCIANI, the famous Roman archæologist, has shown that in the Rome of the Cæsars trouble was experienced with high buildings. A law was passed restricting the height of fronts to 60 feet. In order to evade it, builders adopted the practise of carrying up the rear portion several stories more. Other laws bearing on the heights of buildings were passed in olden times. There was a tendency to diminish the height of stories as the buildings increased in size, and a height of 130 feet was probably attained. It is believed that the ceilings were so low that a man could not stand upright in the rooms.

HERR WOLFF, special correspondent of "Tageblatt," having an idle day somewhere between Kiao-chon and Tsing-tau, went out in quest of adventures with his dog, Schuster, and his clerk. Arriving at a court house, he found a mandarin preparing to try thirteen Chinese charged with murdering German missionaries. Waving a piece of paper, which he declared was his warrant, he promptly took the highest seat, ordered

Herr von Schuster to take the next in dignity to his right, placed his clerk on his left, waved aside the bewildered mandarin (who doubtless thought that this was the "mailed fist" in person) and called for the prisoners, whom, without hearing evidence, he promptly acquitted. He then rode off, followed by Herr von Schuster and the clerk, declaring that the order of the day was at end. Wolff will be prosecuted in Germany, as the German government prefers to conduct its business without assistance from newspaper correspondents.

CURRENT EVENTS.

RUSSIA is going to abolish the difficulties of navigation at the mouth of the Volga by cutting a canal directly from the river to the Caspian Sea. Work on it began this summer.

ONE of the oldest maritime fictions has received its death-blow by the raising of the American flag over Guam, in the Ladrone Islands. According to sailors, thousands of vessels cleared for Guam from ports all over the world each year, but none ever arrived there. Clearing for Guam was done by ships which wished to conceal their real destination. According to maritime law, when once a vessel has cleared for a port, it must proceed there by the most direct route or give a satisfactory explanation. Guam was a closed port under the Spanish rule, and ships could always give that as a reason for not going there after having cleared for the place.

THE Japanese government has ordered the destruction of the city of Teckcham, Formosa, and removal of all its inhabitants to a new location. The city is situated on the northwest coast of the island, and has been frequently subject to pestilence. In 1896 and 1897 plagues visited Teckcham with enormous fatality. This fact being called to the attention of the government, an investigation was ordered by sanitary experts, who reported that the city was built upon a swamp, whereupon an order was issued to the governor to select a new location as convenient to the old one as possible, where the natural conditions were healthful. A new city was laid out, and each property-holder in the old one was assigned a site that corresponded in area with that he occupied at Teckcham, and was given twelve months to remove his buildings and belongings. Sewers, railroads, and sidewalks, public buildings, water-works, and all other public improvements, were laid out by the government in the new city without expense to the people, but they were required to pay the cost of the removal of their own property. Most of the houses and other buildings in Teckcham are built of very light wooden material.

CAPE COLONY is almost treeless, its forests covering only 353,280 acres, or a little more than a quarter of one per cent of the total area of the country. Russia and Sweden each have forty-two per cent of their territory under forests; Germany, twenty-six per cent; France, sixteen per cent; and Great Britain and Ireland four per cent. The need of Cape Colony is emphasized by the heavy importation of wood, and the conservator of forests urges that tree plantations be formed wherever the annual rainfall exceeds fifteen inches.

LITERARY NOTES.

THE LIVING AGE for 1889. The long continued life of this veritable and valuable eclectic is another instance of the survival of the fittest, in that it, the best of all, has absorbed or survived every one of its numerous rivals or imitators. Its present vitality is evidenced by the announcement that THE ECLECTIC MAGAZINE of New York, its oldest and most important competitor, will, with the issue of January, 1899, be consolidated with THE LIVING AGE, and be hereafter known as THE ECLECTIC MAGAZINE AND MONTHLY EDITION OF THE LIVING AGE. One of the earliest numbers of the new year will contain an original translation of a striking lecture given recently by M. Ferdinand Brunetiere, the eminent French critic, on "Art and Morality," in which the modern tendencies toward excessive "realism" in art, and especially in fiction are caustically rebuked. Arrangements are being made for strong serial stories from English, Italian and German sources, and the probability is that THE LIVING AGE will be as noteworthy for the best fiction in 1899 as it was in 1898, when it published René Bazin's "With All Her Heart," Neil Munro's "John Splendid," Pierre Loti's "Spanish Sketches," Paul Bourget's sketches and stories, and Mme. Blanc's "Constance." This magazine is well worthy the attention of every one who is making a selection of periodicals for the new year, and in no other way that we know of can a subscriber, for so small an outlay, only $6.00 a year, be put in possession of the best which the current literature of the world affords.

HARPER'S MAGAZINE for January contains "A Glimpse at Nubia, Miscalled the Soudan," by Captain T. C. S. Speedy, an interesting account of the region in which the military forces of England and France are now in open rivalry; "Naval Lessons of the Spanish-American War," by H. W. Wilson;

"The Weakness of the Executive Power in a Democracy," by Henry Loomis Nelson; "Brother Jonathan's Colonies," by Professor Albert Bushnell Hart; "Thirty Years of Francis Joseph," by Sidney Brooks; "The Naval Campaign of 1898 in the West Indies," by Lieutenant S. A. Staunton, with illustrations by Carlton T. Chapman, who was with the fleet throughout the war as special artist for HARPER'S WEEKLY. A new novel, by W. D. Howells, is begun in this number and is entitled "Their Silver-Wedding Journey. There are also two short stories "The Love of Parson Lord," by Mary E. Wilkins and "The Romance of Chinkapin Castle," by Ruth McEnery Stuart. "The Drawer" opens with "The Boy in the Cloth Hat," a story, by F. Hopkinson Smith.

THE new year of SCRIBNER'S MAGAZINE opens in the January number with several features of great distinction. The place of honor is given to Governor Roosevelt, who will contribute not only his continued story of "The Rough Riders," but other articles on the naval preparations, the strategy and other important subjects growing out of the war with Spain. A literary feature of equal importance, associated with the most loved man among modern novelists, is "The Letters of Robert Louis Stevenson," edited by his friend Sidney Colvin. Among other interesting articles are "With the Sirdar," by Major Edward Stuart Wortley; "A ride into Cuba for the Red Cross," by Dr. Charles R. Gill, and "Searchlight Letters," by Robert Grant. The fiction for the coming year is to be notable. George W. Cable begins a short serial called "The Entomologist." Richard Harding Davis contributes the first fiction that has grown out of his war experience. It is a short love story entitled "On the Fever Ship." Other short stories are a striking fantastic tale by Arthur C. Smith, called "The Peach," and Edith Wharton's strange tale about the woman who inspired a poet — called "The Muse's Tragedy."

THE January ATLANTIC opens the new year and the new volume brilliantly and forcibly with a careful and discriminating comparison between the "Destructive and Constructive Energies of our Government," by President Eliot, of Harvard University. Dr. George Bird Grinnell, in "The Wild Indian," pleads for a better understanding of the red man. In "Fathers, Mothers and Freshmen," LeBaron R. Briggs arraigns frankly and sharply many parents for sins which are visited on their children, or committed by them in their college courses. Professor Hugo Münsterberg has an interesting article on "Psychology and Mysticism"; Bradford Torrey, one on "Autumn in Franconia," and in "A Mother of Marytrs," Chalmer Roberts gives a thrilling and pathetic description, from his own actual experience, of the terrible Turko-Armenian massacres at Constantinople two years ago. The stories are "Hot-foot Hannibal," by Charles W. Chesnutt, and "The Twenty-first Man," by Madge Sutherland Clarke.

THE valuable series of papers on "Principles of Taxation," by the late David A. Wells, whose publication was interrupted by the illness and death of the author, are now to be concluded in two or three articles, the manuscript for which was found practically complete among Mr. Wells's papers. The first of these "The Law of the Diffusion of Taxes," appears in APPLETON'S POPULAR SCIENCE MONTHLY for January. Professor Joseph Jastrow is the author of a very instructive and amusing illustrated article entitled "The Mind's Eye." Other articles are "Our Florida Alligator," by I. W. Blake; "Cephalic Index," by Professor W. Z. Ripley, and "Nature Study in the Philadelphia Normal School," by Mrs. L. L. W. Wilson.

THE Christmas number of THE CENTURY appears in a striking cover, designed by Tissot, the famous French artist who illustrated the "Life of Christ." Lieutenant Richmond Pearson Hobson is writing his personal story of "The Sinking of the 'Merrimac'" and the first of his papers appears in this number. Mr. S. D. Collingwood, a relative of the author of "Alice in Wonderland," contributes a paper on "Some of Lewis Carroll's Child Friends," containing many of his inimitable letters to little girls. Jacob A. Riis describes "The Passing of Cat Alley." There are a number of articles appropriate to the holiday season. A poem, "Christmas Eve," by Edna Proctor Clarke, has striking frontispiece pictures by Maxfield Parrish. J. James Tissot, writes of "Christmas at Bethlehem." "Uncle 'Riah's Christmas Eve" is a humorous southern story by Ruth McEnery Stuart. The prize poem in THE CENTURY'S competition for college graduates, "The Road 'Twixt Heaven and Hell," by Anna Hempstead Branch, is printed, with illustrations by Henry McCarter.

THE complete novel in the January issue of LIPPINCOTT'S is "The Mystery of Mr. Cain," by Miss Lafayette McLaws, daughter of the Confederate general of that name. The scene is in Georgia, and the plot is so uncommon that to reveal it would be unfair to the reader. The other stories are, "The Other Mr. Smith," by Ellen Douglas Deland, "John Rutland's Christmas," by Henry A. Parker. In "Black Feather's Throw" Joseph A. Altsheler deals again with the times when Indians tortured their white prisoners

and burned them at the stake. The history of an ill-fated empress — "Poor Carlotta," wife of Maximilian of Mexico — is told by Lucy C. Lillie. Charles Cotesworth Pinckney revives "The Great Debate of 1833," in which Calhoun bore a prominent part and was opposed by Webster. Under the caption, "Why I did not become a Smuggler," L. C. Bradford tells of an adventurous trip in Texas in 1878–9.

THREE notable serials begin in the December number of McCLURE'S MAGAZINE. "Stalky," the first of Rudyard Kipling's series of stories of English school-boy life, is as hearty and wholesome a tale of school-boy ingenuity and adventure as one could wish to read. The first of Miss Tarbell's articles on the "Later Life of Lincoln" is an even more distinguished beginning than the first of Mr. Kipling's stories. Finally, we have the first of a series of papers by Captain Mahan on "The War on the Sea and Its Lessons." The number derives a Christmas quality from its frontispiece, "Shepherds Abiding in the Field," painted at Bethlehem, by C. K. Linson; and from two excellent Christmas stories. Cleveland Moffatt tells some good stories of hunting big game on elephants, and Ray Stannard Baker gives a thrilling chapter from the records of the Government Secret Service.

NEW LAW-BOOKS.

THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION. By E. PARMALEE PRENTICE and JOHN G. EAGAN of the Chicago Bar. Callaghan & Co., Chicago, 1898. Law sheep. $5.00 *net.*

In this volume the authors give a clear and interesting history of the development of the Federal Commercial power. Certainly no provision of our constitution gives rise to more controversy at the present time than that which gives Congress the power to regulate interstate, foreign and India Commerce, and this work contains a vast amount of valuable information upon the subject, well arranged and brought fully down to date, All topics of practical importance upon which this provision in any way bears are treated under appropriate heads. Among them may be mentioned: Transportation by Land and Water. State Regulation of Freights and Fares. Taxation of Telegraph, Railway and Express properties. Regulation of Carriers affecting tickets or bills of lading, requiring examination of employés, compelling stoppage of trains, etc. Telegraph Communication, Ferries, Bridges and Federal Jurisdiction to Protect Interstate Highways in Cases of Violence. The Inter-state Commerce Commission, its power to compel attendance and testimony of witnesses, etc. The Federal Anti-Trust Law, its operation upon railroads, labor unions and merchants; the use of Injunctions to restrain violations of the Act, and the relation of the Act to State Statutes upon the same subject. Indian Trade, Immigration, Alien Contract Labor, etc. Trade Marks, Adulterated Food, and other subjects over which the Federal Government has extended its control. State Regulation of Commercial Travelers, Auctioneers, etc. State Taxation of Imported Goods and of Capital Invested in Interstate Commerce. Federal and State Inspection of Animals and Animal Products and other Inspection Laws. Laws excluding goods of other States, such as those involved in the Dressed Meat Cases, Oleomargarine Cases, and cases upon State Liquor Laws. Taxation, Regulation and Inspection of Vessels, Mortgages and Conveyances of Vessels, Licensing of Officers, Control of Navigable Waters, Improvements or Obstructions therein under State or Federal Authority, Pilotage, Port Regulations, Wharfage, Quarantine, etc.

The citations of decisions and references to Federal Statutes are complete. The table of cases refers both to the official and to the current unofficial reports.

The work is one which we heartily commend to our readers as a valuable and almost indispensable text-book upon a subject of great importance.

A TRUSTEE'S HAND-BOOK. By AUGUSTUS PEABODY LORING of the Suffolk Bar. Little, Brown & Co., Boston, 1898. Cloth. $1.50 *net.*

Within the limits of a small volume of 158 pages, Mr. Loring states simply and concisely the rules which govern the management of trust estates, and the relationship between the trustee and the beneficiary. The book will appeal not only to the legal profession, but to the vast number of trustees and beneficiaries, who wish to easily ascertain their duties, liabilities and privileges. The law stated is supported by citations of authorities from the decisions of the courts and the statutes of various states carefully selected; the business difficulties are discussed in the light of the author's large experience, and the index is full and accurate.

The work is in every way admirably adapted for general use, and will be heartily welcomed by both lawyer and layman.

A TREATISE ON THE LAW OF THE CONTRACT OF PLEDGE as governed by both the common law and the civil law. By HENRY DENIS of the New Orleans Bar. F. F. Hansell & Bro., New Orleans, 1898. Law sheep.

Both Judge Story and Mr. Schouler in their treatises on Pledges, recognized the relative obscurity and uncertainty of the Common law on that subject, and suggested that assistance could be derived for its better understanding from the knowledge of the Civil law. In this volume Mr. Denis seeks to arrive at a clearer and more complete understanding of the law of Pledge of the Common law, by comparing it with the law of Pledge of the Civil law, from which it descends. The work is ably written and is a most valuable addition to our text books upon this important topic.

SIR HENRY HAWKINS.

The Green Bag.

VOL. XI. No. 2. BOSTON. FEBRUARY, 1899.

MR. JUSTICE HAWKINS.

BY the retirement of Mr. Justice Hawkins, just before the Christmas vacation of the High Court of Justice in England, the English Bench loses one of its most conspicuous characters and unique personalities. He was better known to the public than any of his associates, not because he was a better lawyer, although he was, in fact, an exceptionally good one, nor because he had for a longer period occupied his exalted position, for there have been several English judges who have sat longer on the bench and attained a greater age while in the performance of their duties than had Mr. Justice Hawkins. And yet he had passed his eighty-first birthday, and had completed his twenty-second year of continuous and exceptionally active service before he finally laid the ermine aside. He had made himself noted for a good many things which took the popular fancy. He was not a university man, as are most barristers, nor was he socially well-connected, his father having been a country solicitor, but he was a prodigious worker, and he had a large mental endowment to work with, and he had also an overmastering and dominating will. Such men, provided there is not some defect of moral character, are absolutely sure of success, and young Hawkins succeeded from the first. As he succeeded he cultivated himself, and when finally he reached the bench and settled himself to the enjoyment of its honors as well as to the discharge of its duties, he exhibited a tact and a keenness of intellect few judges possess. His was the name among the judges that most people knew, and his room in the courts came to be the "show-room." No matter what was going on, it was sure to attract a larger audience than any other, not even excepting that of the Lord Chief Justice. Strangers from the provinces, American lawyers making the rounds of the English courts, idlers seeking a sensation, and, most of all, the regular gallery habitués, were eager to see "Old Hawkins," as he was not disrespectfully called, or "Sir 'Enery 'Orkins," as he was known among a certain class who probably had greater reason to fear than to love him. For years past he had the pick of the society cases in the Queen's Bench division, and if there was nothing on the lists for the day, he invariably had something on hand out of which he could provide entertainment. If everything else failed, he could enliven the proceedings with a tilt against some one of the counsel who had excited his animosity, or an onslaught on the solicitors for the way they had worked up, or failed to work up, the case, or the poor solicitors' clerks for the illegibility of their writing, or the manner in which the papers had been prepared.

A dry commercial case had no attraction for him, and aroused his sarcasm against the litigants and the lawyers alike. Upon taking his seat in the morning he would say: "Who is in Jones *v.* Smith? Ah! you Mr. Robes? Well, I have looked at the pleadings in that case, and I can't make head or tail of them. Nobody could. The plaintiff don't seem to know what he is complaining about, and the defendant hasn't a ghost of an idea what sort of a case he is meeting. I can't try the case. No one could. You must put your heads together and settle it. If you can't agree, come to

my room and I will help you." And with that he would go on to the more congenial part of his day's list, leaving the unhappy parties in Jones *v.* Smith to make the best sort of a settlement possible under circumstances where neither is willing to incur the ire of the judge by insisting on trial, and both have expended large sums of money in making their case and briefing counsel for their "day in court."

It was, however, in the criminal court that Mr Justice Hawkins was most at home. Nearly all the *causes célèbres* in the past fifteen years have been tried by him, and in so many of the capital cases has he appeared that he has been known as the "hanging judge." If by this there is meant an imputation that he was actuated by cruelty or lacked mercy, the word is a misnomer, for, on the contrary, he was full of compassion to a prisoner who was not properly defended or whom the judge thought might be innocent. He never apparently lost sight of the responsibility that is imposed upon a judge in England, where there is no appeal court, and where an error of judgment may be attended by the most awful consequences. He had, however, what might be vulgarly called a nose for crime, and could stalk it however far the distance or clever the rogue. The latter might be given a long run and a good run for his life, and particularly if he had a stupid or bungling counsel to defend him; but it was a run that was sure to end in conviction.

It is for these qualities, and more particularly his humor and wit on the bench, his love for sport, his gaiety as a raconteur, his youthfulness in old age, and the quaintness of his figure as he rode and still rides a well set-up cob for his daily exercise, that he will be long remembered, and which make his retirement so much of a public event; but to say that it causes unmitigated regret in the legal profession would scarcely be accurate, however much he may be missed as a popular figure by those who have had no experience of him as litigants or lawyers. It may be, as one enthusiastic leader-writer in a prominent morning paper stated, that after "fifty-five solid years of continuous legal labors registered to his unbroken credit, all of them marked by courageous toil, by commanding ability, by professional probity, by acuteness and perspicacity, Mr. Justice Hawkins retires at the summit of his fame and with the admiration and absolute confidence of his fellow-countrymen." But to the bar his retirement has come as a relief and as the realization of a wish that as years rolled on seemed to be incapable of fulfilment; for he was physically one of the most enduring of men and never seemed to know fatigue or feel increasing years. Only the week before his resignation was placed in the hands of the lord chancellor he sat at Maidstone for several successive days far beyond the hours customary in court, and on the last night until eleven o'clock, or a little more than twelve hours. He may be congratulated upon this show of capacity for judicial work in one who has passed his fourscore of years, but those who were obliged to appear before him, and who had other cases to prepare for trial the next day in a distant court, were not gratified by the exhibition. In fact, Mr. Justice Hawkins has not always been successful in sparing inconvenience, annoyance and expense to barristers, and he has not always been credited with an overwhelming desire to do so. In the course of the protracted sittings at Maidstone, already alluded to, more than one incident occurred to increase the friction between the bench and the bar, until it reached the point where it was agreed between the barristers present that they should rise and leave the court in protest. Cooler heads, however, exhorted to patience, and the sittings were concluded; but had the resignation of the judge not taken place, a repetition of the Maidstone experience would undoubtedly have led to a revolt such

as has never before been seen in the courts of England.

Mr. Justice Hawkins was so long on the bench, and so long an active practitioner at the bar, that his career becomes an exceptionally interesting one to students of contemporary legal history. He was called to the bar in 1843, and fifteen years afterwards took "silk." Thenceforward, as a Queen's counsel, and afterwards as a judge, he took part in nearly every important case of the last half century. His most notable work, in cases with which Americans are familiar, was in connection with the famous Tichborne trial. The array of counsel alone in that case would make it something to be remembered beyond the present generation. In the first of the cases, for there were two, Orton claimed the Tichborne estate. Sergeant Ballantine appeared for the plaintiff, and with him were Mr. Hardinge Gifford (now the Lord Chancellor), Mr. Jeune (now Sir Francis Jeune, the presiding judge of the Divorce Court), and others, while for the defense were Sir John Coleridge (afterwards Lord Chief Justice), Mr. Hawkins, Q. C. (the Mr. Justice Hawkins who has just retired), and, among others, Mr. Charles Bowen, who afterwards became Lord Justice Bowen, one of the most able judges who ever sat in the Court of Appeal. Legal students assert, and more than one text-book writer has confirmed the opinion, that the masterly manner in which, for eleven days, Mr. Hawkins cross-examined Boiquet, a friend of the family, an antiquarian, and the principal witness for the claimant, was a model for students in practice and evidence.

The second trial, that of Orton for perjury, began on April 23, 1872, and was not finished until February 28, 1874, having occupied, during these twenty-two months, no less than 188 days of solid work! In the former trial Mr. Coleridge had occupied twenty-six days in opening the defense, and Dr. Kenealy had made two speeches each of twenty-eight days' duration; in the second, Mr. Hawkins, wishing to be brief, took only six days in opening the case for the crown, and, after examining 180 witnesses, he occupied nine days in his reply to the jury. During the continuance of this trial, Mr. Hawkins was accustomed to work till past midnight, and to rise every morning at four o'clock to read over the evidence which had been given on the previous day, in order to see how it bore on his policy, and where it should be strengthened or weakened. This strain he endured constantly for months, and until the end, although nearly prostrated by an attack of brain fever. He was successful in getting a verdict from the jury, and in seeing the claimant sentenced to fourteen years' hard labor for perjury.

The two qualities for which Mr. Justice Hawkins was most distinguished were capacity for work and immense power of concentration and application to matters of intricate detail, when the subject interested him. As a lawyer, his income was so considerable from lucrative compensation cases, election petition cases, and important criminal cases, that he amassed a large fortune; and the story is current that his clerk, who, as is the custom at the English bar, received certain fees depending in amount upon his master's income, was able to ride in the park and have a box at the opera. This capacity for work enabled the retiring judge, as his last act on the bench, to preside at a trial at the Old Bailey which lasted several days, and in which thirty or forty witnesses were examined. His summing up occupied three hours, and, without referring to a single note, he covered every material fact in the testimony of the witnesses, and weighed every point presented to him by counsel.

The stories that are told of Mr. Justice Hawkins are innumerable; and while some may be attributed to him for want of a better peg to hang them on, enough of the genuine may be gathered up to show the manner of the man and the quickness of his wit.

As a junior counsel, Mr. Justice Hawkins

was once practicing before Lord Campbell, who was somewhat pedantic. In addressing the jury, Mr. Hawkins, in referring to a brougham, pronounced the word with two syllables,—"bro'-am." "Excuse me," said his lordship, blandly, "but I think that if instead of saying 'brough-am' you were to say 'broom' you would be more intelligible to the jury, and, moreover, you would save a syllable." "I am much obliged to your lordship," quietly replied Mr. Hawkins, and proceeded to bring his address to a close. Presently the judge, in summing up, made use of the word "omnibus." Instantly up rose Mr. Hawkins, and exclaimed, "Pardon me, m' lud, but I would take the liberty of suggesting that instead of saying 'omnibus' your lordship should say ''bus,' you would then be more intelligible to the jury, and, besides, you would save two syllables."

During the Tichborne trial, where he was opposed by Dr. Kenealy, in the course of a discussion whether equivalent terms could be found in English for French words, and *vice versa*, Mr. Hawkins was asked whether he thought the word *canaille* could be adequately rendered in our language. He answered, without a moment's hesitation, "Yes — 'Kenealy.'"

During the hearing of the Tranby Croft baccarat case, much comment was caused by the manner in which Lord Coleridge allowed the bench to be occupied by lady spectators. Shortly after this case, Mr. Justice Hawkins had to hear a libel action arising out of some criticisms a member of the London County Council had passed upon the moral character of some marionettes which were then being exhibited at the Westminster Aquarium. The marionettes — two male dolls and a female figure — were produced in court.

"Where shall we put these figures?" asked counsel.

"I suppose the lady," said Sir Henry, maliciously, "ought to be accommodated with a seat on the bench."

Mr. Justice Hawkins once had to sentence an old swindler, and gave him seven years. "Oh, my lord!" whined the man, "I'll never live half the time!" The judge took another look at him and answered, "I don't think it is at all desirable that you should."

On another occasion the usual formality was gone through of asking a prisoner who had been found guilty if he had anything to say. Striking a theatrical posture, and with his right hand in the air, the man exclaimed: "May the Almighty strike me dead if I don't speak the truth, — I am innocent of this crime!" Judge Hawkins said nothing for about a minute. Then, after glancing at the clock, he observed, in his most impressive tones: "Since the Almighty has not thought fit to intervene, I will now proceed to pass sentence."

Until his death, Jack, a fox terrier, was Sir Henry's inseparable companion and friend. He was a present from the late Lord Falmouth. Many a good story is told of Jack and his master. Once, in a crowded assize court, Jack was sitting at the judge's feet when a barrister commenced to cross-examine a witness in a loud and angry tone of voice. Jack took offense and barked lustily. "Dear me, dear me! pray let us have quiet!" said Sir Henry. "I wish gentlemen wouldn't bring dogs into court!"

The caustic remarks of his lordship have not always been confined to the bench. At the opening of an assize, the chaplain preached what he conceived to be a distinctly good sermon, and he had the temerity to sound Mr. Justice Hawkins on the subject. "Did you approve of my sermon, my lord?" he asked. "I remarked in your sermon, Mr. Chaplain," was the prompt reply, "two things which, to be candid, I did not approve of, and which I have, I am glad to say, never remarked on a similar occasion." "They were, my lord?" was the anxious question of the preacher. "The striking of the clock," answered Mr. Justice Hawkins, "twice, sir."

Sir Henry was once presiding over a long, tedious, and uninteresting trial, and was listening, apparently with great attention, to a very long-winded speech from a learned counsel. After a while he made a pencil memorandum, folded it, and sent it by the usher to the Q. C. in question, who, unfolding the paper, found these words: "Patience competition: Gold medal, Sir Henry Hawkins; honorable mention, Job."

To the representatives of the press discharging their duties in his court he was invariably courteous, but even they did not always escape his quiet sarcasm. During the hearing of a case at Norwich assizes women and children were ordered out of court. Counsel subsequently called his lordship's attention to the fact that the messenger boys of the papers remained, and was met with the quiet rejoinder: "They are members of the press, and probably the evidence cannot corrupt their minds."

QUAINT OLD CUSTOMS WHICH WILL NOT DIE.

JOHN DE MORGAN.

THOUGH we live in a very progressive age, there is such a conservative love for old customs in Great Britain that a society has been formed for the advocacy of the revival of those customs which have fallen into desuetude.

Many quaint customs, some on which certain rights depend, are maintained with strict regard to the original institution.

When John of Gaunt, in 1362, gave a charter to the borough of Hungerford, in Berkshire, he stipulated that certain customs should be established and observed through all time. Though over five hundred years have passed, the good people of Hungerford observe the customs and retain their antiquated form of government.

Hungerford is the only unreformed borough in England, and it is proud of the distinction. The original charter vests the government of the borough in the High Constable, feofees, portreeve, bailiff, tithing-men and Hocktide jury. No one is eligible for the office of High Constable unless he shall have served as tithing-man, bailiff and portreeve.

Hocktide customs and Hocktide juries date back to the thirteenth century. The Monday and Tuesday after the second Sunday following Easter Day used to be Hocktide. On the Monday, the women of a parish held the roads and streets and stopped all men who came that way, and having bound them with cords, only set them at liberty when a small sum of money was paid. On the Tuesday, the men had the same privilege, stopping the women and releasing them only when they consented to pay a penny or be kissed. These customs became obsolete in all places, except Hungerford, in the eighteenth century.

In Hungerford, the custom has been modified, the men forming themselves into the Hocktide jury. This jury elects the High Constable, who is Lord of the Manor during his term of office, coroner of the borough and of so great importance that no municipal business can be transacted without his consent. The jury then elects the other officers for the year including a portreeve, bailiff, a number of "tuttimen," or tithing-men, three water bailiffs, three overseers of port-downs, three keepers of the common coffer, two ale-tasters, a hayward, hall-keeper and bellman.

The ceremonies commence on the Friday before Hockney, when the Audit supper is held at the John of Gaunt's inn. In accord-

ance with the ancient custom the supper consists of Welsh rarebits, macaroni and water-cress, followed by copious drafts of hot punch.

On the Tuesday at sunrise, the public bellman steps out on the balcony of the Town Hall, and blows a blast from the very horn given to the town by John of Gaunt. This blast is to call together the Hocktide jury. Punctually at nine o'clock the officer selected reads the charter and ancient rules, and then calls the names of all free-suitors and those having the right of common, or fishing. Those who do not answer are condemned to pay the fine of one penny, or to lose their rights of common for one year. The High Constable is then called on to read his statement of the municipal receipts and expenditure and to place on the table his badge of office, the corporate seal and all public documents which he may have. When this part of the program has been gone through and the officers elected for the coming year, the tuttimen are instructed to do their duty. These men, reduced in number to two at the present day, leave the Town Hall carrying a staff, six feet long, bedecked with choice flowers and streamers of blue ribbon, the whole surmounted with a cup and spike bearing an orange.

They have to call at every house in the borough and receive tribute from each inhabitant, if he be a male a penny, if a lady, a kiss, "given under the shadow of the tutti-pole." With each salute an orange is given and the attendant replaces the orange by another in the cup on the staff. If any female tries to evade being kissed she can be pursued and imprisoned until she kisses the tuttimen. After the perambulation by the tuttimen a banquet is held, and a right good time those invited have.

On the Friday the newly elected officers are sworn in and the High Constable is expected to give a banquet to every townsman who likes to attend, and hot punch is supplied *ad libitum* to everyone all day.

These customs are still observed in Hungerford, and each year the tuttimen exercise the right of kissing the ladies of the borough.

Another curious custom kept alive in many parishes and being revived in many more, is that of "Beating the Bounds" or as it is variously called "Perambulation of Parishes," "rogationing" or "ganging the boundaries." The custom goes back to the time of the ancient Britons, and the Druids made it an occasion for supplicating the Divine blessing on the fruits of the earth, and for impressing on the faithful a due respect for the bounds of individual property.

Before maps and surveys came into use the practice was necessary to keep in memory the limits and boundaries of parishes, and the legal maps relied on to-day are based on these perambulations.

A procession, headed by the rector of the parish, was formed and all who wished to join were welcome. After liberal potations were indulged in, the procession marched completely around the parish. A number of boys were compelled, much against their desire, to join in the procession and at certain points a halt was called and one of the boys whipped thoroughly, it being thought that the impression made on the memory of the whipped boy would remain through life so that he would always be able to keep in mind the exact boundaries. Each boy after being whipped was given a small sum of money, called "bounding money."

The necessity of perambulating along the old track often occasioned curious experiences. If a canal had been cut through the boundary it was held that merely crossing the water in a boat, or over a bridge, was not sufficient, some of the parishioners must actually walk through the water, no matter how deep, so that it could be said that the bounds were perambulated. In one case a dispute arose in an action concerning the boundary of a parish, because instead of the bounds having been perambulated, the pro-

cession had walked along the banks of the river, which was part of the boundary, and that some had swum over the boundary line. It was contended that because the feet had not touched the bed of the river there could be no evidence of perambulation.

I remember, one New Year's Day, being in the town of Aylesbury, following the procession of bound-beaters, and watching them beat the bounds. The men carried long willow wands with which they beat the pavement, or wherever the boundary was said to be. At last they found a house erected on the line and the whole procession entered the house, passed through the kitchen and out by the window. A little farther on a baker had erected an oven on the boundary line and a boy was seized and pushed into the oven so that he could "beat the bounds." Though no longer necessary, or of any use, many parishes keep up the custom and the society recently established speaks of these annual perambulations as being "highly beneficial" to the public.

For several years I was interested in the effort to reclaim the commons from rapacious lords of Manors, and I often wished that the "bounds" of the commons had been beaten annually so that there could be no dispute about the extent of land which had been wisely set apart for the people to hold in common.

The Manor of Oakham, in Rutlandshire, preserves a quaint custom. Peers of the realm were prohibited passing through the Manor, and if any peer should defy the order his horse was seized and its hoofs taken off. This cruelty was modified later and instead of the hoofs, the shoes were removed and kept in the castle with an appropriate inscription setting forth the name of the peer and the date of his disobedience of the law. Although the castle is in ruins, save a small portion used as a county hall, the custom is kept up and every peer who passes through the town has to send a new horseshoe to be nailed up on the castle wall. The latest instance occurred in June, 1897, when the Earl of Onslow passed through the town. The earl had a silver horseshoe made, highly decorated, bearing the inscription: "William Hillier, 4th Earl of Onslow." This was forwarded to the constable of the castle and by him placed on the wall by the side of several centuries of horseshoes. There are rusty old shoes dating back several hundred years, gold shoes sent by peeresses, silver and steel and iron shoes, each telling of some peer who had dared to disobey the law of the Manor.

THE "OPEN DOOR" POLICY AND THE LAW.

By Benjamin S. Dean.

IT is our policy to increase by growing and spreading out into unoccupied regions, assimilating all we incorporate," wrote John C. Calhoun, secretary of state, to Mr. King, our minister to France, in 1844. "In a word," he continues, "to increase by accretion, and not through conquest by the addition of masses held together by the cohesion of force. No system can be more unsuited to the latter process, or better adapted to the former, than our admirable Federal system." Perhaps the traditional policy, and the true one, of this republic has never been better stated than in the words quoted above, and it is because thoughtful men see in the proposed "open door" policy a complete abandonment of this ideal, and the assertion of powers on the part of the general government which have not been delegated to the Congress or to the executive, that the dormant statesmanship of the nation is finding expression in the demand that we shall not assume the responsibilities incident to the annexation of the Philippine Islands.

Andrew Carnegie, voicing a considerable sentiment, and one which is destined to grow, has already called attention to the error in business policy, and to the fact that there is no power, either in the executive or in the legislative branch of the government, to establish the "open door" policy in the Philippines, without abandoning our tariff system in the nation. Senator Foraker, in a published interview, attempts to controvert Mr. Carnegie upon the constitutional proposition, and asserts the somewhat remarkable doctrine that the provision of subdivision one of section 8 of article I, that "all duties, imposts, and excises shall be uniform throughout the United States," refers only to the United States, and not to the territories within its control, and that, under the provisions of section 3 of article IV, that "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," the Congress has plenary powers to deal with the territory and inhabitants of conquered possessions in such manner as it may deem proper.

It is apparent either that Senator Foraker is ignorant of the history of the Constitution, or that he is attempting to deceive the people in a partisan effort to sustain the administration in its untenable position. These precise questions have been before the Supreme Court of the United States, and both of them have been decided in accordance with the contention of Mr. Carnegie. During the war with Mexico the United States took military possession of California, and came into control of the port of San Francisco. R. B. Mason, military governor of California, appointed Edward H. Harrison on the 3d day of September, 1848, temporary collector of the port of San Francisco, and authorized the collection of a tariff, based upon a schedule furnished by the treasury department. In a letter by Mr. Buchanan, secretary of state, to Mr. Vorhees, on the 7th of October, 1848, after calling attention to the fact that by the treaty of peace California had been ceded to the United States, but that no provision of law had been made for its government, the military government is practically authorized to continue in operation until the legislature has had time to act. "This government *de facto*," says Mr. Buchanan, "will, of course, exercise no power inconsistent with the provisions of the Constitution of the United States, which is the supreme law of the land.

For this reason no import duties can be levied in California on articles the growth, produce, or manufacture of the United States, as no such duties can be imposed in any other part of our Union on the products of California. Nor can new duties be charged in California upon such foreign productions as have already paid duties in any of our ports of entry, for the obvious reason that California is within the territory of the United States."

During the military occupation, when a war tariff was exacted, and before the establishing of a port of entry at San Francisco by the legislature, Cross, Hobson & Company, among others, attempted to land foreign goods in the port of San Francisco without the payment of duty, holding, as Mr. Foraker now holds, that as there was no port of entry, and the port being in the territory and not in the United States, there was no authority to collect the duties. Collector Harrison, however, insisted on collecting the revenues, and Cross, Hobson & Company paid the demand under protest, and afterward brought suit to recover. This case came before the Supreme Court of the United States on a writ of error to the Circuit Court of the United States for the southern district of New York. Mr. Justice Wayne, in delivering the opinion of the court, says: "It was urged that our revenue laws covered only so much of the territory of the United States as had been divided into collection districts, and that out of them no authority had been given to prevent the landing of foreign goods or to charge duties upon them, though such landing had been made within the territorial limits of the United States. To this it may be successfully replied that collection districts and ports of entry are no more than designated localities within and at which Congress had extended a liberty of commerce in the United States, and that so much of its territory as was not within any collection district, must be considered as having been witheld from that liberty. It is very well understood to be a part of the laws of nations, that each nation may designate, upon its own terms, the ports and places within its territory for foreign commerce, and that any attempt to introduce foreign goods elsewhere within its jurisdiction, is a violation of its sovereignty. It is not necessary that such should be decreed in terms, or by any decree or enactment, the expressed allowances being the limit of the liberty given to foreigners to trade with such nation. Upon this principle the plaintiffs had no right of trade with California with foreign goods, except upon the permission given by the United States under the civil government and war tariff which had been established there. And when the country was ceded as a conquest, by a treaty of peace, no larger liberty to trade resulted. By the ratification of the treaty, California became a part of the United States. And as there is nothing differently stipulated in the treaty with respect to commerce, it became instantly bound and privileged by the laws which Congress had passed to raise a revenue from duties on imports and tonnage. . . . The right claimed to land foreign goods within the United States at any place out of a collection district, if allowed, would be a violation of that provision in the Constitution which enjoins that all duties, imposts and excises shall be uniform throughout the United States. Indeed it must be very clear that no such right exists, and that there was nothing in the condition of California to exempt importers of foreign goods into it from payment of the same duties which were chargeable in the other ports of the United States."

This case is exactly in point; it is dealing with precisely the same situation which will exist when the Philippine Islands are brought under the jurisdiction of the United States by conquest, and the court distinctly asserts that the constitutional provision in respect to duties is as active in the conquered territory of California, as in any

other port of the United States. We come, then, to the consideration of the question whether the Constitution, under the provisions of section 3 of article IV, has authorized Congress to override this positive rule of the Constitution in dealing with the territories which may from time to time come within its control, for unless this has been done, the "open door" policy cannot be inaugurated, unless we are willing to adopt the same policy in respect to all of our ports of entry.

This question has also passed in review before the Supreme Court of the United States, and while its decision precipitated the baptism of blood which redeemed this nation from slavery, its doctrine has never been disputed in any tribunal, in so far as this particular question is concerned. In the decision of the Dred Scott case (19 Howard, 393) it became necessary to consider the power of Congress to enact a law in respect to the Northwest Territory, and the question decided cannot be better stated than in the words of the court: "The act of Congress, upon which the plaintiff relies," says Chief Justice Taney, delivering the opinion of the court, "declares that slavery and involuntary servitude, except as a punishment for crime, shall be forever prohibited in all that part of the territory ceded by France, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, and not included within the limits of Missouri. And the difficulty that meets us at the threshold of this part of the inquiry is, whether Congress was authorized to pass this law under any of the powers granted to it by the Constitution; for if the authority is not given by that instrument, it is the duty of this court to declare it void and inoperative, and incapable of conferring freedom upon any one who is held as a slave under the laws of any one of the States."

This case came before the court in 1856, at a time when the agitation against the institution of slavery was fast bringing to a crisis the affairs of the nation, and when there was every inducement to compromise and conciliate the people on both sides of the Missouri compromise line. The decision is, therefore, of great importance, as a declaration of the true construction to be put upon the Constitution, and to show that the exact question presented in the controversy between Mr. Carnegie and Senator Foraker was before the court, the language of the Chief Justice will again be quoted: "The counsel for the plaintiff has laid much stress upon that article in the Constitution which confers on Congress the power 'To dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States'; but, in the opinion of the court, that provision has no bearing upon the present controversy, and the power there given, whatever it may be, is confined, and was intended to be confined, to the territory which at that time belonged to, or was claimed by, the United States, and was within their boundaries as settled by the treaty with Great Britain, and can have no influence upon a territory afterward acquired from a foreign government. It was a special provision for a known and particular territory, and to meet a present emergency, and nothing more." The court then enters into an exhaustive discussion of the history of the clause under consideration, and concludes that "there is certainly no power given by the Constitution to the Federal government to establish or maintain colonies bordering on the United States *or at a distance*, to be ruled and governed at its own pleasure; nor to enlarge its territorial limits in any way, except by the admission of new States. That power is plainly given; and, if a new State is admitted, it needs no further legislation by Congress, because the Constitution itself defines the relative rights and powers, and duties of the States, and the citizens of the State, and the Federal government. But no

power is given to acquire territory to be held and governed permanently in that character."

"We do not mean, however," continues the learned Chief Justice, "to question the power of Congress in this respect. The power to expand the territory of the United States by the admission of new States is plainly given; and in the construction of this power by all the departments of the government, it has been held to authorize the acquisition of territory, not fit for admission at the time, but to be admitted as soon as its population and situation would entitle it to admission. *It is acquired to become a State and not to be held as a colony and governed by Congress with absolute authority;* and as the propriety of admitting a new State is committed to the sound discretion of Congress, the power to acquire territory for that purpose, to be held by the United States until it is in a suitable condition to become a State upon an equal footing with the other States, must rest upon the same discretion. It is a question for the political department of the government, and not the judicial; and whatever the political department of the government shall recognize as within the United States, the judicial department is also bound to recognize, and to administer in it the laws of the United States, so far as they apply, and to maintain in the territory the authority and rights of the government, and also the personal rights and rights of property of individual citizens, as secured by the Constitution. All we mean to say on this point is, that, as there is no express regulation in the Constitution defining the power which the general government may exercise over the person or property of a citizen in a territory thus acquired, the court must necessarily look to the provisions and principles of the Constitution, and its distribution of powers, for the rules and principles by which its decision must be governed.

"Taking this rule to guide us, it may be safely assumed that citizens of the United States who migrate to a territory belonging to the people of the United States, cannot be ruled as mere colonists, dependent on the will of the general government, and to be governed by the laws which it may think proper to impose. The principle on which our government rests, and upon which alone they continue to exist, is the union of States, sovereign and independent within their own limits in their internal and domestic concerns, and bound together as one people by a general government, possessing certain enumerated and restricted powers, delegated to it by the people of the respective States, and exercising supreme authority within the scope of the powers granted to it, throughout the dominion of the United States. A power, therefore, in the general government to obtain and hold colonies and dependent territories, over which they might legislate without restriction, would be inconsistent with its own existence in its present form.

. . . . . .

"But the power of Congress over the person or property of a citizen can never be a mere discretionary power under our Constitution and form of government. The powers of the government and the rights and privileges of the citizen are regulated and plainly defined by the Constitution itself. And when the territory becomes a part of the United States, the Federal government enters into possession in the character impressed upon it by those who created it. *It enters upon it with its powers over the citizen strictly defined and limited by the Constitution*, from which it derives its own existence, and by virtue of which alone it continues to exist and act as a government and sovereignty. *It has no powers of any kind beyond it;* and it cannot, when it enters a territory of the United States, put off its character, and assume discretionary or despotic powers which the Constitution has denied to it. It cannot create for itself a new character separated from the citizens of the United States, and the duties it owes them

under the provisions of the Constitution. The territory being a part of the United States, the government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out; and the Federal government can exercise no power over his person and property, beyond what that instrument confers, nor lawfully deny any right which it has reserved."

The learned chief justice then calls attention to the provisions of the Constitution guaranteeing religious liberty, freedom of the press, the right to keep and bear arms, the right to trial by jury, to peaceably assemble and petition for the redress of grievances, etc., and says: "The powers over person and property of which we speak are not only not granted to Congress, but are in express terms denied, and they are forbidden to exercise them. And this prohibition is not confined to the States, but the words are general, and extend to the whole territory over which the Constitution gives it power to legislate, including those portions of it remaining under territorial government, as well as that governed by States. It is a total absence of power everywhere within the dominion of the United States, *and places the citizens of a territory, so far as these rights are concerned, on the same footing with citizens of the States, and guards them as firmly and plainly* against any inroads which the general government might attempt, under the plea of implied or incidental powers."

This being the law, that there is no power in Congress higher than the Constitution, it must be apparent that the "open door" policy, which undertakes to give European nations the same rights in the Philippines as ourselves, cannot be made operative. The moment these islands are annexed to the United States they become a part of its territory, and are subject to the provisions of the Constitution, which requires that "all duties, imposts, and excises shall be uniform throughout the United States," and that "no tax or duty shall be laid on articles exported from any State." The Dingley tariff act, by operation of law, becomes operative at every port of entry in any of the possessions of the United States immediately upon the ratification of the treaty of session, and the Congress has no authority to change it, except as it may change the law in respect to all ports of entry. By the same act of ratification the inhabitants of the Philippines become naturalized citizens of the United States, and entitled to all of the rights and privileges of citizens of the United States; they may come into the State of New York, and, after a residence of one year, become entitled to vote at all elections. It equally nullifies the contract labor law, in so far as these islanders are concerned, and the opportunities for profitable colonization of voters is thus materially extended.

Would it not be well to suspend action in reference to the Philippine Islands until we have solved the problem of dealing with our new possessions in Hawaii and Porto Rico? Gibbons tells us that "In the decline of the Roman Empire, the proud distinctions of the republic were gradually abolished; and the reason or instinct of Justinian completed the simple form of an absolute monarchy. The emperor could not eradicate the popular reverence which always waits on the possession of hereditary wealth or the memory of famous ancestors. He delighted to honor with titles and emoluments his generals, magistrates and senators, and his precarious indulgence communicated some rays of their glory to their wives and children. But in the eye of the law all Roman citizens were equal, and all subjects of the empire were citizens of Rome. That inestimable character was degraded to an obsolete and empty name." Are we not confronted by this same menace to our national life; is that citizenship worth the having which is placed on an equality with that of an alien race, ages behind the development even of those whom we have but recently freed from bondage?

THE SOUTHERN JUDICIARY AND SLAVERY.

By Albert W. Gaines.

THE American people had scarcely gotten their governmental machinery fairly to work before the wrangle between freedom and slavery began, and the adherents of each were wary to take advantage of everything that might favor their contentions.

The acquisition, or contemplated acquisition, of any new territory was the signal for a renewal of the conflict with fresh vigor, and every foot of newly-acquired territory was a battle-ground of the contending forces.

The acquisition of Louisiana, the Missouri Compromise, the attempted Nullification, the Annexation of Texas, the Kansas-Nebraska Bill, the Omnibus Bill, the passage of the Fugitive Slave Law, the Dred Scott Decision; the discussions of which by orator, historian, and novelist kept the subjects alive in the minds of the people, all played their important parts in the political drama.

It would naturally be supposed that the slave-holding States, during all these excited controversies and heated contentions of pro-slavery and anti-slavery adherents, would see to it, that within their own borders, at least, the fetters of slavery would be more firmly riveted, and the peculiar institution bound more tightly to the body politic.

Without attempting to defend slavery or to criticise the institution, or its enemies or defenders, it may be interesting and instructive to note the legal status of the slave in the slave-holding States, and to see how far, if at all, the southern judiciary were influenced by interest, and by the bitter warfare continually being waged against slavery and, in short, to gather from the decisions themselves and from the language of the courts, which it will be conceded are most reliable sources of information, the relations which existed between master and slave and the attitude of the State toward both.

The limits of this article will not permit an examination into the judicial decisions of all the southern States, and, hence, I shall confine my inquiries to only one State; one which does not arrogate to itself any superiority over her sister States, and one which, probably, without examination, may be considered as fairly representative of the slave-holding States in the *personnel* of her judiciary and the treatment of questions arising under the laws of slavery; the State of Tennessee.

Tennessee came into the Union in 1796, with slavery fully and firmly established, and she began at once to make laws; and her courts to construe them, in favor of emancipation. Her courts, instead of throwing obstacles in the way "to fetter the step of freedom," whenever human liberty was involved, construed every intendment in favor of the slave, often breaking down the barriers of technicality, in order to declare the freedom of a slave.

The amelioration of the condition of the slave, and his due protection from cruelty, were objects of special care to the courts of Tennessee, and the decisions exhibit a feeling of humanity, as deep as it was sincere, and show that "the still, sad music of humanity," although coming from a slave to a slave-holding court, never went unheeded, and the protecting arms of the courts of chancery were ever thrown about the helpless and "the lowly."

By the act of North Carolina of 1777, in full force in Tennessee, a slave could only be set free for meritorious services to be adjudged of and allowed by the county court. In 1801 the legislature of Tennessee passed an act removing the restrictions requiring meritorious services, and

allowed the slave to be set free in all cases. In 1829 the legislature passed an act making it the duty of an executor or an administrator with the will annexed, where a testator by will directed that his slaves be set free, to petition the county court to set the slaves free, and if he failed or neglected to do so, the slaves themselves could file their petition and obtain their freedom.

It was the universal law of Christendom that the child of a slave mother was a slave, *partus sequitur ventrem;* but, notwithstanding this well-recognized principle of law, the courts of Tennessee often construed it so strictly in the interests of freedom, that it was of but little force.

As early as 1813 the Supreme Court of Tennessee decided that a child born after the emanation of the writ in a suit for freedom by the mother, but before any freedom had ever been decreed her by any court, was a free child.[1] In another case, one John Bayless liberated his slave, to take effect at the death of himself and wife. After his death, but before the death of his wife, a child was born to the slave, and the court held that, notwithstanding the mother was a slave, the act of Bayless was an act of emancipation *in presenti* to take effect in the future, and that the child was free.[2]

In the year 1800 Thomas Bond died, leaving a will, in which appeared the following clause; "All young negroes which I may have in my possession at the time of my decease, shall have their freedom when they respectively arrive at the age of twenty-five."

Clarissa, one of the slaves, was about ten years of age at the date of the death of her master, and, under the will, would be free when she reached the age of twenty-five. Before she reached that age, she became the mother of three children, and the question which came before the court for judicial determination, was the legal status of these children.

[1] Edward *v.* McConnell, Cooke, 305.
[2] Hartsell *v.* George, 3 Hum., 257.

It was contended, first, as they were the children of a slave mother, they were slaves for life, and secondly, that if not slaves for life, at least, they would be slaves until they respectively reached the age of twenty-five. The supreme court decided, that when the mother reached the age of twenty-five, she carried her three children into freedom with her. In delivering the opinion in this case, the Court say: "In giving construction to the will made pursuant to the statute, the court must bear in mind the claim is one involving human liberty, and that the testator's intention must be favorably interpreted to this end."[3]

This case was decided in March, 1834, and it is worthy of notice, that, at the January term of the same year, the Supreme Court of the United States, upon substantially the same facts, and in a case arising in Tennessee, took a directly opposite view of the law. In the case referred to, Patrick McCutchen made his will in Tennessee in 1812, by which he devised to his wife his slaves for life, and at her death, they were to be set free. And if there were any slaves which had not arrived at the age of twenty-one at the date of the wife's death, such were to become free when they respectively reached that age. Two of these had issue, after the death of the testator but before the death of the wife; and the Supreme Court of the United States decided, on the principle of *partus sequitur ventrem*, that these children were slaves for life.[4]

In 1825, one Abraham Vernon made his will, as follows: "My negroes (naming them), I wish her (his wife), to keep, and if they are obedient to her, and at my wife's death, I wish them to be set free; and, if they should be disobedient to my wife, she may dispose of them as she pleases." Abraham died, and soon after his widow, aged sixty, married one William Sharp a lad of eighteen summers. In 1834 the wife died

[3] Harris *v.* Clarissa, 6 Yerg., 240.
[4] McCutchen *v.* Marshall, 8 Pet., 235.

also; and, while the record does not state, let us hope that she was carried into Abraham's bosom. Be this as it may, she made no disposition of the negroes, and the young widower began to console himself for the loss of a wife by the acquisition of a slave, and accordingly took possession of one of the slaves and was about to remove him South to sell him, when he was enjoined by a brother of the testator, who filed a bill to have the slave declared free.

The court, delivering the opinion say: "The liberty which a testator intends to bestow is of so high a value to the objects of his benevolence — and must be supposed to so occupy his thoughts and so strongly to fix his purposes, that a devise of freedom is not to be defeated by any right of disposition (not exercised), which may be given to a devisee for life — and, if there is any doubt of the meaning of the will, the power of disposition must be construed to be subordinate to the higher and more important right of freedom."[1]

This opinion was quoted by Mr. Justice McLean in his dissenting opinion in the Dred Scott case.

It would naturally be expected that the act by which so valuable property as a slave should be given up by the master without consideration, would be attended by all the formalities possible and be evidenced by the most solemnly executed instruments, but the courts of Tennessee decided that no deed or writing was necessary, but that acts *in pais*, from which freedom might be implied, were sufficient.[2] And that, if a master said to his slave that he might go and be free, the slave at once became vested with a right to freedom, and that the master could not reassert his dominion over him.[3]

We can almost hear this court say, with Emerson: —

> "For what avails the plough or sail,
> Or land or life, if freedom fail?"

The courts also made it the duty of the master to keep his slaves in decent apparel; and, if a slave was allowed to go about in public in garments "tattered and torn, and not sufficient to cover nakedness," the master was indicted for lewdness, convicted and fined.[4]

The courts not only granted the slave all intendments in favor of freedom, but they exercised the greatest protecting care over him, and showed the utmost consideration for his welfare; not because he was valuable property, but, as the opinions clearly show, because he was a human being, and entitled to consideration as such.

In 1836, the husband of the owner of a life estate in slaves was preparing to remove them from the state, but was perpetually enjoined from doing so; and the opinion of the supreme court shows how continually that court was working to throw about the slave all the protection afforded by a court of justice.

"It is but recently," say the Court, "in this State, at least, that the peculiar nature and character of slave property, and of relation between master and slave, have been regarded in our courts, in the spirit of a rational and humane philosophy. A few years ago, and any man who had a judgment debtor, might by virtue of an execution against him, become the owner of the slave of the third party, if he chose in a suit at common law, to pay the value or more than the value. A court of chancery, if the owner had there sought to restrain the bill, or recover the possession, closed its doors upon him, with the information given him, that he had a clear and unembarrassed remedy at law. Afterwards, as it was discovered, as wines, family pictures, plate, and ornamental trees, etc., were protected to the owner in a court of chancery against trespass, so might a slave, if a family slave and

[1] Jacob *v.* Sharp, Meigs, 114.
[2] Abram *v.* Johnson, 1 Head, 120.
[3] James *v.* State, 9 Hum., 311.
[4] Brittain *v.* State, 3 Hum., 203.

a peculiar favorite with his master. But recently, upon grounds less technical and far higher and sounder, it has been determined that a court of chancery will protect the possession and enjoyment of this peculiar property, a property in intellectual and moral and social qualities, in skill, in fidelity and in gratitude, as well as in their capacity for labor, and any owner may now say and show to a court of chancery; I am master, this is my slave, and he shall retain or recover the possession." [1]

In 1833, the supreme court enjoining the sale of a negro boy, gave expression to these lofty sentiments:

"The slave and the master should never be separated when affection exists between them. In the next place, it often must occur that the mother will be separated from the children, or the husband from the wife, if the sheriff be permitted to sell. Nothing can be much more abhorrent to these poor people, or to the feelings of every benevolent individual than to see a large family of slaves sold at sheriff's sale; the infant children, father and mother to different bidders. To treat them as other domestic animals, would be to declare, that, as a people, we had, in reference to this class, sunk all feelings of humanity, and that the slave was not elevated in his sensibilities over the lower classes of animals, which are allowed to have none worthy the protection of man. As a fact and as a theory, this is untrue. These are some of the considerations why the courts of equity have protected the slave as well as the master from unlawful separation. Truly, compensation for the market value of the slave could be had at law as for the horse or the ox, but the mutual feelings of dependence, affection, and humanity, existing between master and slave, have no cash price, and cannot be compensated in money." [2]

In 1845, a most pathetic case came before the supreme court. Elias, a slave, was emancipated by his master, and afterwards married a slave belonging to a neighbor. Elias had a child, and upon the death of the owner of his wife and child, at the administrator's sale, with the consent of the family, Elias bought his wife and child for the sum of ten dollars. Whereupon, Smith, a creditor of Elias, levied an execution upon the wife and child, as the property of Elias. A bill was brought to enjoin the sale, and we would search long to find an opinion, in which a court expresses so thorough an indignation at a creditor.

In granting a perpetual injunction, the court says: "But they (the wife and child) trusted and not rashly, it seems, to the heart of the husband and the father, as being, at least, equivalent to the deed of another. If he, stifling the voice of nature, and severing the paternal tie, had been such a barbarian and monster as to have meditated a sale of them, for his pecuniary advantage, upon the strength of his mere legal title, is there a chancery court in Christendom, having jurisdiction over such a trust, which would not promptly interpose, at their instance, and enjoin him from perpetrating against them so flagrant a wrong? And will not such a court interpose in a case, little short in its enormity of that supposed, where a creditor of Elias seeks to produce the same result by an execution sale at law? Certainly it would. That much we have the power and it is our duty to do." [3]

In 1849, the court, in passing upon the duty of a hirer of slaves, said: "The law, as administered at this day, in most of the slave States, rigidly exacts from the hirer an observance of the duties of humanity; and that measure of care and attention to the comfort and welfare of the slave, that a master, of a just and humane sense of duty, would feel it incumbent on him to exercise in the treatment of his own servant." [4]

[1] Henderson *v.* Vaulx, 10 Yerg., 37.

[2] Loftin *v.* Espy, 4 Yerg., 92.

[3] Elias *v.* Smith, 6 Hum., 35.

[4] Lunsford *v.* Baynham, 10 Hum., 269.

I shall quote but from two other decisions, both rendered in 1858, a year after the Dred Scott decision, and four years after the passage of the Kansas-Nebraska bill.

"We are not to forget," say the court, "nor are we to suppose that it was lost sight of by the legislature, that under our modified system of slavery, slaves are not mere chattels, but are regarded in the two-fold character of persons and property. That as persons they are considered by our law as accountable moral agents, possessed of the power of volition and locomotion. That certain rights have been conferred upon them by positive law and judicial determination, and other privileges and indulgences have been conceded to them by the universal consent of their owners. By uniform and universal usage, they are constituted the agents of their owners and are sent on their business without written authority. And, in like manner, they are sent to perform those neighborly good offices common in every community. They are not at all times in the service of their owners, and are allowed by universal sufferance, at night, or Sundays, holidays, and other occasions, to go abroad, to attend church, to visit those to whom they are related by nature, though the relation be not recognized by municipal law, and to exercise those innocent enjoyments, without it ever entering the mind of any good citizen to demand written authority of them. The simple truth is, such indulgences have been so long and so uniformly tolerated, that public sentiment upon the subject has acquired almost the force of positive law." [1]

The other case alluded to was one in which a slave who was in jail charged with rape and murder, was taken from the jail by a mob and hanged. The opinion in this case is well worth careful perusal, and, although delivered long after the passage of the Fugitive Slave Law, which denied the right of trial by jury, is in marked contrast to that law.

"The case," say the court, "was one of extraordinary aggravation, in which all law was set at defiance, public justice insulted and the life of a human being, already in manacles, lawlessly destroyed. He was charged with the shocking crimes of rape and murder combined. But the officers of justice had performed their duty, and had him safely incarcerated in jail to await the vengeance of the law, in case his guilt was established according to its forms. There was not the least necessity that the defendants should interfere after the criminal had been secured and disarmed of all power of resistance or of flight, and shed human blood, even of a slave, without trial or condemnation. If the slave were guilty of the crime imputed, no punishment would have been too severe for him, and so by the law the penalty is death — death by hanging — the mode adopted by the defendants without and against the law. But no man, whether bond or free, is to be condemned or punished without a hearing, a fair and impartial trial. There is neither valor nor patriotism in deeds like these. Not valor, because there is no contest — the victim is already in bonds and harmless; nor patriotism, because the country has provided for the proper and legal punishment of offenders and needs not the aid of mobs and lawless combinations to wield the sword of justice or quicken its stroke." [2]

It would thus appear that the courts of a slave State construed the law more favorably to freedom than did the Federal Supreme Court; that they showed more consideration for the rights of the slave and for his due protection than did the Federal Congress in its enactments; and that their broad views and high conceptions of the rights of the slave are in marked contrast to the statements of the popular novelist of the times, when it was represented, that, under State law, a slave was "not a man, but a thing," and classed with "bundles, bales and boxes."

[1] Jones *v.* Allen, 1 Head, 636.

[2] Polk *v.* Fancher, 1 Head, 337.

WINDMILL AT POTSDAM.

LEGAL OBSERVATIONS IN GERMANY.

READ BEFORE THE KANSAS CITY BAR ASSOCIATION, DECEMBER 10, 1898, BY MR. EDWIN A. KRAUTHOFF.

A TRIP to Germany during the summer of 1898, and an acquaintance with its language, furnished an opportunity of studying the workings of some of the legal machinery of that country.

At Wiesbaden a criminal trial was witnessed. The court consisted of three judges, one of whom acted as the president of the tribunal, and the others officiated as his associates. These judges are selected for life. The manner of their appointment was thus stated: When starting on their career, they had selected the judicial position as the one best adapted for the display of their talents. They were required to pass an examination, not as to their judicial temperament, but as to their knowledge of law, and if successful were placed on the waiting list. Whenever a vacancy in the office of judge existed, either by death or retirement on account of age, the same was filled by an appointment from the next lower grade. Thus, speaking relatively, should a vacancy occur in the Supreme Court of Missouri, the appointing power — in Germany a council of judges — would select one of the circuit judges. Thereupon a justice of the peace would be promoted, and one of the young lawyers who had passed the requisite examination would be appointed to the magistracy, the first one on the list being entitled to the office.

At the trial now under review, the judges sat upon an elevated bench at the end of the court room, — a high, airy apartment. Above them was a bust of William, King of Prussia. In this connection, it must be borne in mind that the empire of Germany is a federation of many states, one of which is Prussia. The King of Prussia is, by virtue of that position, Emperor of Germany, — a situation analogous to the one presented in the United States if the governor of New York would *ex officio* be President. But this court was the royal court of the kingdom of Prussia, and the features of its ruling monarch were displayed in order that all might be impressed with the thought, his majesty had been violated, his law disregarded.

The presiding judge, of course, occupied the middle seat, one of his associates being on each side of him. At the left was the recorder of the proceedings, who preserved a narrative account of all that transpired. There is a system of stenography in vogue in Germany, but this court was content with the substance of the testimony. The recorder did not use a blotter, but instead, when a page was finished it was sprinkled with sand, and as soon as the surplus ink had thereby become absorbed, the grains were returned to a box, only to be again used when the next page had been completed. On the same elevation with the judges sat the prosecuting attorney. He was not on a level with the counsel for the defense, but instead sat at the right hand of the court.

In civil cases the court consists of five members, and it, not a jury, decides issues of fact; but in criminal cases a jury of twelve is called upon to determine the guilt or innocence of the accused. Their place is at a right angle to the judges, at the left side of the room. Opposite to the jury, on the right-hand side of the room, likewise at a right angle to the court, are two long benches, one behind the other. The first row is for the attorneys of the defendant, the second row is for the defendants. At the rear of the room are seats for witnesses and for jurors when not in their box, and back of a railing is a place for bystanders.

The judges, the recorder, and the lawyers were garbed in robes of black, not silk, but some plain goods, and at times wore caps. There were two defendants, a man and a

woman. The woman was charged with having become a bankrupt fraudulently. The specifications were that she failed, in the schedule of assets accompanying her petition, to accurately state her property, and that, although a trader, she had failed to keep such a set of books as would show a complete record of all her business. The other defendant was charged with being an accessory, both before and after the fact.

The opening of court did not present any features which at this time are recalled by the onlooker. The presiding judge conducted the proceedings almost to the entire exclusion of the lawyers. Immediately in front of the judges' bench, and between the places assigned to the jury and the counsel for the defense, was an open space, some sixteen feet square, and in this the defendants, standing, were arraigned, the charges read, and their plea taken. Both answered, Not guilty. When asked if they were represented by counsel, the names of their attorneys, each being defended separately, were given, and thereupon the gentlemen named by the accused were asked by the presiding judge if they appeared as stated by defendants. Their answer was in the affirmative, and the trial began.

At the bench of the presiding judge was a small box or urn, and into this were dropped cards, one at a time, and each containing the name of a juror. As the jurors were called, they answered "present," and when the names of the entire panel, some thirty in number, had been placed in the box, the twelve who were to try the case were selected, and in this manner: the presiding judge took a card from the urn, called the name of a juror, his residence and his occupation. (In passing, it may be stated that in Germany a man's occupation is as much a part of him as the name bestowed upon him at baptism, and he is always spoken of as "Hermann Mueller, merchant.")

As the jurors were called, they were peremptorily challenged, either by the prosecuting attorney or the attorneys for the defense, or they were accepted. Twelve men, presumably good and true, passed the gauntlet, without seemingly either the prosecution or the defense exhausting the number of peremptory challenges to which they were entitled, and then the jury were inquired of, generally, as to their relationship to the accused, their official connection with the government, and their knowledge of the facts of the case. None of the twelve came within the objections which stood as cause for challenge, and they were sworn to try the issue. During this ceremony, as well as during the administering of the oath to the witnesses, every one in the court room — judges, lawyers, and all — stood uncovered. After the judge had read the oath, the jurors repeated, one after the other, each with uplifted right hand, "This is my oath, so help me God."

In the introduction of testimony, the radical difference in trial of cases in Germany and the United States was made manifest. The defendants were first examined, not as witnesses, because they were not sworn, not by their counsel in chief and then cross-examined by the prosecution as to the matters testified to in chief, but by the presiding judge. The woman was first questioned. She was required to stand, no chair on which to sit, no table on which to rest. She was in the middle of the open space in which she had been arraigned, and where every eye in the room could have an unobstructed view of her. There was handed the judge a large bundle of documents, presumably prepared by the prosecuting attorney, and then she was asked a series of questions like this by the judge: Your name is ——, you were born a —— (a married woman is always spoken of as, for instance, a Mueller, born a Schulze), you are by religion a ——. By dint of a somewhat protracted examination, most of the interrogatories being leading in their structure, this state of facts was proved: The woman defendant

THE REICHSTAG BUILDING.

had been the owner of a small store in which notions and woman's goods had been offered for sale. She had filed a voluntary petition in bankruptcy and had failed to disclose all her assets, in that she had kept five dollars on her person, about thirty-two cents in a savings bank, and some unseasonable, moth-eaten woollen goods, the value of which the testimony did not disclose. It also appeared that she had purchased a ticket in one of the lotteries which in Germany are not only lawful, but are often operated either by the state or the churches, or some of the many charitable or benevolent organizations which there abound. This lottery had four drawings, and these drawings occurred at intervals of three months. The purchaser of a ticket paid one fourth of its price at the time he bought it. If the ticket failed to appear at the first drawing, the holder thereof was privileged to pay the second instalment of the price, and participated in the next drawing, and so on to the end. The woman had purchased such a ticket, had paid the first instalment, and had drawn no prize. Instead of scheduling the ticket as an asset, she gave it to her co-defendant, who of his own funds paid the second and third instalments on the ticket, and at the third revolution of the wheel a prize of $375 was drawn, and thereupon the co-defendant, a man, gave this woman $100 of the prize.

It also appeared that the woman had pledged some of her personal belongings at the public pawn-houses which prevail in Germany, not in her married but in her maiden name, and did not schedule the pawn tickets among her assets. There was no evidence that the value of the pledge was greater than the amount advanced thereon, but this seemingly did not palliate the offense. The circumstance that a name was assumed by the defendant was severely commented on by the prosecution, and as ingeniously avoided by the counsel for the defense. He repeated to the jury Goethe's lines: —

> "Who never ate his bread with tears,
> Who never passed the midnight hours
> Upon his bed engulfed with fears,
> He knows ye not, ye heavenly powers,"

and paraphrasing them, observed: "Who never pawned his goods knows not what he might do." He told the jury that when he was at the university he often found it necessary to pawn his watch, and in so doing always assumed a name.

The woman defendant, when confronted with the set of books kept by her, and which were claimed to be incomplete, testified that one of the books she had was missing.

So far as such a system permits, the judge was exceedingly fair, but ever and anon he would turn to the jury and ask them to remember that the defendant had admitted a fact damaging to her, and he would as frequently express his opinion of the probability of the defendant's answer in this manner: "You will scarcely expect the jury to believe that"; or, "It may be your counsel can explain that." He was quite thorough; and when he had finished with the defendants (the man going through the same process as the woman), the prosecuting attorney had nothing, and the defense little, to ask.

The witnesses were introduced in rapid succession, each being sworn by "God, all-powerful and all-knowing," to tell the truth. There was an expert, and to his oath was added the word "impartially." In Germany, if an issue involving expert knowledge is raised, the court appoints the witnesses on this point, and the conclusion they reach is binding on the tribunal. In this case the expert was asked if the books present in court were sufficient to show the state of defendant's business, which he answered in the negative. He was then asked if the book claimed by defendant to be missing would complete the set, and this was answered in the affirmative.

Persons within certain degrees of kinship do not have to take an oath, but may, if

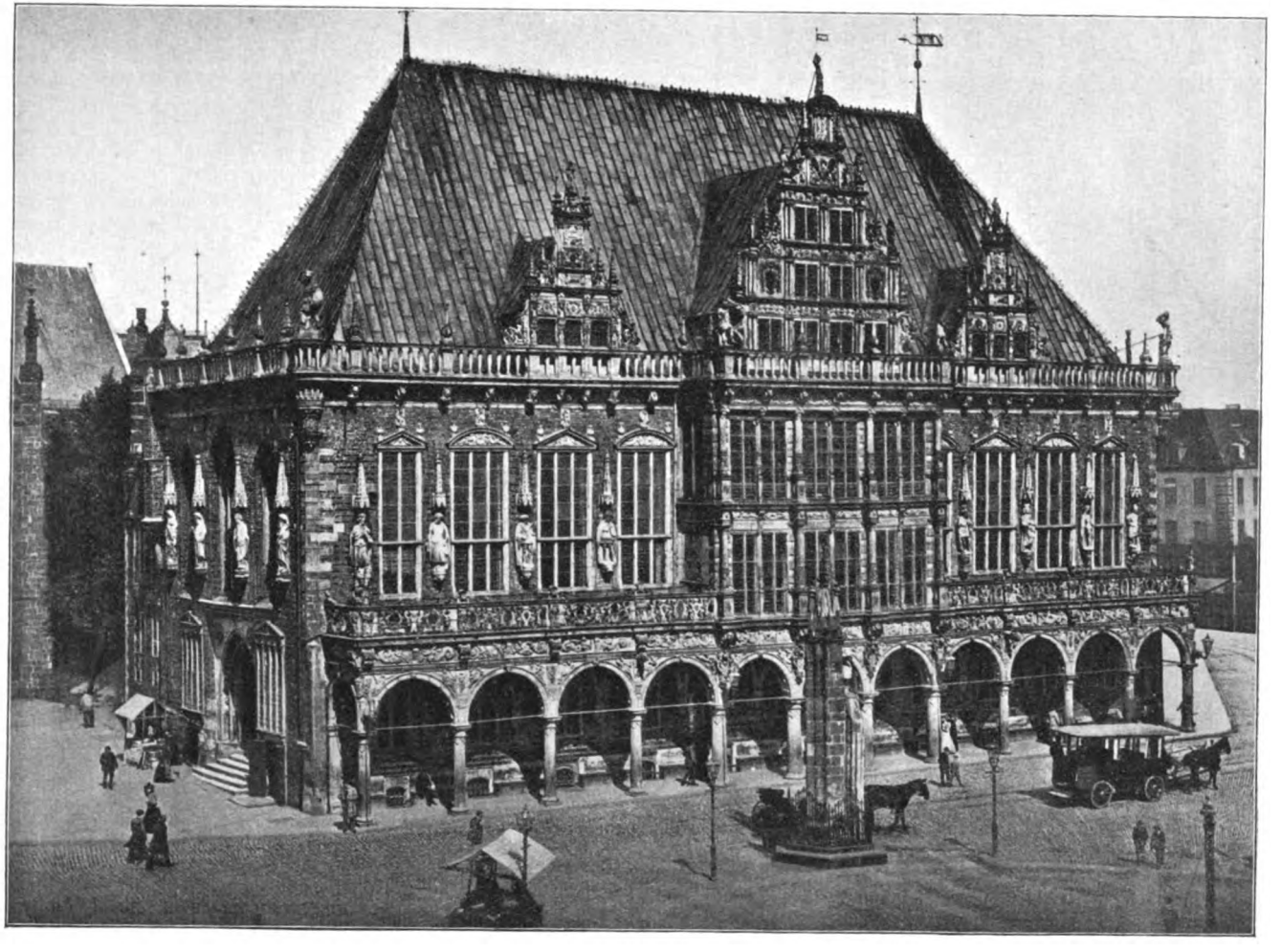
COURT HOUSE AT BREMEN.

they prefer, state the facts within their knowledge bearing on the issue to be determined. If not sworn, they are, of course, not subject to the pains and penalties of perjury; but an unsworn statement is not given the weight of testimony which is accompanied with the solemnity of an oath, and the persons who were entitled to the privilege just mentioned generally waived it and were sworn as witnesses.

At the conclusion of the testimony the case was submitted to the jury in the form of questions, to be answered Yes or No. Thus: Did the defendant on (a certain day), at (a certain place), commit the acts of which she was charged? If this was answered in the affirmative, the further question was propounded: Were there any circumstances extenuating the offense? If eight of the jury voted Guilty, the first question was answered Yes; if less than eight so voted, it was answered No. The jury could not disagree. Eight could convict, and five could acquit. The second question was to be answered in the affirmative if six of the jury so voted. The charge of the judge was oral. The burden of proof, the presumption of innocence, the previous good character of the accused, the definition of reasonable doubt, and other principles of like nature so frequently invoked in American criminal trials, were not mentioned. The judge clearly and dispassionately informed the jury of the issue to be decided, and then the attorneys argued the case in tones almost conventional when compared to the flights of eloquence often heard in Kansas City court rooms. To their credit, it may be said, the jury acquitted both defendants.

The next day a young man, formerly a clerk in the postal service, was arraigned, the charge against him being that he did abstract from a registered letter some two thousand dollars in money. Insurance companies in Germany hold themselves responsible for the safe transmission of valuables sent by post, and issue policies to that effect, and so money is frequently sent in that manner. This defendant pleaded guilty, but the judge called a jury, and very patiently inquired into every circumstance attending the crime, and the jury found the defendant guilty, but with extenuating circumstances, and the sentence fixed by statute was on that account lessened. Conviction of a felony in Germany does not absolutely forfeit rights of citizenship as in Missouri, but has that effect for a period to be fixed by the court in awarding the punishment.

An interesting tribunal is known as the "Gewerbegericht," or "Trades Court." The word "trade" is used in its mechanical, not commercial, sense, and the court has jurisdiction of trade disputes between employés and employers, between employés of a common employer, between piece workers who do not work in a factory and their employers, and between piece workers of the same employer. The court has jurisdiction of disputes growing out of the inception, the continuance, or the dissolution of the term of employment. It is made the duty of the master, when the relations between him and the servant are terminated, to give the servant what is commonly known as a "character"; that is, he must state in a book owned by the servant the reason for the ending of the relation theretofore existing between them, whether the servant was discharged for his fault or because the term of service had expired. Should the servant be dissatisfied with the statement of the master, he may apply to this court for redress. Should the master have a rule whereby under certain circumstances a servant is fined, and a dispute should arise from the infliction of the penalty, this court has jurisdiction of the same. It is also obligatory upon every person in Germany whose income is less than $500 per year to insure themselves against sickness, death, and old age. Persons engaged in hazardous employments must be insured against death or injury by accident irrespective of the amount of their



CITY HALL AT BREMEN.

income. Both classes of insurance are managed by the government, the policies being originally issued through the post-office department, and the premiums payable weekly, in this manner: Stamps are sold by the postal authorities, and one of these is affixed every week in a book kept by the employé and cancelled. In the first class of insurance mentioned, — sickness, death, or old age, — the employer pays one half of the premium, and the employé one half. In the second class, — accident, — the employer pays all the premium; but in case of accident, the employé is limited to the insurance for recompense, and has no cause of action against the employer. The Trades Court has jurisdiction of all controversies growing out of the failure or refusal of the employer to pay these insurance premiums.

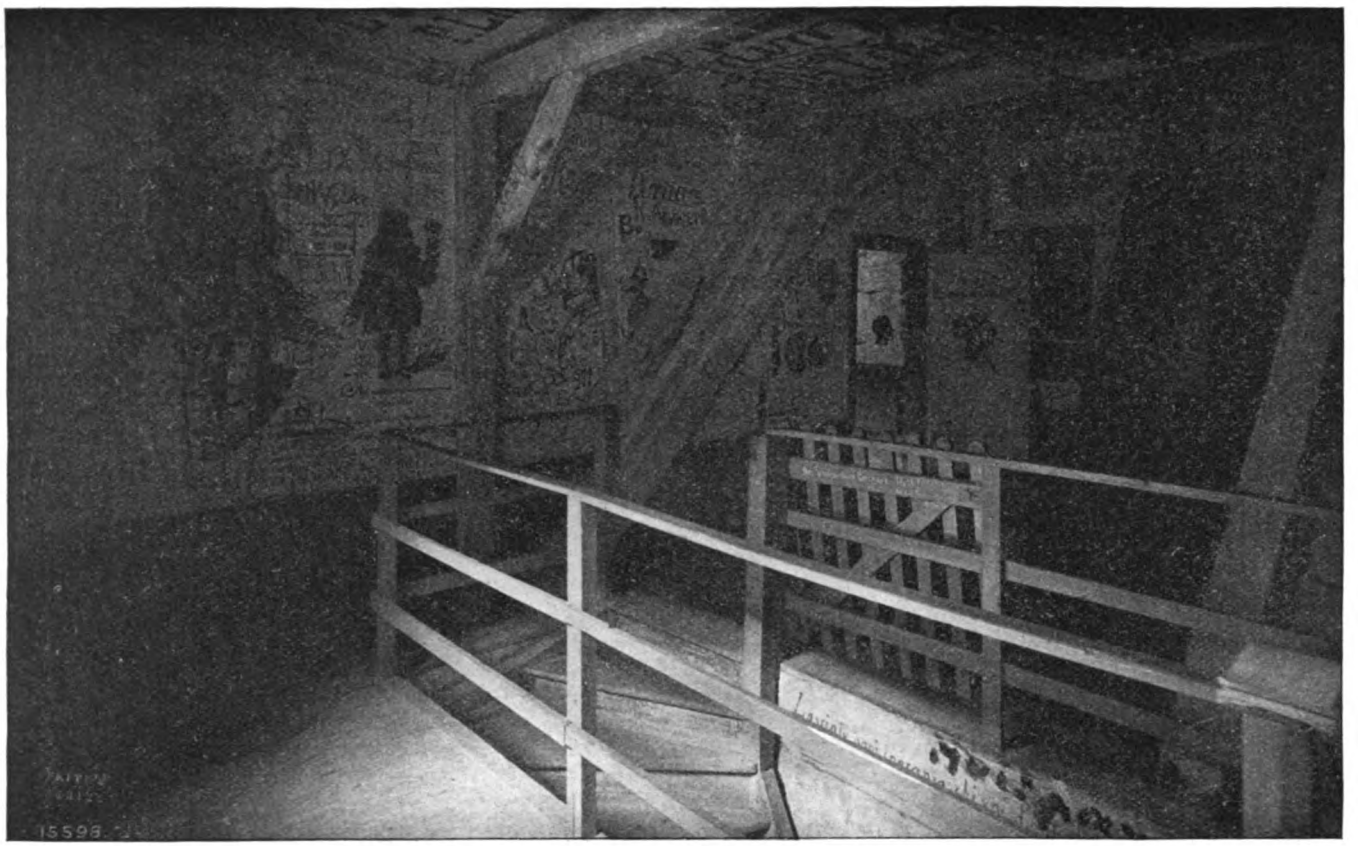
Should a contract of employment provide that the employé was subject to a fixed penalty in case he entered the employ of another, or opened a business of his own, and a controversy arise from such a provision, the Trades Court would have no jurisdiction. Neither would it have jurisdiction of controversies between members of a labor union and their apprentices, nor between members of a union which has a board of arbitration.

The court consists of a president, a vice-president, and thirty associates. The associates must consist one half of employés elected by employés, and one half of employers elected by employers, all at a special election held for that purpose. Members of a labor union having a board of arbitration are not eligible either as voters or associates. The associates must be thirty years of age, have never received support from the Bureau of Charities, and have lived in the community at least two years. The president and vice-president are selected by a body corresponding to our upper house of the common council. Neither employers nor employés are eligible to this position.

When in session, the court consists of five members, — the president, or, in his absence, the vice-president, two members who are employers, and two who are employés. At the beginning of their official term, the associates are divided into groups of four, and assigned to certain weeks in which they are to officiate. The court may also act as a board of arbitration in case of a strike, but this is not compulsory; that is, one party to such a dispute cannot force an arbitration. A session of such a court was witnessed in Berlin. The president was alone, endeavoring to settle the controversy. The complainant, a woman garment worker, claimed that she had made nine garments. The defendant admitted five. The proceedings were colloquial in their nature, and when the issue was presented, — nine on one side and five on the other, — the judge set the case for hearing before a full bench on a later day.

At Potsdam there is an historic windmill. Frederick the Great built the palace of Sans Souci as a summer home, but unfortunately for his peace of mind, at its gate was a flour mill operated by wind. It made a terrific clatter, and an emissary was sent to its owner with a proposition to buy it. This was declined, the miller stating that the property was not for sale; he had inherited it from his father. He was then told the king would come and take the mill. "Ah!" he said, "not so long as there is a court of justice." His confidence was not misplaced; the court did not permit the king to deprive him of his heritage. But in course of time the descendants of the miller, coming into possession of the property, and finding themselves in financial straits, were compelled to offer it for sale. A successor of Frederick bought it, and it stands to-day, preserved and in good repair, a monument to Prussian justice.

Adherents of codification will be pleased to know that Germany has adopted a comprehensive code of law defining the rights resulting from every human relation, and



THE KATZER, HEIDELBERG.

(The place of punishment or imprisonment for such students as violate either the rules of the University or the ordinances of the city.)

uniform throughout the empire. With a commendable desire that all should be instructed in the provisions of "Das Bürgerliche Gesetzbuch," it was ordained the same should take effect January 1, 1900. In the meantime the book is taught in the law schools, and lectures are delivered based on its provisions.

The present laws of Germany are diverse in their origin. The Roman, or, as we call it, the civil law, is the basic element. As indicating the conservatism of jurisprudence, it may be noted that Mainz, which was wrested from France in 1815, still retains the Code Napoleon. In certain portions of Germany the law of primogeniture prevails; in others not. Wiesbaden, now in Prussia, was once a portion of Luxemburg-Nassau, and edicts of that extinct grand duchy are still in force. Frankfurt, prior to 1866, was a free city of the empire, and certain ordinances then passed still apply. Other cities — Goslar, Lübeck, Magdeburg, Cologne, Freiburg, Hamburg, or Bremen — either were or are free cities of the empire, and have varying laws. Instances of this character might be multiplied, but lack of space forbids.

As early as 1814, Thibaut, then a professor of jurisprudence at Heidelberg, wrote a pamphlet entitled, "The Necessity for a Universal Code of Rights in Germany," but the circumstances then surrounding the country were unpropitious; but in 1849 a universal bill of exchange and negotiable instrument act was adopted, and in 1861 a commercial code was added thereto. Nothing further was accomplished until 1873, when a preliminary act of the Reichstag was passed. In accordance with its provisions, a commission of five eminent scholars, four of whom were appellate judges, were selected in February, 1874, to devise a plan. They reported in April and in July of that year; their recommendations were adopted, and a committee of eleven were appointed. Thrice death invaded their ranks, but the vacancies were filled, and, with the assistance of numerous others, the code was completed in 1890. The code was then submitted to a committee of twenty-two, who reviewed the same. This required five years, and in October, 1895, the completed work was handed the chancellor, who submitted the same to the Reichstag, where it was passed in July, 1896, and it was approved by the emperor on August 14.

This new code is exceedingly interesting, and settles by positive enactments many questions on which numerous courts hold divergent opinions; and it is hoped, at some future date, when the same has been more carefully studied, that the writer of this paper may have the pleasure of speaking more fully in reference thereto.

The rambler in the city of Weimar, famed for its literary associations, finds himself, almost ere he notices its bounds, in a beautiful park. He wanders aimlessly where

> "The long, leafy shades between,
> The shadows alternately come and go";

and meditating on the lines of Shakespeare, —

> "Tongues in trees,
> Sermons in stones,
> Books in the running brooks,
> And good in everything," —

suddenly finds a monument, erected at the suggestion of Goethe, in an out-of-the-way spot. On it is the inscription: "Mind, not limited by place." So it is with law: it is to no race or creed confined, but "its voice is the harmony of the universe, its seat the bosom of God. The very least do feel its care, the greatest are not exempt from its power."

AN UNFORTUNATE FRENCH LAWYER.

By George H. Westley.

HENRY THE SECOND had just succeeded to the throne of France, and seated on the place of honor above the president of the High Court of Justice, he was formally opening the courts now under his rulership. Among the motley group of lawyers at the back of the hall was a young man clothed in black and wearing the tippet of a doctor of laws, who bore the most remarkable resemblance to the king. This was Raoul Spifame.

During the tedious address in Latin by the chancellor, Henry allowed his eyes to wander over the assembled company, and presently they fell upon the young advocate. The king was not above superstition, and for a moment he was stricken with astonishment and fear. In the man in black at the other end of the hall he saw what he believed to be his double, and according to an idea prevalent at the time, this was a sure sign of approaching death. As soon as the ceremony was over he made anxious inquiries concerning what he had seen, and was relieved to find that the young man who so resembled him was no spook, but a real personage. Thereupon he took no further notice of the matter, but allowed it to drift from his mind.

The incident, however, had for Spifame the most dire results. He had been noted among those who knew him for certain eccentricities, and was at times suspected of a tendency to insanity. As he passed out of the court his companions now half-jeeringly made way before him, with obeisances, addressing him as "Sire" and "Your majesty," and this they kept up for several days, until at length the unfortunate young lawyer's incipient madness was given a definite bent, and he began to fancy that he was indeed the king. As the days passed, the idea thus started took firmer possession of him, though on all other points he seemed quite reasonably sane.

While the idea of his great importance to France was growing upon him, his actions became more and more eccentric. One thing he did was to remonstrate in the boldest terms against some judgment which had been given by the president of the High Court. For this he was fined and suspended for a time from his legal functions. Presently he began to attack the laws of the kingdom and harshly criticise the most respected judicial opinions, and he even went so far as openly to denounce the government.

These bold remarks brought an end to Spifame's career as an advocate, for he was thenceforward prohibited by the authorities from further practice in his profession. He still frequented the precincts of the courts, however, where he would detain the passers-by and submit to them his ideas of reform and his complaints against the magistrates. At length his conduct could be tolerated no longer; his civil interdiction was demanded, and he was brought before the public tribunal.

Raoul Spifame was by this time a marked man. As he passed through the vestibule, on his way to trial, he heard a hundred voices murmur, "It is the king!" "Make way for the king!" "Place for his majesty!" This was the final straw upon the back of his tottering intelligence. Reason yielded, and the delusion now having full sway, he entered the hall with his cap on his head, and seated himself with royal dignity. The procureur, Noël Brulot, he honored with a gracious salutation, and in addressing the assembled councillors, he called them "our right trusty and well beloved."

A singular phase of his aberration during the trial was, that while he was the king, his thoughts dwelt with friendly interest upon his own proper person. Running his glance

over the court, he presently observed, "We regret that our good friend Raoul Spifame, of whom we wished to speak, is not present," and he made earnest inquiries after the advocate's health. Of course there was but one way of dealing with a case of this sort, and Spifame was turned over to the guard, to be conveyed to a mad-house.

When Henry was informed of the matter, and told how well the poor mad advocate had played the king, he said, "So much the better that he does not dishonor his likeness, who has the honor to be made in our image."

As in most cases of the kind, Spifame's aberration during the early days of his confinement was intermittent. During the day he seemed perfectly sane and properly conscious of his own identity, but as soon as darkness fell he was Spifame no longer, but Henry the Second, and those about him were his subjects. His cheerless prison vanished, and he sat in the Louvre holding councils, presiding at splendid banquets, or enjoying the society of his beautiful mistress, Diana of Poitiers. This seemed to him his real life; the sad experiences of the day nothing but a troublesome dream. While he was king he never tired of speaking of his favorite councillor, Raoul Spifame, and he bestowed upon his other self many honors, among them the high office of Keeper of the Royal Seal.

After he had been in this asylum for some months it was thought wise to remove him to another, on the ground that a change of surroundings might improve his mental condition. Unfortunately the change only resulted in an intensification of his monomania, for here he met a fellow-sufferer who at once fell in with and fostered his illusion. This was Paul Vignet, a man of some culture, who, though sane on other points, imagined himself to be the royal poet of France. The historian records their initial interview as follows: —

"When Vignet cast his eyes upon Spifame he appeared confounded, and in utter astonishment took a step forward, and, falling on his knees, cried out, 'His Majesty!'

"'Rise, my friend,' said Spifame. 'Who are you?'

"'Do you not recognize the humblest of your subjects and the greatest of your poets, O great king? I am Claudius Vignetus, the illustrious author of the "Sonnet to Star-studded Space." Sire, avenge me on a traitor, the despoiler of my honor, Mellin de Saint Gelais.'

"'What! my favorite poet — the keeper of my library?'

"'He has robbed me, sire; he has stolen my sonnet; he has misused your goodness.'

"'Is he really a plagiarist? Then I shall give his post to my brave Spifame, at present travelling in the interests of the kingdom,'

"'Rather give it to me, and I will spread your renown from east to west, all over the earth.'

"'You shall have a pension of a thousand crowns, and my old doublet, as yours is very ragged.'

"'Sire, I perceive my sonnets and epistles have been until now withheld from your knowledge, though all addressed to you. Thus 'tis done in courts,

"That hateful place of shady knaves."

"'Claudius Vignetus, you leave me no more; you shall be my minister, and you shall put in verse my decrees and ordinances, and thus shall they be immortalized. And now 'tis the hour when our friend Diana visits us, and 'tis fitting we be left alone.'"

In a short time the two had become inseparable companions. Each fostered the illusion of the other, and the fancy grew stronger than ever that they were king and poet-subject, that their prison was a palace, their rags costly robes, and their simple repasts sumptuous banquets.

Vignet, in his lucid moments, hearing the clank of chains and noticing the iron bars

of their prison, was led to think that His Majesty was being kept in confinement. On his mentioning this fact to Spifame, the latter observed, with a knowing look, that his ministers were playing a very deep game, but he had fathomed their schemes, and when his trusty chancellor, Raoul Spifame returned, the king would undoubtedly be set free from bondage. This release, however, did not come about, and, growing impatient, the two began to issue proclamations and edicts commanding the people to rise and set free their monarch from the captivity in which he was held by perfidious councillors. These documents they rolled up, weighted with small stones, and threw out between the bars of their window, where, unfortunately, most of them were lost by falling into a pig-stye.

Finding that these manifestoes had no effect in rousing the populace, Vignet conceived the idea that the fault was their being in manuscript. To mend this, he set to work and carved out twenty-five rude wooden letters, and with ink compounded of oil and lampblack, he laboriously printed succeeding edicts letter by letter. These documents met a better fate than their written predecessors, for many of them got abroad, and they have from time to time been reprinted. Among the most curious of them was the one which declared that King Henry the Second, in council, having heard the pitiful complaints of his good subjects against the perfidies and injustices of Paul and Jean Spifame, brothers of the faithful subject of that name, condemned them to be tortured, flayed and boiled; and the ungrateful daughter of Raoul Spifame to be publicly whipped and pilloried and thereafter shut up in a nunnery. All the edicts were issued in the name of the king, and most of them treated of justice, war, finance, and other broad affairs of the kingdom.

Time passed, and, to the astonishment of the two, no steps were taken by the Parisians to free their imprisoned monarch. At length they resolved upon another course. They set to work composing lampoons and incendiary proclamations, and of these they struck off a large number of copies, which they carefully concealed. Early one morning, while their keepers were yet sleeping, they managed to unfasten the bars of their window and make their escape. Once free from the precincts of the mad-house, they took no further precaution of concealment. It was only necessary, they thought, for the citizens to recognize their royal master to fly to his side and defend him with their lives.

As they traveled along, Spifame confided to his companion a secret. He was jealous. He feared that his beautiful mistress, Diana of Poitiers, had transferred her affections to another, as he had heard or seen nothing of her for weeks. It was his intention to go to her residence without delay.

Walking along at a lively pace, they came to the square near the Church of the Innocents. It was market-day, and the place was crowded with bustling humanity. Taking this stir for excitement consequent upon his arrival in their midst, Spifame could not conceal his satisfaction. Suddenly, however, his face became clouded with anger.

"Look!" he cried to his companion. "Do you not see that pillory, retained in spite of my ordinances? Sir, the pillory is abolished, and I shall make a clean sweep of the city officials. Ho! good people of Paris," he shouted, "come hither and listen!"

"Hear the king, who himself desires to speak with you!" added Vignet, at the top of his voice.

There was a large stone near by, and the two leaped upon it, while the people crowded round, thinking it was a fakir who had something to amuse them. Spifame pulled off his hat, and, throwing back his mantle, displayed a sparkling collar of orders, an affair of glass and tinsel which his keepers had allowed him to retain.

The features of Henry were quite familiar to the people, and as they looked at the new-comer, standing there in melodramatic attitude, they thought he was indeed the king.

"Good people of Paris," cried Spifame, "hear the blackest perfidy. Our councillors are traitors, our magistrates are felons, who have held in captivity your well-beloved king, as was done to Charles the Sixth, his illustrious grandsire."

The French have always been an excitable people, and this harangue, in conjunction with Spifame's unmistakable likeness to his majesty, aroused a murmur of surprise and indignation. Vignet seized the opportunity to distribute copies of their edicts, not forgetting to mix in some of his lampoons.

"See," he cried, "these are the royal edicts which your king has issued for the good of his people, but which have neither been published nor obeyed. And these," he went on, holding up some of his own effusions, "are the divine poems which have been traitorously pilfered and debased by the scoundrels Ronsard and Saint Gelais."

The people took the papers and eagerly scanned them, with exclamations of astonishment and rage. At length the excitement rose to such a pitch that they lifted Spifame into a rude sort of triumphal chair, and started off with him for the Hôtel de Ville, with the intention of installing their abused monarch there until they had procured arms to attack the Louvre and seat him once again upon his rightful throne.

Now, it so happened that at that very moment the dauphin's bride, Mary of Scotland, was entering Paris by the Porte Saint Denis, and the real king was riding along past the Hôtel de Bourgoyne to meet her. Hearing the noise of some tumult, he sent his officers forward to see what was going on, and, on their return, he was informed that a new king was being proclaimed. "We will go and meet him," said Henry, "and, by the faith of a gentleman, if he is worth it, we will offer him single combat."

Hurrying on, they presently emerged into the square where was taking place the odd scene just now depicted. The advent of the soldiers caused the mob to disperse, the triumphal chair was set down, and the real and pseudo king came face to face. "A miracle! a miracle!" cried some of the onlookers, and no wonder, for there, in full view, sat two kings of France, with features exactly alike; both pale and proud of mien, and both wearing a sparkling collarette of orders.

Henry was not slow to recognize his impersonator. As for Spifame, he seemed for a moment deprived of the power of speech; then one of his worst attacks came on him, and he poured out a volley of only half-intelligible language, confounding, as before, his dual existence as Henry and Spifame, which he was unable to disentangle.

The king dealt very kindly with the poor fellow, and instead of allowing him to be taken back to the mad-house, he had him conveyed to one of the royal castles, where he was cared for by special servants, who were instructed to indulge his illusion by calling him "sire" and "majesty." His companion, Vignet, went with him, and in their new home they resumed their old occupation of issuing edicts and composing poems.

CROSS-EXAMINATION.

COLONEL INGERSOLL, in "Some Mistakes of Moses," remarked that truth fits into everything, and a lie fits into nothing in all the world — except another lie. To which one is tempted to add: How full the world must be of misfits! Still, as truth is so easy and a lie so difficult to manage, and as there are so few people clever enough to take the management of a lie, there must be a good deal of truth in circulation. Yes, if by truth we mean only one kind of truth. But the learned have told us of three kinds of truth and their opposites, viz., moral truth, which is the harmony of thought and expression, and whose opposite is a lie; logical truth, which is the harmony of successive thoughts when the latter arises out of the former, and whose opposite is a fallacy; and real truth, which is the harmony of thought with things as they exist, and whose opposite is an error. While courts of law have to do with every kind of truth, the witness for the most part may leave logical truth to the judge or jury, and confine his own attention chiefly to moral truth and real truth. Though these do not require on the part of the witness more than mere honesty and the use of the senses, it need not be supposed that truth will be found flowing from the witness like pure water from a fountain. Truth in this connection may rather be said to lie at the bottom of the well, and to need, for drawing it up, the bucket of examination, and the rope of cross-examination. Truth is a pearl, and the oyster which contains it is difficult to open. And, again (even at the risk of seeming to mix, while only multiplying metaphors), truth is a diamond, but it needs cutting, polishing and setting. To abandon the figure and come down to the fact, it is not so easy as it may seem to know and to testify the truth, and it is still more difficult to overcome for him (perhaps in spite of him) the obstacles which lie in the way of the witness, and to lead him to make a clear exhibition of the truth, notwithstanding his erroneous observation, the wrong bias arising from wrong observation, and the purpose (thus improperly begotten) of presenting one, and only one, aspect of the matter in hand, though that aspect be not the true aspect. And where the witness has, with malice aforethought, resolved to put forward a false view of the facts, the work of the examiner or cross-examiner (as the case may be) is rendered difficult and delicate to the verge of despair.

When the subject of cross-examination is discussed by laymen, it is the fashion to fix attention on the examiner, and to treat of his malign purpose of making the worse appear the better cause, of his unholy design of making black seem white. It is more likely to lead to a true view if we bestow less notice on the questioner and more on the witness. The examiner is the outcome of generations of witnesses, and may be said to be only another illustration of the adaptability of animals to the soil. Obviously, if all witnesses had the intelligence and honesty to come forward and give their evidence in accordance with the oath (the truth, the whole truth, and nothing but the truth), the work of the examiner would be easy, and the occupation of the cross-examiner would be gone. Let us notice a few of the difficulties under which the witness generally or, at all events, often, gives his testimony.

He is called by one side against the other, and if he is inclined to support the side which invokes his help, or is determined to show the litigant who calls him that he will get nothing out of him, the feeling is called partisanship. It is either conscious or unconscious. In both cases, its effect is the

same, but it may vary in degree. There is no purpose in the mind of the witness to misrepresent the truth, much less to commit perjury. The witness may even be a person of scrupulous honesty, but partisanship in the witness-box is as fatal to fair evidence as blue spectacles to the discernment of colors. With this difference: you can put off the spectacles and see better without them, but you can't put off partisanship, chiefly because you don't know or admit, even to yourself, that you had put it on. Moreover, the partisan sentiment is generally entertained from a sense of duty which lends a sanction to all that the sentiment prompts, and even supplies the witness with a combativeness and heat which, with the unskilled and ignorant, often pass for honest indignation at hearing the truth called in question. When partisanship is conscious, it is easier to deal with it than when it is unconscious. It betrays the witness to some extreme which warns the examiner and supplies the skillful cross-examiner with all he needs for beginning his work. When the witness is honest and unconscious of his bias, he esteems his own answers as containing the naked truth, and he regards the questioner who tries, by examination, cross-examination, or re-examination, to get him to vary or alter his answers as a hired perverter of the truth as far as the witness will allow him. In this frame of mind, little wonder witnesses cherish harsh thoughts of lawyers, and hug themselves on their own superior honesty — by way of contrast rather than comparison.

A witness sometimes puts an obstacle to truth in his own way by constituting himself, perhaps unconsciously, the judge of the cause. He knows what is in dispute, and he knows the facts of the case pretty fully (but not fully), and he comes to the conclusion that this side or that should win. This is partisanship, but growing from a new root. In this case, the witness does not trust the court, except with his valuable help. He feels bound to keep the judge right, and seeks to supply in his own evidence all that he thinks needful for deciding the case — as he thinks it should be decided. This witness forgets that his testimony is but a link, less or more important, in the chain. As his evidence is meant to bring about a certain end, he works up to that end with what skill he happens to possess, and, though he may never swear falsely, he is difficult for the examiner to handle, and he, too, resents the handling, and blames the wicked examiner. His human nature goes with him into the witness-box, remains with him there, and steps down with him, and prevents him from thinking, and saying, with Cassius —

> "The fault, dear Brutus, is not in our stars,
> But in ourselves,"

If he had the suspicion, even, that he might be wrong or biased, or unfit to be a judge, he would probably be a better witness, for we are assuming him to be honest in his purpose.

When the witness is there to perjure himself he belongs to a class apart, he needs the attention of the best examiners, and he deserves, and will probably receive, the attention of the public prosecutor. We need not trouble ourselves with him here, but only say that, however the litigant he favors may regard him, he is an object of horror to the lawyers on both sides. If he begets wrath in the opposing lawyer, he excites loathing in the other. To the honor of the legal profession it can truly be said that we have few, if any, practitioners willing to win their case by perjury. We have seen that partisanship may be conscious or unconscious, but perjury is partisanship which is often inspired, is always intentional, and is careless of consequences if the purposes be served.

But witness-bearing depends not only on the animus, but also on the powers and opportunities of observation, and the con-

sequent state of knowledge. People seldom or never suspect their own powers of observation, rarely reflect upon the opportunities they have enjoyed of ascertaining the facts, and still less frequently realise that the state of their knowledge is a disqualification for witness-bearing. When a witness is called to testify, accepts the call, and attends for the purpose, he usually comes to tell what he thinks he knows, and he is not prepared to have his knowledge, any more than his veracity, called in question by either the examiner or the cross-examiner. Having once put forward a definite view of the facts, he becomes bound in his own opinion to defend that view, and is aggrieved by any opposition to it, or even question of its correctness. Thus the work of the examiner, and still more of the cross-examiner, is rendered difficult; but the ascertainment of exact truth, in spite of all the obstacles we have noticed, is the function of the law courts through the media of the opposing examiners. Though the judge has the right and power to put questions to the witnesses, he uses his right only to supply the defects in the work of the bar. There are instances in which questions come with more effect from the bench than from the bar, and where it is safer to leave the question to the judge than to either of the pleaders.

Before we speak of cross-examination, a few words on the examination-in-chief will help clear the way. The lawyer who first examines does so from an *ex parte* standpoint, and puts his questions in order to elicit the answers he expects and desires, and believes to be the true answers. Apart from the bias and tendency of the witness, the examiner has thus a bias and tendency of his own, or, at all events, on his side. His bias is necessary for the proper performance of his duties, and, having the check of the opposing lawyer's contrary bias, and being subject to the regulative impartiality of the bench, is exempt from the reproach which attaches to bias in the witness. The leaning of the lawyer needs no defense if it is, as we have said it is, "necessary." The counsel for a litigant is the litigant, plus skill in the law. Neither may do anything which an honest and honorable man may not do. Both may do his best, by all honest means, to obtain the verdict of the jury, or the judgment of the court. The bias, prejudice or preconception of the litigant, therefore, enters into every question put by his mouthpiece, and, unless the witness is clear-headed and cool-headed, the answer may easily convey a wrong impression without being false in the spirit or even wrong in the letter. The point of view is always and in all things what determines the aspect in which a scene is realized by the spectator, and that equally whether the scene be one in nature or human nature as manifested in human affairs. If to the bias of a partial witness he added the leaning of the lawyer who examines in chief, it is easy to see that the first answers may need toning down. The examiner-in-chief holds a precognition taken by his own side for the advancement of his own side, and perhaps, done with the witness there is need for probing. From the opposite point of view the examination-in-chief sometimes creates the impression of a nice little family party, where the witness and the questioner are being as agreeable as they can to each other, and the client looks on with benign satisfaction. Is it not cruel to disturb the unity in which as brethren they are disposed (*quoad hoc*) to dwell? If they have been building upon false and therefore insecure foundations, perhaps it is not unkind to let them know it in good time. The cross-examination is the way to do it.

The cross-examiner has listened to the examination-in-chief with watchful care to find where it creates wrong impressions. By wrong impressions he means impressions adverse to his case, or contrary to, or differing from, the impressions he seeks to con-

vey. He must make up his mind whether the witness is true or false, biased or free from bias, informed or ignorant, accurate or blundering, intelligent or stupid. He must regulate his cross-examination in accordance with his view on these points. He may begin in any one of several ways. He may seem to follow up the opposing counsel by putting a question certain to obtain the same answer as before, and so put the witness off his guard. Or he may put an indifferent question of no importance, and create the impression that there is to be nothing in his examination, and in this way put the witness off his guard. Or he may boldly put a disconcerting question, the very terms of which will show the witness that he has given wrong evidence, and is about to be righted, whether he likes it or not. This last method of attack does not put him off his guard, but it puts him off his balance, which is worse. Some lawyers prefer one method to the other modes, but an accomplished lawyer should be able to adopt each method in its turn, i.e., where in his judgment, it is required for his purpose. His purpose is to present, by means of the witness in hand, the view of the facts for which the examiner is contending; and in order to do this he must get the witness to alter what is adverse, retint what has been wrong colored, and supply what has been left out. All this is not to be done without a struggle, and it is a struggle in which the advantage is with the witness, if he only knows how to use it. The witness is master of the situation, but is often not master of himself. He has said his say, and as he has presumably said it correctly, he should stand to it if he can. And he can, if he can. But often he can't, though ever so willing, and even determined. If the cross-examiner makes him feel that he has been wrong in his answers by ever so little, the process of introspection conflicts with the weighing of the succeeding questions, and the effort to do both at the same time generally ends in mental confusion, under which he gives himself away even more than to the extent of correcting previous answers. He now gives answers which themselves require the corrective of re-examination.

We are dealing with the witness at all points as a witness of truth. But even an honest witness may lose sight of the three limbs of the oath — (1) the truth, (2) the whole truth, (3) nothing but the truth. The first and third items are not so difficult for a leal and soothfast witness, but the second often troubles him. "The whole truth" demands intelligence as well as probity. The natural tendencies of the mind are not extinguished by the taking of an oath, and only in the finer natures are these tendencies even restrained by the solemnity of the judicial formula and surroundings. The tendency of most minds is towards exaggeration, which operates, now in enlarging, and now in minimizing, according to the bent of the witness to or from the view he is being examined to advance. This tendency, even when the witness is unconscious of it, prevents him from seeing things in the clear light required for their proper discernment, and he leaves out or adds on a bit, just ever so little, without knowing it. That bit makes all the difference. Another tendency of the mind is toward completeness. Incompleteness creates a sense of dissatisfaction, which is best overcome by rounding off the thing, whatever it may be. The incurable habit of telling more than the witness knows, of adding hearsay evidence to his own evidence, is to be ascribed to this love of completeness, which operates *retro* — back to the beginning of a series of occurrences, of which the deponent witnessed only the last half, or less. Again, some people feel humiliated when they have to say, "I don't know." When these people are in the witness-box, they are apt to sustain their reputation for knowledge by testifying what they do not know, without knowing it, or even suspecting it.

The "nothing but the truth" clause of the oath does not suggest to such witness to find out where their knowledge ends, and to stop there, however incomplete the stoppage may render their evidence, and however the incompleteness may disappoint the examiner and affect his case. For all these evils the antidote is cross-examination, which (to follow the simile) may be regarded as sometimes an aperient and sometimes an astringent, and requires great skill to administer in suitable doses, at the right moment, and in the proper way. It is not enough to prescribe the medicine: it must be administered.

The administering has been considered and discussed *ad nauseam*, and it would be difficult to make any valuable addition to what has been already said and written on the *modus operandi* of cross-examination. Above the signature of Lord Bramwell, in a recent number of the "Nineteenth Century," will be found a very spirited defense of the less popular methods of the cross-examiner, and a vindication of the extremest license usually taken by the British bar. We are content to leave this part of the subject to so able and experienced a judge as the distinguished lawyer just named, and to confine ourselves to showing the necessity for cross-examination, and the foundations of that necessity. — *Scottish Law Review.*

LONDON LEGAL LETTER.

LONDON, January 4, 1899.

THE Lord Chancellor has acted with commendable promptness in appointing a new judge to fill the vacancy created by the retirement of Mr. Justice Hawkins. The new appointee, Mr. Thomas Townsend Bucknill Q. C., will take his seat at the opening of the next term on the 11th instant, and there will, therefore, be no inconvenience caused by a reduction of the already limited number of judges. The appointment will be acceptable to the bar and will excite very little comment, as it has been generally anticipated.

The new judge has had thirty-one years of active practice, of which thirteen or fourteen have been "within the bar," or as Queen's Counsel. He was at one time one of the acknowledged leaders of the admiralty bar, and for some years acted as one of the consulting counsel to the shipping federation and edited the last edition of "Abbott on Shipping." In addition to having a good practice in common law work and before arbitration boards, he has contributed to several journals and reviews, and has been editor of two series of law reports. He has also been, since 1892, a popular member of Parliament, and has had considerable experience in local government affairs, having served as a county alderman from 1889 to 1892.

Whether he will make a successful judge remains, of course, to be seen. It is the common experience of every bar, as well in America, I assume, as in England, that a good lawyer and a brilliant advocate does not always make a good judge.

The certain qualities which go to make up the "judicial temperament" do not invariably find their best development in the study, or in the exacting work of a busy lawyer. In this country the difficulty is greater than in America, notwithstanding that greater care is exercised in selecting the judges who, with rare exceptions, are taken from the ranks of those who have been longest at the bar and have attained the greatest eminence in successful practice. Here the circuit system and the rotation of

work to which every member of the bench is subject, imposes on the judges a varied assortment of duties; each variety of these duties every judge is expected to perform with equal ability, whatever his temperament, his intellectual capacity or his previous professional experience. He may go straight from a practice at the admiralty bar or in the commercial courts to try crime, and, although able to grasp the most intricate legal problems, finds himself embarrassingly confronted with problems of human nature with which he is out of touch, and a practice in which he has had no training. He may, on the other hand, have had a large experience of crime and have been a successful advocate in classes of civil work in which his talents were recognized by a large number of clients, and yet be quite incapable of trying the intricate and important cases that arise in a commercial community. Two recent appointments illustrate this difficulty.

Mr. Justice Phillimore while at the bar was the acknowledged leader of the admiralty practice, and was rarely seen elsewhere except in the ecclesiastical courts. He was and is a most pronounced churchman of the advanced school of those who adhere to the Catholic doctrine as to divorce, and the remarriage of divorced persons. Shortly after his appointment to the bench, sitting as a vacation judge, he found in his lists for the day a large number of cases from the divorce court in which decrees absolute were to be entered. Being conscientiously opposed to divorce, he was reluctant to enter these decrees, and yet as a judge he could not avoid executing the law. He therefore preceded his judgment in these cases by a dissertation on the wrongfulness of the system, and the reluctance with which he complied with it. The incident excited a good deal of comment at the time, and will doubtless provoke attention in higher quarters.

Recently at Liverpool, on circuit, he presided at the trial of an army officer, who was indicted for having assisted a young woman to produce a miscarriage which, it was alleged, resulted in her death.

The circumstances were pathetic and such as to attract the attention of the country generally, and to arouse a great deal of sympathy for the officer as well as for the family of the young woman. The officer was in the south of England at the time the young woman died in the north. It was alleged that by letter he had either encouraged her to procure the miscarriage, or at least had acquiesced in it, but at the trial it was not proved that her death was the result of the drugs she had taken; both of the eminent physicians called for the prosecution having admitted that there was nothing to show whether death resulted from natural causes or not, while in her dying declaration she positively asserted that not only had the accused had nothing to do with her act, but that he tried to dissuade her from it. In the face of this, and in commenting on it in his summing up, Mr. Justice Phillimore volunteered the suggestion that this deathbed declaration *might* have been due to various motives; among others, a desire to shield her lover. The jury, who, in criminal cases in this country, are largely influenced by the judge's comments, returned a verdict of guilty of murder, and the judge sentenced the unhappy officer to be hanged. Fortunately the sentence was commuted to a comparatively short term, but an agitation which has popular support is working for the release of the prisoner.

Upon another occasion, also, upon circuit, Mr. Justice Phillimore, who was trying a prisoner, after expressing his belief that the accused had committed perjury in giving evidence in his own behalf, inflicted a punishment for the crime for which the jury had found the prisoner guilty, and another term of punishment for the perjury which

he thought the accused had committed, but for which he had not been tried.

Another judge, who was recently appointed from the position of an official referee, — Mr. Justice Ridley, — has also aroused a good deal of comment by his peculiarly abrupt way of treating counsel and trying to decide cases before they have been heard. The methods which he had grown accustomed to in deciding matters referred to him for the assessment of damages, and which, although irritating to counsel, were comparatively harmless, are now working consternation when continued in the High Court, particularly in cases where there are juries. Not long ago, in an action for commission on the sale of a yacht, before the defendant's case was opened, and during the cross-examination of one of the plaintiff's witnesses, Mr. Justice Ridley said to the defendant, "I think you are jockeying this man out of his commission." Defendant's counsel protested, and said that his client had already paid one commission. "I ought not to have said that," replied the judge, "but I think the plaintiff is entitled to his commission." It is unnecessary to say that the verdict and judgment went for the plaintiff. The result may or may not have been right, but it is not in human nature that the defendant should think it was right, or that his case had been fairly tried.

I was not a little amused to hear an eminent barrister, in commenting on the present condition of our Bench, affirm that he was not sure that there was not something to be said, after all, in favor of an elective judiciary. It might be, and doubtless was, open to terrible abuses in the hands of unscrupulous politicians, but the people were not, as a mass, incapable of making a good selection. An honest man, with good common sense, was apt to make an infinitely better judge than an able lawyer or a good advocate who was not possessed of the great quality of natural discernment. And, above all, the system of electing judges for a stated period enabled the bar to get rid of an incompetent or an unsuccessful judge. He was disposed to advocate the retention of the power of appointment, as at present exercised in England by the Lord Chancellor, but to modify the system by prescribing a fixed and definite term of tenure of the office. It was abhorrent to him, and would be to lawyers generally in England, that a judge should descend from the Bench and assume the active practice of the profession, and he therefore suggested retiring pensions or half-pay allowances, which would add but little to the cost of maintaining the judiciary; but whatever extra expense was occasioned would be more than compensated for by the removal from the staff of judges of those who had proved their unfitness, or who had, by reason of old age, lost their former capacity.

While on this question of appointment to the Bench, I may remind your readers that this patronage is vested in the Lord Chancellor for the time being. The career of the present Lord Chancellor has few, if any, parallels in legal history. He has during the past year been made an earl, and is the fifth chancellor upon whom in the present century that dignity has been conferred. Lord Halsbury has held his high office for a longer period, under the several administrations of Lord Salisbury, than any Chancellor since the Restoration, with the exception of Lord Hardwicke, Lord Thurlow, and Lord Eldon, and in the extent of the patronage which he has exercised he probably surpasses them all. Of the twenty-eight judges who constitute the Court of Appeal, and the Chancery, Queen's Bench, and Probate divisions, no fewer than twenty were raised to their present offices during one or the other of his chancellorships. Of the fifty-five County Court judges (and it must be remembered that these important functionaries receive salaries of $7,500), about one half are Lord Halsbury's ap-

pointees. In addition, he has appointed scores of Recorders, and raised nearly a hundred juniors to the rank of Queen's Counsel.

Among the New Year's "honors" is the conferring of a peerage upon Mr. Justice Hawkins. By what title he will enter the House of Lords has not yet been announced; but what concerns the Bar most is that he will still be able to continue his judicial career as a law lord in the House of Lords and in the Privy Council if he so desires.

STUFF GOWN.

The Lawyer's Easy Chair.

. Current Topics, . . Notes of Cases, etc.

BY IRVING BROWNE.

CURRENT TOPICS.

RAILROAD MORTALITY. — In the report of the Interstate Commerce Commission for 1897 is a very surprising statement as to the number of railway employés killed and wounded in the course of their employment in the year ending June 30, 1896. The number was 1861 killed and 29,969 wounded, or more than in many a great battle. Of these, 229 were killed and 8,457 were wounded in coupling or uncoupling cars. These statistics are used in a recent North Carolina case to justify the decision that failure to equip freight cars with self-couplers is negligence in itself, and that a brakeman's knowledge of the lack and the danger does not constitute contributory negligence. Two judges dissented, one of them observing, "This was written as the opinion of the court, but since it was written the court has changed its opinion, and I file it as my dissenting opinion." (Greenlee *v.* So. Ry. Co., 41 L. R. A., 399.) The dissenting opinion contains the following significant warning: "But it seems to us that as a matter of economy, to say nothing of the suffering and loss of human life, railroads would be induced to get and use the more modern and safer appliances. They will have to do this soon, or answer for damages caused by the lack of them."

STILL "SWELLIN'." — The American Annual Digest for 1898 contains 3563 pages, which we believe breaks the record. It is an error of judgment to put this enormous mass in one volume. It is impossible to handle the book conveniently or comfortably, and in a little while it will become necessary to bind it over to keep the pieces. There is plenty of it for two volumes. The General Digest published by the Lawyers' Co-operative Publishing Company bound its annual for 1897 in two volumes, and it made books quite bulky enough for lawyers who are not professional athletes, or in training for lifting heavy weights. Really this enormous annual for 1898 is a species of cruelty to animals. Our criticism is confined to its bulk. In all other points it is a highly creditable piece of work, and represents an appalling amount of literary labor. The West Publishing Company's "Century Digest," which is coming out with commendable regularity, is discreetly limited to volumes of some 2500 pages. We suppose it will be completed sometime, perhaps in the first decade of the next century. Meantime the mass of judge-made law will keep on growing. Oh, what a pitiable book-burdened profession we are, to be sure!

JUDICIAL ROBES. — The recent donning of robes by the judges of the first department of the New York Supreme Court has revived the outcry on the part of certain ultra-democrats that was raised when the judges of the Court of Appeals decided to adopt them some years ago. The New York "Tribune" has recently published a very sensible editorial in favor of this distinctive judicial costume. There are some solid arguments in favor of the wearing of the robes, and hardly anything but the mouthings of political demagogues against it. If military and naval officers wear uniforms when on formal duty, why should not judges? There is comparatively little objection made to the priest's robe, and none at all to the academic or collegiate gown. When the justices of the Supreme Court of the United States and the judges of the New York Court of Appeals enter the court room in their robes of office, and the crier makes proclamation of the opening of court, the bar and spectators meanwhile standing until the magistrates take their seats, it is a conventional but not an unmeaning or undemocratic form, imposed by the bar to indicate their reverence for justice, and not any abasement to the judges. Everybody would be shocked to see a judge sitting on the bench in his shirt-sleeves, or even a lawyer trying a cause in that free-and-easy dress, but it is difficult to appreciate the distinction between a black frock-coat, which nobody objects to, and a black robe. A judge is not any better than any other man simply by reason of his official position, and a robe does not make him any better, either positively or comparatively, but it may be an influential form to remind the spectator of the solemn presence into which he has come. No lawyer objects to addressing a judge on the bench as "Your honor," which is the merest form. Although the form does not prevail in this country, there could be no good reason why our judges should not wear the black cap in pronouncing sentence of death. The sheriff's staff or the constable's pole is not denounced, although it is

a mere formal sign of office. What would a western Democrat say of a sheriff who should appear on the gallows, in exercise of his office, arrayed in anything but his "customary suit of solemn black"? Even the cow-boys would hoot at him. Why should not a judge be as distinctively and solemnly clad as a hangman? The truth is, that the ranting against the judicial robe is simply the outcry of levellers, who struggle to effect their own elevation by the pulling down of others. Part envy, part ignorance, part truckling for political favor, part contempt for all things solemn and sacred, this fierce denunciation of a gown on a magistrate is what one naturally expects only from a socialist, who wants all things in common and all things common. His cry is, "One man is as good as another." It is not true — he ought to be, but he is not. We select our judges from the recognized better class of men, and we would put gowns on them as a sort of visible seal of public approbation of the men themselves and of reverence for their high office. So we cordially approve of what the "Tribune" says: —

"Familiarity does breed contempt, and perfect republican equality is not incompatible with such distance and reserve as make a court of justice a place where conventionality gives some stimulus to the sense of reverence for the institution intrusted with the most sacred of secular functions. Perhaps that stimulus is more needed in a democracy than elsewhere, because other institutions tend to deaden reverence; and anything within reasonable bounds, like a gown, a crier, a form of address, an impressive room, which tends to make of the courts to men's minds something apart from the ordinary public office, is to be commended."

EXCESSIVE ANNOTATION. — Is the excellent "Lawyers' Reports Annotated" going to degenerate into a series of text-books? We hope not, and therefore regret to see a "note," in the number of October 1, of 120 pages, double columns, fine type, on the topic of "Knowledge as an element of an employer's liability to an injured servant." The opinion in the case covers a little more than a page of the same number. The "note" is an exhaustive and very admirable piece of work, rarely equalled in the annals of annotated reports, but it is not annotation. It is treatise-writing or digest-making. It is magnificent, but it is not war. It needs an analysis or summing-up appended, stating the general results. It needs codifying. It undoubtedly is the result of months of research, and must have cost the publishers a great deal of money, and will please the lawyers who demand every case and the last case, and will enable them to set out a formidable array of authorities on their briefs. But it reminds us of a suggestion squealed out (in our hearing) by Judge Grover, of the New York Court of Appeals, to a learned counsel who had cited fifty cases to a single point: "Mr. ——, you know the court can't look at all these cases. Now will you jest pint out two or three that you set the most store by, and we'll try to look at them." Counsel replied, "The first half dozen will suffice, your honor." The judge settled back in his seat, observing, "Ah, I thought so." We are speaking only for the practitioner. As an annotator we are very grateful for this work; it saves us a great deal. But if the L. R. A. keep this up, the legislature may find it necessary to restrain them, as they did the New Hampshire court from publishing volumes on such questions as killing a mink, etc.

NOTES OF CASES.

ELECTION LAW — In State *v.* Bland, Missouri Supreme Court, 41 L. R. A. 297, it was held, two judges dissenting, that the expenditure of more money than the statute permits to secure the nomination and election of a candidate, if made without his knowledge or consent, will not render his election void.

The court uttered the following patriotic sentiments: —

"In reaching the conclusion announced in this case, we feel the importance of the questions involved. We realize that pure, fair, and honest elections, untainted by fraud and unstained by even a suspicion of wrongdoing, are the foundations upon which our institutions rest. We appreciate the especial necessity of rigidly enforcing all constitutional laws having for their object the protection of the sacred right of the electors to have their wishes faithfully recorded and strictly respected. We understand that the purpose of acts like that of 1893 is to purify elections, by guaranteeing assurance and protection to the law-abiding citizens, and by punishing with symbolic stripe and shaven head, rough fare, and hard labor, all who are so bereft of patriotism, or so impregnated with criminal selfishness, as to pollute the fountain from which spring the liberties of the people. But under the division of powers in our form of government we have no right to trench upon the prerogatives of the other coördinate branches of our government. We have no right to make laws. Our duty and province is ended when we construe and enforce the laws that are made by the legislature, and by as much as we should overstep the boundary lines of our powers, and attempt to invade the province of the legislature, we would be ourselves violators of the Constitution and laws we are solemnly sworn to obey. These truisms in our law are not threadbare utterances. It is as wholesome to recall them to-day as it ever was in our history. They are the alphabet of the language of freedom, and the *ultima thule* of the liberties of our people."

But when is anybody punished for fraud upon the election laws? Or if punished, how much does it hurt him? Just now a man is running for lieutenant governor of New York, who was fined a few years ago by the courts for corrupt practice as a high

officer of state, which resulted in defeating the legislative choice of the people and in electing a senator of the United States contrary to their will.

"SOUNDING BRASS"—In Detwiller *v.* Hartman, 37 N. J. Eq. 347, a testator provided a fund of $10,000, from the interest of which a brass band was to be equipped and maintained forever, to be named after the testator, and to march to his grave on the recurring anniversaries of his death, as well as on holidays and other proper occasions, and there to play a funeral march and such other appropriate music as the leader of the band should designate and appoint. The testator also provided for a monument at a cost of from $40,000 to $50,000. But the legacies to relatives amounted to only $18,000, and the estate footed up only $35,000, although the testator directed an outlay of from $73,000 to $83,000. The monument was approved, but the brass band was discountenanced. Of course the monument had to abate in expense. This musical charity seems to have been of the order described by the apostle as "sounding brass." We have a suspicion that the testator was a practical joker.

A TRUISM. — In State *v.* Hyland, 144 Mo. 302, the defendant had been convicted of murder by unprovokedly striking the deceased with his fist. The prosecuting attorney said to the jury "Crimes of this character are becoming too frequent." This was alleged as error, but the appellate court said: "He merely voiced a truism. It is lamentably true that criminal acts like the one under investigation are too common." About how common might they lawfully be? In Hayes *v.* Sears, 51 S. C. 537, holding that abusive words may mitigate assault and battery, although they will not justify it, the court said: "These are not times which justify a circuit judge in offering a premium, so to speak, on violence. The hearts of all good citizens are stirred at the dreadful results which sometimes follow the supposed power of a man when he conceives himself to be wronged by his fellow-man, and in consequence thereof takes the law into his own hands to redress those wrongs."

MEMORY NOT CHILDISHNESS. — In Riley *v.* Sherwood, 144 Mo. 354, a will made by a woman at the age of seventy-six was contested on the grounds of childishness and insanity. One curious claim was disposed of as follows: —

"Again it was considered evidence of insanity that Mrs. Shootman in her old age delighted to recall the recollections of her childhood and young womanhood in Salem, Virginia. It was said the constant repetition of those events in her life was evidence of an unsound mind. To one who never lived in the Old Dominion prior to the late war between the States, the fondness with which all Virginians dwell upon those halcyon days, sweetened with an unrivaled hospitality, this tendency to recall again and again the memories of that period may seem unnatural, but to those who knew Virginia at that time even as casual sojourners, instead of being evidence of weakness, it would excite suspicion should a Virginian neglect for any considerable time to recount the glories and delights of that period. Indeed it can be said that such was the spell of that life that all who came within its influence became intoxicated with its charms and ever afterward dwelt with loving reiteration upon its refinement. We are unwilling to believe that any considerable number of the most advanced neurologists would see, in this amiable disposition to linger over the memories of youth and home, the most remote evidence of unsoundness of mind."

Mrs. Shootman was "all right," but between 1861 and 1865 a good many persons of the description indicated by that name were very inhospitably treated in Virginia, and do not dwell on their life there with any degree of enjoyment.

RAILROAD LIABILITY FOR RAPE. — The Georgia supreme court has recently held, in Savannah, etc., R. Co. *v.* Lula Quo, 40 L. R. A. 483, that a railroad company is liable in damages for an attempt by its baggage master on a train to commit rape on a passenger. Quite correct, and carries the doctrine of the Illinois case, where the conductor uninvited kissed a female passenger, to its legitimate conclusion. The court said: —

"When a contract of carriage is entered into between a passenger and a carrier, there arises out of the relation thus created, not only a duty to safely transport the passenger to the destination fixed in the contract, but also to protect him from injury, violence, insult, and ill treatment at the hands of the servants of the carrier who are in charge of, or connected in any way with, the carriage in which the passenger is being transported. 5 Am. and Eng. Enc. Law, 2d ed. p. 541. While a carrier of passengers owes a duty to all of its passengers to protect them from violence and insult on the part of its servants, it owes an especial duty to female passengers, to protect them from insult and abuse. In the case of Chamberlain *v.* Chandler, 3 Mason, 242, Judge Story, in discussing the question now under consideration, uses the following language: In respect to passengers, the care of the master is one of peculiar responsibility and delicacy. Their contract with him is not for mere ship room, and personal existence on board: but for reasonable food, comforts, necessaries, and kindness. It is a stipulation, not for toleration merely, but for respectful treatment, for that decency of demeanor which constitutes the charm of social life; for that attention which mitigates evils without reluctance, and that promptitude which administers aid to distress. In respect to females, it proceeds

yet farther, it includes an implied stipulation against obscenity, that immodesty of approach, which borders on lasciviousness, and against that wanton disregard of the feelings which aggravates every evil, and endeavors by the excitement of terror, and cool malignancy of conduct, to inflict torture upon susceptible minds. What can be more disreputable, and at the same time more distressing, than habitual obscenity, harsh threats, and immodest conduct, to delicate and inoffensive females? What can be more oppressive than to confine them to their cabins by threats of personal insult or injury? What more aggravating than a malicious tyranny, which denies them every reasonable request, and seeks revenge by withholding suitable food and the common means of relief, in cases of seasickness and ill health? In the case of *Nieto* v. *Clark*, 1 Cliff. 145, this decision of Judge Story's was cited with approval by Judge Clifford. While it is true that in two cases cited the carrier whose liability was under consideration was a carrier by water, still the doctrine laid down in these cases has been followed in cases where suits were brought for wrongs of a similar nature inflicted upon passengers in a railway carriage. See Craken *v.* Chicago & N. W. R. Co. 36 Wis. 657, 17 Am. Rep. 504; Louisville & N. R. Co. *v.* Ballard, 85 Ky. 307."

We quite agree with the court that a carrier by land is bound to be just as polite as a carrier by water.

The Green Bag.

PUBLISHED MONTHLY, AT $4.00 PER ANNUM. SINGLE NUMBERS, 50 CENTS.

Communications in regard to the contents of the Magazine should be addressed to the Editor, HORACE W. FULLER, 344 Tremont Building, Boston, Mass.

The Editor will be glad to receive contributions of articles of moderate length upon subjects of interest to the profession; also anything in the way of legal antiquities or curiosities, facetiæ, anecdotes, etc.

FACETIÆ.

RECENTLY in arguing a case before the Supreme Court of North Carolina, counsel asked for an extension of the time allowed for argument, saying in a deprecatory manner that he did not know that he could add to what his associate had already said, but "your honors will remember that the cackling of geese once saved Rome." "You may try it, Mr. B.," blandly replied the chief justice.

THE same court a few years since was in session when a countryman passed with a load of fodder, and in reply to his inquiry a mischievous young attorney standing at the door of the court building replied that *he* did not need any fodder just then, but if the inquirer would go to a door he pointed out and look in he would find five men sitting up behind a long desk who might need some fodder — and thereupon the young limb of the law and of Satan put out for down street. While the court was in the midst of an earnest argument from eminent counsel, suddenly a long, lank countryman opening the door, called out in stentorian tones, "Fodder! any of you 'uns want any *fodder* to-day?" Before the court and bar could recover from the assault, the county clerk in the blandest and most matter-of-fact tone, as if it was an every-day inquiry, responded: "No fodder *to-day*, sir, I believe," and the incident and the door were closed as suddenly as they had been opened.

SOME years ago, when a judge down in North Carolina was charging the jury, John V. Sharon, one of the counsel, who did not like the tenor of the charge, rose, and in utter good faith and simplicity said, in a beseeching way, "And now, won't your honor charge a *leetel* bit on *my* side?"

OUT in Indiana a good many years ago a certain old woman, summoned as a witness, came into court wearing a large poke bonnet such as was then much affected by rural folks. Her answers to the questions put to her being rather indistinct, the court requested her to speak louder, though without much success.

"The court cannot hear a word you say, my good woman," said the judge. "Please to take off that huge bonnet of yours."

"Sir," she said composedly, and distinctly enough this time, "the court has a perfect right to bid a gentleman take off his hat, but it has no right to make a woman remove her bonnet."

"Madam," replied the judge, "you seem so well acquainted with the law that I think you had better come up and take a seat with us on the bench."

"I thank your honor kindly," she responded. dropping a low courtesy to the court, "but there are old women enough there already."

NOTES.

THE French instrument of capital punishment, the guillotine, is not actually as represented in conventional pictures of it. It has been made a much more delicate apparatus than it used to be, and has been reduced one third in size. The parallel uprights in which the knife moves are now painted a dirty Vandyck brown, instead of bright scarlet, and the knife is not a great triangular piece of steel, but an almost razor-shaped blade, weighted with mercury, and not with lead. All the prisons of Paris, except one, are to be torn down, and a movement is on foot to have executions take place within this prison, instead of out-of-doors, as formerly.

SAYS the Ceylon "Standard": In the Calcutta courts recently, one Suppramanian Chetty sued K. Visvalingham and his wife, Seppachi, for the recovery of 200 rupees on a promissory note.

The defendants desired to be sworn by the god Kathiresan, so a piece of camphor was bought at a chemist's close by, lighted and placed in a saucer. Then the witness, holding his hands over the flames, swore by the god to "tell the whole truth," etc. The court was highly amused. It was remarked that the burning of the camphor had satisfactorily disinfected the room.

MR. JOSEPH H. CHOATE, in his address at Saratoga before the Bar Association, defended warmly the jury system. He urged, however, that there should be an able and pure judge, intelligent and incorruptible jurymen, and conscientious advocates: three very important conditions. He asserted, also, that he had never known a juryman to be bribed, or improperly influenced, which is, certainly, contrary to common belief. Several years ago there was a case in this commonwealth where a widow was plaintiff for a large amount against the estate of her deceased father-in-law, who had remembered her generously in his will, and where it did not seem probable that he could have given her the notes in question. There were three trials and as many disagreements. At the last trial a juror stated that the minds of the jurors varied from eleven to one for the plaintiff to eleven to one against her; the one obstinate juror in her favor was from the same town, and asserted that under no circumstances would he agree to a verdict against her.

CURRENT EVENTS.

IN London they have just formed an Anti-Scandal League. The members promise to combat, in every way in their power, the "prevalent custom of talking scandal, the terrible and unending consequences of which are not generally estimated."

RUSSIA, with a population of 127,000,000, has only 18,334 physicians. In the United States, with a population of about 75,000,000, there are 120,000 physicians.

BY different nations every day in the week is set apart for public worship — Sunday by the Christians, Monday by the Greeks, Tuesday by the Persians, Wednesday by the Assyrians, Thursday by the Egyptians, Friday by the Turks, and Saturday by the Jews.

THE population of Egypt has been gradually increasing during the past hundred years. It is stated to have been about two and a half million in 1800, and is now estimated at nearly ten millions. There are about 112,000 foreigners, of whom 38,000 are Greeks; the remainder being chiefly Italians, 24,000; English, 19,000; French, 14,000; Austrians, 7,000; Russians, 3,000; and Persians and Germans about 1,000 each. Only about five per cent of the population can read and write, and nearly two thirds are without any trade or profession.

THE only Indian woman lawyer in the country is said to be Miss Laura Lykens, a half-breed Shawnee graduate of the Carlisle Indian School, who is practicing in Oklahoma.

SCATTERED throughout the area of Great Britain are numerous towns and villages of a curious character, says some writer in Tid-Bits. One large village actually consists of old railway carriages, even the little mission chapel being built out of four large horse trucks. Another village, with a population of eleven hundred, and a ratable value of $40,000, has neither church, chapel nor school, the only public edifice being a pillar letter-box. Villages with a single inhabitant are not unknown. At Skiddaw, in Cumberland, there is a solitary householder who cannot vote because there is no overseer to prepare a voters' list, and no church or other public building on which to publish one; while the only rate-payer, in a certain rural Northumberland parish, has recently declined to bear the expense of repairing a road because he considers it quite good enough for himself. In the Isle of Ely there is a little parish which has been somewhat contemptuously described as "a portion of land, with three or four houses, and perhaps twelve inhabitants." This place has no roads at all, and is, consequently, put to no expense in keeping them in repair. As a matter of fact, there are no public expenses of any kind and no rates.

THE pure water distributed to the inhabitants of Blankenberge is that of the Bruges canal. After filtering through beds of sand and then subjecting in sterilizers to an electric current at a pressure of one thousand volts, all traces of microbes are destroyed. The electrical plant has a capacity of about fifty-five horse-power, and about thirty-five thousand cubic feet of water per day are treated in summer and ten thousand in winter.

NEWS from France of the increasing popularity of kerosene as a beverage suggests the possibility of agi-

tating differences between the Standard Oil Company and the Woman's Christian Temperance Union. The new habit has made more progress in Paris than elsewhere, and is under observation there by the guardians of the public health. The *pétroliques* seem to begin their evil courses not because they are out of humor with alcohol, but because kerosene is the only stimulant they can get. It produces an intoxication which, though a low-spirited affair, has its attractions for the experimenters. How unwholesome kerosene is in its effects, and whether it is worse than alcohol, has not yet been fully determined. Meanwhile alcohol is in no present danger of being crowded out of France. The number of wine-shops has increased twenty-five per cent in twenty-four years, and in the larger cities the consumption of wine varies from forty to sixty gallons a head; besides more or less spirits and beer. Thirst like that must either be restrained or rated by home products. There is no prospect that any considerable part of it will ever be allayed by kerosene. — E. S. MARTIN, in *Harper's Weekly*.

To those who have never considered the subject, it might appear that each letter is of equal importance in the formation of words; but the relative proportions required in the English language are these: a, 85; b, 16; c, 30; d, 44; e, 120; f, 25; g, 17; h, 64; i, 80; j, 4; k, 8; l, 40; m, 30; n, 80; o, 80; p, 17; q, 5; r, 62; s, 80; t, 90; u, 34; v, 12; w, 20; x, 4; y, 20; z, 2. It is this knowledge of how frequently one letter is used compared with others that enables cryptogram readers to unravel so many mysteries.

LITERARY NOTES.

THE two important and timely subjects of American diplomacy and territorial expansion figure prominently in the January number of the AMERICAN MONTHLY REVIEW OF REVIEWS. The editor reviews the historic year 1898 from the international view-point and discusses pending national problems; Mr. Henry Macfarland, the Washington correspondent, contributes a study, based on intimate knowledge, of the diplomacy of the war, and Prof. Harry Pratt Judson, of the University of Chicago, writes an exhaustive paper on "Our Federal Constitution and the Government of Tropical Territories." Mr. W. T. Stead gives an interesting estimate of the young Russian Czar; Miss Laura Carroll Dennis describes the career and work of the rising American sculptor, George Grey Barnard, and a sketch of the late General Garcia, the Cuban patriot, is contributed by Mr. George Reno. Margherita Arlina Hamm gives a succinct account of the Red Cross movement and the work of that organization in the late war.

THE Spanish War Series in THE CENTURY is proving a great success, and has very considerably increased the circulation of the magazine. In the February number General Shafter tells the story of the Santiago campaign, and Lieutenant Hobson follows his account of the sinking of the "Merrimac" with a narrative of his imprisonment in Morro Castle.

HARPER'S MAGAZINE for February contains "The Spanish-America War," Part I. The Unsettled Question. By Hon. Henry Cabot Lodge; "Lieutenant-Colonel Forrest at Donelson," by John A. Wyeth, M.D., a chapter of a forthcoming book which will throw new light on the career of one of the most brilliant and dashing Confederate leaders of cavalry; "Ghosts in Jerusalem," by A. C. Wheeler (Nym Crinkle); "A Trekking Trip in South Africa," by A. C. Humbert, illustrated with views of South African life and sport; "Anglo-Saxon Affinities," by Julian Ralph; "The Astronomical Outlook," by Professor C. A. Young, a study of the future of the science as related to mechanical and instrumental improvements. "Baldy," a story by Sarah Barnwell Elliott; "The Sick Child," a sketch of Indian life, by Henookmakhewe-kelenaka (Angel de Cora). The author, who is a pupil of Mr. Howard Pyle, illustrates her own story from drawings made under his tuition. "His Nomination," a story, by Margaret Sutton Briscoe; "The United States as a War Power," a chapter of experience, by Professor Albert Bushnell Hart; and "Facing the North Star," by C. C. Abbott.

WHAT SHALL WE READ?

The Life of Henry A. Wise, the famous governor of Virginia, has been written by his grandson, Barton H. Wise of the Richmond Bar, and will be published in a few weeks by the Macmillan Company. It covers the period of Governor Wise's service in the American Congress from 1833–1844, his career as United States Minister to Brazil, from 1844–1847, his services in the Virginia Constitutional Convention of 1850–51, and in the Virginia Convention of 1861, which last passed the ordinance of secession, his spirited campaign against the Knownothing party in 1855, the John Brown raid, and lastly his career as a brigadier general in the Confederate army. The author has had access to the private papers of Governor Wise, which he has studied with great care, and has gathered an immense amount of data bearing on his life and career, and the history of Virginia prior to the war between the States. The book contains a great number of personal anecdotes concerning its subject, as well as valuable material hitherto unpublished relative to the presentation of abolition petitions in Congress, the Graves-Cilley duel, the

building of the first ironclad for the United States navy, the administration of Mr. Tyler, the suppression of the African slave trade in Brazil, the struggle of democracy against aristocracy in Virginia, the material, social and political condition of the Virginia people from 1830 to 1860, and reminiscences of public men.

Three Studies in Literature, by Lewis Edwards Gates, Assistant Professor of English in Harvard University, is the title of a book just published by the Macmillan Company. The three essays treat of three prose writers of the present century, Francis Jeffrey, Cardinal Newman, and Matthew Arnold. The essays are supplementary to one another, in so far as each considers an important aspect of the romantic movement in English literature.

One of the most notable members of the Massachusetts Bar was the late Samuel E. Sewall. Honest, upright, fearless in the defense of right, and unwearying in his opposition to injustice in every form, an able lawyer and a model citizen, he won not only the esteem and admiration of his brother lawyers, but also the love and affection of all who knew him. To the present generation, the story of his life should be an inspiration and an example worthy of imitation. We know of no book from which more pleasure and profit may be derived than the *Memoir* [1] of this noble man recently published by Messrs. Houghton, Mifflin & Co.

Sir Frederick Pollock, Corpus Professor of Jurisprudence in the University of Oxford, will publish shortly through the MacMillan Company his *Life and Philosophy of Spinoza*. His purpose is to put before English and American readers an account fairly complete in itself and on a fairly adequate scale, of the life, correspondence, and philosophy of Spinoza. He aims, in the first instance, at being understood by those who have not made a special study of the subject; but his hope is that it may also be of some use to those who already know Spinoza at first hand, and to critical students of philosophy.

[1] Samuel E. Sewall. A Memoir by Miss Moore Tiffany. Houghton, Mifflin & Co. Boston and New York. 1898. Cloth. $1.25.

NEW LAW-BOOKS.

The United States Internal Revenue Laws now in force. With notes indicating the derivatory statutes, and references to judicial decisions, regulations, rules and circulars of the Commissioner of Internal Revenue and other executive departments relating thereto. With an appendix containing laws of a general nature and miscellaneous provisions applicable to the administration of the internal revenue laws. By Mark Ash and William Ash, of the New York bar. Baker, Voorhis & Co., New York. 1899. Law sheep. $5.00 *net*.

This treatise may be truly said to be a very timely one, as the enactment of the war revenue law of 1898 has required added consideration of the subject on the part of the legal profession, federal officials and business men generally. The work contains very full notes of the judicial decisions of the United States Supreme Court and the lower Federal courts from the earliest times; also, the decisions of the treasury department and the Commissioners of Internal Revenue. The cognate authorities in the state courts have also been collated, particularly upon the now important subject of the stamp tax on instruments. A special feature is the grouping of the conflicting authorities in the various jurisdictions upon the mooted points of the invalidity of unstamped instruments, and their admissibility in evidence depending upon the forum in which the question has been raised, viz., the Federal or the state courts. In addition to very full annotations of the judicial decisions, especial attention has been given to the regulations issued by the Commissioner of Internal Revenue, and the decisions of this official, as also those of the bureaus of the Secretary of the Treasury and the Attorney-General. These official rulings, although not controlling upon the courts, have been repeatedly declared by the Supreme Court of the United States to be entitled to weight in construction, as the contemporaneous and uniform interpretation by executive officers charged with the duty of acting under a statute, and "in a case of doubt ought to turn the scale." They are, therefore, of manifest value to all examining the subject, particularly to discover the exemptions from taxes under the internal revenue system, as these cannot be found in the books of reports. The decisions of the Commissioner of Internal Revenue are further valuable in determining the possible liability for taxes, fines, penalties or forfeitures, as under the law no suit for their recovery can be instituted without the sanction of the commissioner. The authors have done their work thoroughly and exhaustively, and the treatise is in every respect all that could be desired.

The American State Reports, Vol. LXIII. Containing the cases of general value and authority decided in the courts of last resort of the several States. Selected, reported, and annotated by A. C. Freeman. Bancroft-Whitney Co., San Francisco. 1898. Law sheep. $4.00.

Robt. Y. Hayne

The Green Bag.

VOL. XI. No. 3. BOSTON. MARCH, 1899.

ROBERT Y. HAYNE.

BY WALTER L. MILLER, OF THE SOUTH CAROLINA BAR.

THERE seems to be an increasing tendency at present to go back and study afresh the lives of the great men who figured prominently in what I may term the formulative period of our country's history. This is the explanation of the articles which we see on Webster, Calhoun, Clay, and others. In singling out the distinguished Carolinian whose name appears at the head of this article, I feel, therefore, that I need make no apology. His reputation and character were such as to command for him a high place on the list of the nation's leading men.

Robert Y. Hayne was born on the 10th day of November, 1791. He was reared in the country, near Charleston, and this seems to have been an advantage to him in some respects, for it tended to a more healthy development, both in mind and body, than would have likely been the case had he been brought up in a city. A writer, in speaking of his early life, says: "The greater portion of his juvenile days were spent amidst the charms of rural scenery, to which his mind was always peculiarly susceptible. Here he was habituated to those manly sports and invigorating exercises to which he attached the utmost importance in training up his sons, believing that he was himself in no small degree indebted to them for some of those striking traits of character by which he was distinguished in after-life." There is a lesson here for people of our day. The cities, with their many advantages, are fast drawing away from the country people who would be wiser to remain where they are. The country, after all, is the best place in which to bring up a boy. City and town life are demoralizing, and present many temptations to a life of idleness, dissipation, and extravagance. The strong men of the nation have generally been country-bred boys. Young Hayne's educational advantages were limited, and he was denied the privilege of a college training. While at school, however, he seems to have taken a course in the classics. In doing this he acted with more wisdom than characterizes many of our young men who go to college, and, though having the opportunity of studying the classics, actually leave them off.

As a school-boy he does not appear to have distinguished himself above his fellows so far as intellectual activity was concerned, but he already began to give evidence of that high moral purpose which in after-life so prominently characterized him.

"It was in this interval that he informed one of his school-fellows that he had formed and laid down for the government of his conduct certain rules, drawn principally from ethical writers, which he considered it his duty to observe through life. In the same conversation, the different systems of moral philosophy having been brought into discussion, he expressed his very decided opinion that any system of morals not founded upon Christianity must be radically defective both in its requisitions and its sanctions. Indeed, there is abundant evidence, from his conversations and writings, that from a very early period of his life a sense of the obligations

of religion was superadded to a deep sense of the moral obligation of all his various duties. It is not at all surprising that a young man formulating his life, and the principles by which it should be guided, on such a high moral plane, should have built up for himself a character which would command a nation's admiration.

"How it came about that he selected the law as his profession, we are not informed. That he should have done so, however, is not surprising. Even then he was ambitious and full of aspiration, and to young men of talent and promise, the law was perhaps the most attractive of all professions, especially to those who aspired to political honors.

"He was exceedingly fortunate in the selection of Judge Cheves of Charleston as the lawyer in whose office he was to prosecute his legal studies. His preceptor was a man of high character, splendid intellect, and fine professional reputation. To be intimately associated with such a man was indeed a privilege, and one no doubt which Hayne both appreciated and improved.

"Just eight days before he became of age, he was admitted to the bar. Judge Cheves having been elected to Congress, and his partner, Mr. Northrop, having died, Hayne fell heir to most of their practice, which was large and lucrative. The consequence was that he did not have to go through the process of waiting which is so common a fate for young lawyers, and which is so discouraging in its effect. He rose rapidly in his profession, and soon took a place among the leaders of the Charleston Bar.

"Some of the qualities which characterized him as a lawyer are worthy of special mention. He was remarkable for the clearness with which he stated his case. It was almost impossible for judge or jury to fail to understand him. Not only was he full and clear in presenting the facts and arguing the points of his case, but he was so earnest and sincere in his style and manner that he carried conviction to the heart. He made no attempt to parade his learning or to cite a long array of authorities, but he sustained his positions by referring only to those cases that were pertinent and directly applicable to the matter at issue. He was a fine cross-examiner, and knew exactly how to get as much as possible out of an opposing witness. His style was exceedingly conciliatory, and in this way the witness was often disarmed and led to tell things which, under other circumstances and under other counsel, could not have been obtained from him. He had fine self-control and never lost his temper. Even when taken by surprise, he betrayed no embarrassment or particular concern. He had an earnest, energetic style of speaking, and was eloquent in his advocacy of a cause. While engaged in a case, he never failed to conduct himself as became a courteous, well-bred gentleman.

"At the age of twenty-three he was elected a member of the legislature, where he made a fine record, and this was due not only to his speeches but also to the practical judgment which he displayed in the various matters which were brought up for consideration. While serving as a member of the House, he was elected speaker. Up to this time he had never looked into a book of parliamentary rules. On the day of his election he borrowed a copy of 'Jefferson's Manual,' and spent the entire night in mastering its contents. The next day he presided with ease and grace, betraying neither hesitation nor embarrassment in the application of the rules governing a deliberative body. His own experience on this occasion fully illustrated the opinion which he gave to a friend when urging him to accept a responsible trust. 'I have always found that *good sense* and a *firm purpose*, with competent general education, qualify a man for anything.'

"He served for four years as attorney-general of the State, filling the place with

credit to himself and honor to the State. In 1823 he became a senator of the United States. His part in the Senate is so well known that it is hardly necessary for me to speak of it here. It occupies a prominent place in the history of our country. His speeches were models both in point of composition and style. Like the speeches of Clay and Webster, his glowing words of eloquence have never ceased to charm, and extracts from his speeches still constitute a part of the declamatory exercises of young men in the schools of our country.

"Perhaps the most noted of all his speeches was the one he delivered on the occasion of the celebrated contest between himself and Mr. Webster, incidentally arising on a proposition relative to the public lands. In the course of some remarks on that subject, he deprecated a large and permanent public treasure as a means of corrupting and consolidating the government. Mr. Webster, evidently with a premeditated design of assailing South Carolina, seized the occasion to disparage her domestic institutions, to ridicule the apprehension of danger from consolidating the government, to charge her citizens with disaffection to the Union, and to speak contemptuously of what he called the South Carolina doctrine. Our lamented friend, more deeply excited than I ever saw him on any other occasion, by this gratuitous and unprovoked attack upon his State, her doctrines, and her institutions, made an able and successful defense at every point against which the attack had been directed."

The words just quoted are taken from the splendid eulogy on Hayne delivered in Charleston, South Carolina, in 1840, by George McDuffie, the great southern statesman, who himself took an active part in the national halls of legislation, and whose exalted patriotism and matchless eloquence won the admiration of the world. In his description of this contest between Massachusetts' favorite son and Carolina's noble champion, we can easily see, what would have been unnatural had it been otherwise, the leaning of a friend and the partiality of an admirer, however unconscious they may have been. In an article on Webster, written from a northern standpoint, and by a writer whose prejudices were evidently in favor of the New England statesman, I find the following description of Hayne's effort on this occasion: "Hayne's speech made an immense and intense impression. It flamed with fierce invective; it was uttered with superb declamatory skill and energy; it bristled with statements of the most irritating personal allusion, and throbbed throughout with the bitterest political and sectional animosity. Webster's friends trembled for him, and his enemies believed him to be annihilated." This was perhaps the grandest intellectual contest ever witnessed by the American people, and the speeches which were made on this occasion have never since been surpassed as specimens of eloquence and style. Both of the distinguished actors in this memorable scene were men of high character, wide experience, national reputation, and exalted patriotism. Mr. Webster was a typical representative of New England and New England ideas. He was an advocate of a high tariff and of a strong national government. He was then in the prime of his life. "Time had not thinned nor bleached his hair; it was as dark as the raven's plumage, surmounting his massive brow in ample folds. His eyes, always dark and deep set, enkindled by some glowing thought, shone from beneath his somber, overhanging brow like lights, in the blackness of night, from a sepulchre. It was such a countenance as Salvator Rosa delighted to paint." Always careful as to his attire, he was dressed in a manner becoming the place and the occasion.

Mr. Hayne was then in his hopeful manhood, full of ambition, confidence, and determination. He was one of the younger senators. He was a man of fine personal appearance and winning manners. Mr.

March, in his "Reminiscences of Congress," describes him as follows: "Hayne dashed into debate like the Mameluke cavalry upon a charge. There was a gallant air about him that could not but win admiration. He never provided for retreat; he never imagined it. He had an invincible confidence in himself, which arose partly from constitutional temperament, partly from previous success. His was the Napoleonic warfare, — to strike at once for the Capitol of the enemy, heedless of danger or loss to his own forces. Not doubting to overcome all odds, he feared none, however seemingly superior. Of great fluency and no little force of expression, his speech never halted, and seldom fatigued. His oratory was graceful and persuasive. An impassioned manner, somewhat vehement at times, but rarely, if ever, extravagant; a voice well modulated and clear; a distinct, though rapid, enunciation; a confident, but not often offensive, address, — these, accompanying and illustrating language well selected and periods well turned, made him a popular and effective speaker." Born and bred a southerner, he was proud of his section and people. A South Carolinian to the core, he believed in State rights and in a strict construction of the Constitution.

All of the environments and settings of this occasion were appropriate and interesting. The Senate at that time was composed of strong men with extended reputations. The presiding officer was the great Carolinian, Mr. Calhoun, in the zenith of his fame. The chamber was crowded with spectators, — the House of Representatives almost being deserted by its members. The members of the various diplomatic corps occupied conspicuous places, and in the galleries could be seen many of the most distinguished and beautiful women of the country.

The entire scene, in grandeur and impressiveness, was without a parallel in the history of this country. Both of the speakers acquitted themselves splendidly, and their respective constituents and admirers were delighted. The friends of each claimed the victory for their champion. At a reception held in the White House immediately after the "great debate," admiring throngs gathered around them, both to extend the hand of congratulation and offer words of praise.

It is perhaps too early even at this time — seventy years since — to pass judgment upon them, and to award to either of them the palm of victory, so hard is it for one to free himself from sectional prejudice and political bias. In brilliant rhetoric, glowing imagery, and eloquence of style, Mr. Webster's speech excelled. To the argument made by Mr. Hayne on this occasion, an able writer pays the following splendid tribute: "It exhibits a profound knowledge of the true principles of our Constitution, and of the relative rights and duties of the federal and state governments. As an effort of intellect, it will rank among the highest in the annals of American eloquence, and as a faithful exposition of the true structure and objects of the American Confederacy, it will be regarded as a text-book by the supporters of the sovereignty of the States in every section of the Union."

In November, 1832, Mr. Hayne was a member of the convention that enacted the South Carolina Ordinance of Nullification, and was in thorough sympathy with that measure. In December, 1832, he was elected governor and commander-in-chief. On entering upon the duties of his office, he took occasion to set out fully in his inaugural address South Carolina's position on the nullification question.

When President Jackson issued his famous proclamation in which he denounced the nullification ordinance, the legislature of South Carolina was still sitting, and a good many of its members and of the citizens became alarmed. So vigorous, however, was the counter-proclamation of Governor

Hayne, and so reassuring was its tone, that their fears were at once dispelled.

After his term of office as governor expired, he retired from politics and became president of the Louisville, Cincinnati, and Charleston railroad. His death occurred on September 24, 1839. Hon. Thomas H. Benton, in his "Thirty Years' View," pays a very high tribute to Mr. Hayne. What he says of him is all the more to be appreciated when we remember that they served together in the United States Senate, and knew each other intimately. I can only select a few from among the many complimentary things which Mr. Benton says of him: "Nature had lavished upon him all the gifts which lead to eminence in public, and to happiness in private life. Beginning with the person and manners, he was entirely fortunate in these accessorial advantages. His person was of middle size, slightly above it in height, well proportioned, flexible and graceful. His face was fine, the features manly, well formed, expressive, and quite handsome, — a countenance ordinarily thoughtful and serious, but readily lighting up when accosted with an expression of kindness, intelligence, cheerfulness, and inviting amiability."

Mr. Hayne's character was a rounded one, free from angularities and crotchets. He could never have been what we are pleased to term a crank. He was not abnormally developed along certain lines and deficient in others. In this respect he resembled Clay and Webster rather than Calhoun or Jackson.

Again, he was a practical man, and a good judge of human nature. These are invaluable qualities to a politician and statesman. If a man does not possess them, he had better stay out of public life. In the possession of these qualities, the English people as a rule surpass the French. To these qualities, it always seemed to me, Lincoln owed his success in a very large measure. He seemed to have almost an intuitive knowledge of the men with whom he was thrown into contact.

Hayne had also great adaptability of character. He could regulate himself to suit the circumstances by which he was surrounded. In place of being the mere creature of circumstances, he so used them as to accomplish his purposes. Had he lived in this generation, I have no doubt he would have been a successful man even though the times have greatly changed.

He was a genial, pleasant man; he was companionable and friendly; he had many warm friends and few enemies. After the debate with Webster to which I have already referred, he approached the latter and extended his congratulations. That was just like him; he was too noble and generous to have done otherwise.

He was a man of resolute will and great determination. When he made up his mind to accomplish a thing, he bent every energy in that direction, and success was almost sure to crown his efforts. The advice given to him by his law preceptor, "Never distrust thyself," was one of the guiding principles of his life.

To him we must assign a high place on the roll of American orators. Even in his youth he commenced to cultivate the graces of oratory. A distinguished jurist who grew up with him, and was a fellow-member of a debating society in Charleston while he was a law student, says: "In truth, he at that early day, and in these preparatory exercises, gave evidence of the ability and eloquence for which he was afterwards distinguished." But he was something more than an orator, — he was a statesman in the highest sense of the term. He did not take a superficial view of things. He examined public questions in all their different lights and aspects. He went to the bottom and searched for the underlying principles.

Above all else, he was a man of the highest character. That was what gave force and effect to his words. Without character,

learning, eloquence, and intellectual acumen amount to but little. Character is the great vitalizing force. A distinguished minister, who was a neighbor and an intimate friend of Mr. Hayne, speaks of him as follows: "The whole impression of his character, left after a long, close, intimate observation, is that he was the *purest public man* I ever knew."

It may be interesting to relate here the last interview between Mr. Hayne and General Jackson, the "Hero of Orleans," which took place at the "Hermitage" in 1837. It will be remembered that in the great nullification movement Calhoun and Hayne were the leaders among the people of Carolina, and that at that time President Jackson threatened to hang Mr. Calhoun. No doubt he regarded Mr. Hayne also as an arch-traitor and a fellow-conspirator of Calhoun. But as the years had gone by, Jackson's heart had softened towards the Carolinians. It so happened that in the fall of 1837 Mr. Hayne paid a visit to Jackson at his home. The meeting between the two statesmen was a touching one. Grasping the hand of Mr. Hayne, Jackson, among other things, said: "I say it now, and say it with pleasure and in sincerity, that in that great record of your country which belongs to history your name will stand conspicuous on the roll of her illustrious sons, as an able jurist, an elegant orator, a wise counsellor, a sagacious and honest statesman."

The study of Mr. Hayne's life suggests one or two reflections. It was unfortunate that he did not have the advantages of a collegiate training. No doubt he keenly realized his deprivation in this respect. Clay suffered, too, in the same way. Calhoun and Webster were more fortunate; both of them were college-bred men.

It seems to me that it was a mistake on the part of Mr. Hayne to accept the presidency of a railroad after he retired from politics. He would have done more for the world and for his own reputation if he had devoted his attention to some object more closely allied with his life-work than railroading. What a contribution to the history of the American people and to its literature he might have made if he had written the reminiscences of his life! In this way he could have well discharged the debt which every man owes to his profession. Again, I would remark that the politicians and statesmen who were prominent in Mr. Hayne's day were of a high order. Many of them were well educated. Some of them were graduates of the finest colleges in this country, and others had gone abroad to finish their education. Webster was a graduate of Dartmouth College, and Calhoun of Yale, and, in fact, many of the public men of that time were college-bred men.

In the second place, they made public life a profession. They studied the science of government and the history of nations. And then, too, the national questions of that day were peculiarly adapted to the development of statesmanship. Our form of government was new, and to some extent an untried experiment. The Constitution had to be analyzed, and its various features examined and discussed. What is the best form of government, was not only a practical question, but it was a stimulating mental query.

At the present day the great issues before the people are not so much questions relative to the form of government as was the case at that time. Now the monetary issue overshadows every other consideration. Now it is not so much constitutional lawyers who are in demand, but men who are informed in banking and matters of finance. The currency question takes precedence over everything else in the politics of our day.

Abbeville, S. C.

TRIALS IN ATHENS.

IT was a peculiar feature in the trials at Athens, that they were divided into two classes, assessed (τιμητοί) and non-assessed (ἀτίμητοί). In the former, if the case was in the nature of a civil action, the plaintiff laid his damages at a certain amount; or, if it was a criminal case, the prosecutor named a certain penalty to be paid by the accused. The court then, after hearing the evidence, gave judgment first simply for or against the defendant, and if their verdict was unfavorable, provided it was not a capital case, he was allowed himself to name the punishment or penalty (ἀντιτίμημα) which he thought ought to be inflicted upon him. Afterwards the dicasts voted a second time, and decided whether the original penalty or the one proposed by the defendant, or even in some cases, one differing from both, should be finally adjudged. Those members of the court who were of opinion that the severer sentence should be pronounced, drew a long line (μακρὰν) across the waxen tablet with which each of them was provided; those who took the more lenient view drew a short one. Hence we may understand the full force of the proud and lofty reply of Socrates, who, when he was asked by his judges after his conviction what sentence he deserved, said, "If I am to receive my deserts, I ought to have the highest honors paid to me, and be entertained at the public expense in the Prytaneum." This answer, according to Cicero, so exasperated the court, that they immediately condemned him to death.

In the second class of actions the nature and amount of the penalty was determined by the law, and the judges, if they gave their verdict against a defendant, were obliged to award that punishment.

The mode of procedure in conducting state trials at Athens is involved in more or less obscurity, owing to the scanty notices of them contained in the works which we possess of the ancient writers. But the following is an outline of what took place. First of all, as a preliminary step, a motion was made in the popular assembly, or Ecclesia, by the prosecutor, that the accused should be put upon his trial, and this question was fully debated and put to the vote. We may call this the finding of the grand jury. If the people determined in favor of the motion, a day was fixed for the trial, and the party charged with the offense was, unless he gave sufficient bail, forthwith committed to prison. Shortly afterwards it was referred to an assembly of the people to decide upon the mode of trial, and the punishment that should be awarded, in case the party were found guilty. On the day of trial, if it took place before the people at large, the prosecutor rose, and formally stated the charge, supporting it with proofs, and he might be followed by any other speaker who wished to press the accusation. The prisoner then pleaded his own cause, and sometimes with fetters on his limbs, while officers stood on each side to prevent his escape. Two urns, or ballot-boxes, were placed for the use of each tribe, and into these the people cast the tablet of acquittal or condemnation, according as each wished to deliver his verdict. If found guilty, the prisoner underwent the punishment which had been previously appointed.

Sometimes, however, the people determined that they would not in a body try the accused, but ordered that he should be brought before the criminal judges, called Heliastae; and it was the duty of certain public officers, named Thesmothetae, to undertake the management of the proceedings. In order that the interests of the state might be fully represented, it was customary to appoint, besides the pro-

secutor, who originally brought forward the impeachment, several public advocates, generally not less than ten, to assist him in enforcing the charge. These were called Synegori, and received each a drachma of the public money for their services; but the office was not a permanent one, and they were selected as different occasions arose. Thus, when Cimon was accused of having corruptly for a bribe, abandoned the invasion of Macedon, the conquest of which was supposed to be within his grasp, Pericles, a most formidable accuser, was appointed by the people to speak for the prosecution. But the party who brought forward the charge did so at his peril, for if he failed in obtaining the suffrages of a fifth part of the judges for a conviction, he was fined a thousand drachmas, and in old times is said to have been punished still more severely.

A remarkable difference between the mode of conducting trials at Athens, and in England at the present day, consists in the degree of strictness required in supporting an accusation by proof. Amongst the Athenians we find the most lamentable deficiency in this first principle of justice. Common report was admitted as good evidence of guilt, and was held sufficient sometimes to warrant a conviction, though no specific proofs could be brought forward. Thus Æschines, in his speech against Timarchus, strongly insists upon the point that the prosecutor may proceed upon the notoriety of the facts charged against a party, and we find him constantly *presuming* the guilt of Timarchus, simply on the ground that everybody knew it, although he acknowledges his inability to bring direct evidence. Nay, he goes so far as to pronounce a panegyric upon the power of Rumor, to which, as a mighty goddess, he says the state formerly had erected an altar; and he quotes Homer, Hesiod, and Euripides, to prove the respect due to her influence. And this too in a criminal trial, where the character of the defendant was at stake, and the question was, whether he had been guilty of certain specific offenses of the most disgraceful nature. What more dangerous method for the destruction of the innocent can be imagined than this?

Although the rule in Athenian courts of justice, as in our own, was against the reception of hearsay evidence to prove particular facts, we find it was frequently violated in practice; and besides this, the speakers were in the habit of supporting their assertions, by appealing to the personal knowledge of the jurors themselves. We can well understand how, in a small community like that of Athens, where the jury on each trial bore no inconsiderable proportion to the whole number of citizens, many of those who sat as dicasts must have been cognisant beforehand of the facts of the case; and no doubt the verdict was often given, not upon the evidence adduced in court, but on the private information which they themselves possessed. Indeed, Æschines tells us that it was the avowed system of the court of Areopagus (by far the most virtuous as well as most august tribunal at Athens), for the judges to give their votes, not merely according to the evidence and statements before them, but acting upon their own private information and inquiries.

GOOD AND BAD LAW REPORTING.

By Seymour D. Thompson.

I. What Ought and what Ought Not to be Reported. — The first inquiry under this head will naturally be, What ought and what ought not to be reported. The fact that this is determined in most cases by statute, and not by the court, and still less by the reporter himself, does not make the inquiry irrelevant here; especially since, in the unofficial reports with which the shelves of our libraries, public and private, are crowded, it is determined neither by the legislature, nor by the court, nor by the reporter, but by the bookseller. Even where the question is determined by the legislature it is sometimes determined badly, of which the greatest State in the Union exhibits a painful example. I refer to the decisions of the *nisi prius* courts in New York, which are officially reported and printed at public expense, under the title of "Miscellaneous," and cited "Misc." The impropriety of printing reports of the decisions of the inferior courts in their ordinary work is so obvious as to create the suspicion of a job in the statute providing for it. And such there was in this case. The irony of fate was such that the lawyer who got the job through for the purpose of being appointed reporter failed in his questionable ambition, another being appointed in his stead. No decisions ought to be reported at the expense of the public, nor at all, except those which, in our Anglo-American jurisprudence, have the force of judicial precedents. Although the case-made law of our ancestors was largely built up by the decisions of eminent judges at *nisi prius*, and although this was almost entirely true of the criminal law,—yet, with the great multiplication of reports and of precedents, it has come to be the general rule in England, and it ought to be in this country, that no decision has the force of a precedent except the decision of a court of appeal. A thorough and painstaking judge at *nisi prius* may, and sometimes does, write an opinion upon some new and very important question which is pressing for solution,—such as, let us say, for example, the question at what date the recent federal bankruptcy law went into effect. Such opinions are valuable to the profession, and may well be reported in the law journals and in the unofficial reports, such as the "Federal Reporter"; but, as a general rule, there is absolutely no excuse for reporting decisions rendered at *nisi prius*, and especially charges to juries, and taxing the profession with buying them and crowding the shelves of their libraries to make room for them. Then the burden of reporting all the decisions of appellate courts of last resort is so seriously felt that several States have adopted the plan of the court or the judges marking those opinions which are deemed to be of minor importance, "not to be officially reported." I happen to think now that this is the case in New York, in Pennsylvania, in Kentucky, and in New Jersey. I have failed to discover any principle upon which the judges of those States perform this duty. The theory, the rhyme, the reason upon which they proceed in eliminating what is not to be reported, or what is not to be reported in full, is as hard to get at as is that of a Russian press censorship. There was a time in the St. Louis Court of Appeals when the policy was pursued of reporting one half of the decisions rendered by the court, and relegating the other half to abstracts made by the reporter. Each judge took the opinions which had been written by him during the term, and went over them and marked the half of them which he thought the least important, or

which he was most ashamed of, "not to be reported in full," and the reporter followed the directions of the judges. Under this system some of the best work which the court ever did became buried and lost in the abstracts. I happen now to think of the case of Spaulding *v.* Suss, abstracted, I think, in 5 Mo. App. This was an opinion written by that laborious and thorough judicial worker, Robert A. Bakewell, on a very important question constantly arising in the probate law of Missouri. It was a final decision. The manuscript opinion was constantly sought for by the profession; and there were many other like instances, until the system was adopted of publishing all the opinions of the court.

You cannot suppress the decisions of a court by not reporting them officially, for they will be eagerly taken up by the unofficial reporters and printed by them, and the fact that they are not officially reported will make the unofficial reports all the more valuable. For example, the fact that the "Atlantic Reporter" contains many decisions of the Supreme Court of Pennsylvania and of the Chancery Court of New Jersey which are not officially reported gives an additional value to that series of private reports; and the fact that the Court of Appeals of Kentucky mark a large portion of their judgments "not to be officially reported," including some of the most valuable of them, aliments and supports a local law journal called the "Kentucky Law Journal," which is found on the shelves of every well-equipped law library in Kentucky. Every Kentucky lawyer feels that he must have this private collection of the reports of his State court of last resort.

The moral of all this is that there is but one way to keep down the accumulation of reports of unimportant cases, and that is for the appellate courts to decide such cases without writing any opinions at all. But the difficulty in the way of this is insurmountable. One of the principal objects of requiring judges to give their reasons for their decisions is to insure careful judicial work, with correct and just results. The work of a court of last resort which decides without giving reasons cannot retain the confidence of the bar or of the public. It would present the condition of judicial work denounced by Mr. Jefferson in one of his letters, of "opinions huddled up in conclave." It would be worse than that; it would be decisions huddled up in conclave without any public reasons given for them at all. Mr. Jefferson thought, and many have thought and still think, that every judge of a court of appeal ought to be required to give his reasons for his concurrence or dissent in every case, just as is still done in the British House of Lords and in the English Court of Appeal. If the habit of delivering opinions formally written, corrected, and concurred in by the whole court, or by a stated number of the judges, be abandoned, and the habit of substituting oral opinions be adopted, then the shorthand reporter will be in court with his ever-ready pencil, and these opinions will be taken down and published by the private reporters or by the local law journals, and the profession will be burdened with them, just as they are now burdened with the unofficial publication of the decisions marked "not to be officially reported."

The conclusion must be that this question of curtailing the volume of the judicial reports is one which overwhelms the profession. They cannot abolish the rule of *stare decisis;* and the decisions of courts of appeal which are not officially reported have the same force as judicial precedents as those which are officially reported. They cannot assent to the proposition that their judges are to decide their cases without giving reasons for their decisions; no lawyer would wish it, and the public would not submit to it; and they cannot prevent the publication of those decisions by private persons. What, then, is to be done about

it? Nothing except to let the law of nature — the law of action and reaction — take its course, and to let the evil rectify itself in its own way. The multiplication of judicial reports will, by a natural reaction, create the same condition which visited the profession in the early stages of our jurisprudence, when they had no such reports at all. The mass will be so great that no particular thing can be found in it. It will be not merely the case of searching for a needle in a haymow, but of hunting for some particular straw in a haymow. Moreover, there will be contradictions on every subject; all this will weaken the rule of *stare decisis*, and drive the lawyers and judges to the habit of relying less on what may have been decided, and of working out and deciding causes on lines of natural justice; and under that system justice will be quite as certain as it is now.

II. ENTITLING THE CASE. — In giving the title of the case, the reporter should confine himself to so much as will make a name convenient for citation. He should avoid spreading out the names of all the parties, plaintiff and defendant, as the old reporters of the Supreme Court of the United States used to do. On the other hand, he should avoid an over-contraction, such as will lead to confusion between cases having the same name. He should give the name of but one party plaintiff and one party defendant, and he should eliminate the abbreviation *et al.*, which is not used in citing cases, and which adds no element of certainty to a citation. In describing a railroad company as a party to a cause, he should avoid that unspeakable abomination, a long lingo of capital letters, such as "C. B. & Q. R. R. Co."; on the other hand, he should avoid the designating of a railway company merely by the descriptive words "Railroad Company," or "Railway Company." By going so far in the way of abbreviation, the identity of the parties is lost, and the object of giving the names of the parties in citations, instead of citing merely the volume and page, is defeated. For instance, there may be a thousand cases in various American judicial reports that might be described as "Smith *v.* Railroad Company." The leading name of the railroad company should at least be given, so as to make the citation, for example, "Smith *v.* Chicago, &c. R. Co." This makes a neat form of citation, and one sufficiently accurate for practical purposes.

III. STATING THE FACTS OF THE CASE. — It has often been said that a clear statement of the facts of a case, made to a court in argument, decides the case. Certainly the power of an advocate consists largely in his ability to array before the court or jury the essential facts upon which his client's action or defense depends, dismissing all unnecessary details and casting out all irrelevancies; unless, as some dishonorable advocates do, he seeks, through subtlety and chicanery, to make use of unimportant details and irrelevancies, to confuse the real facts of a bad case, or of an insufficient defense before the judge or jury. It is equally true that a sound judicial opinion is nearly written when the constitutive facts upon which the law pronounces its judgment have been clearly stated. This statement of the facts, whether embodied in the opinion or presented separately from it, should always be prepared by the court, or by the judge who writes the opinion as the mouthpiece of the court, and never by the reporter. The reason why the reporter should never be intrusted with this duty is threefold: 1. He is but one man, and he may have the office of reporting the decisions of a court composed of from three to nine judges. He cannot attend the arguments[1] and find time

[1] When the late John William Wallace became reporter of the Supreme Court of the United States, he adopted the practice of attending all the sessions of the court and of listening to the arguments, regarding that as necessary to enable him to make a proper report of the

to perform the rest of his official work. He cannot do the work, which has been distributed among the judges of a numerous bench, of making the statements of the facts of all the cases which they have been able to decide. 2. If he attempts to do this, he will in many cases make statements of facts essentially different from those upon which the court predicates its judgment; in other words, he will understand the facts one way and the court will understand them another way; and this will introduce confusion and incongruity into the decisions of the court, and may often, in supposed cases, render its decisions absurd. 3. The judicially expounded law is always an exposition of the law as applicable to a given state of facts; it is always the deduction of the judge, called the conclusion of the law, upon a given state of facts. This being so, a judicial opinion cannot be well written unless the judge opens it with a statement of the facts upon which the judgment of the court proceeds. Now, if the reporter is in all cases to make his statement of the facts, the result may frequently arise that the judge may make one statement and the reporter another, — a spectacle which would not be edifying, to say the very least.

If it is said, in reply to this, that where the court, or the judge who writes the opinion of the court, understands the facts one way, and the reporter understands them another way, the public have, in the interests of truth, the right to both expositions of the facts, the answer is, that the reporter is put in his office as an *editor*, and not as a *supervisor*, of the decisions of the court. The court may err in its statements of the facts, as all men err, but the reporter is not there to correct them. It may, however, be worth considering whether, in case the facts, as contended for by the counsel for the unsuccessful party, differ from those stated by the court in its opinion, the reporter ought not to be permitted to state in outline the facts as understood by counsel for the party against whom the decision is rendered.

IV. Reporting the Briefs and Arguments of Counsel. — This leads to another question, namely, the extent to which reporters should go, or to which they should be allowed to go, in printing the briefs or arguments of counsel. This question cannot in all cases be decided by the reporter, nor even by the court. The opinions of appellate courts are generally reported and published by public authority and at public expense; and the legislature, on grounds of economy, prohibits the printing of briefs and arguments of lawyers altogether, or at most permits the printing of a condensation. If this condensation goes beyond the limit of showing clearly the positions taken by counsel and the authorities cited in support of those positions, it is of little value. But yet even this condensation is better than an entire omission. It is often necessary, to a correct understanding of the judgment of the court, to know the positions taken by counsel, and especially by the counsel of the appellant or plaintiff in error. In examining a decision for the purpose of determining its value as a precedent, the discriminating judge or lawyer will often turn to the arguments of counsel and treat them as a part of the statement of the case in judgment. It is true that, take the American bar all in all, the briefs and printed arguments filed in our appellate courts are not of a very high order as literary performances. They often lack clearness and precision of thought. Authorities are often copied into them, without examination, from the footnotes of text-writers and digests; and sometimes they are not couched in grammatical English. But the same may often be said of judicial opinions,

facts of each case, and a proper condensation of the printed briefs or arguments of counsel. Whether he kept up the practice during his incumbency of the office, we do not know. Certainly his statements of the facts of the cases reported by him were models of perspicuity, though not of brevity.

and especially of those filed in our overworked appellate courts, where the judges are elected for short terms and are turned out of office as soon as they become trained and practiced at their work. Moreover, it often happens that the printed brief and argument of counsel will be a thoroughly wrought-out, able, and scholarly performance, which may have involved the labor of weeks or even months; while his case is brushed away, in the opinion of the court, by the weak conceit of an incapable judge. In cases of this kind, it would be a great gain to the profession if they could have the benefit of the lawyer's brief and argument; and it would be little loss to them, or to mankind, if the opinion and judgment of the court were sunk out of sight. The writer has known in his experience many cases of this kind.[1]

V. Description of the Parties in Judicial Opinions. — The judges of appellate courts can also do much toward facilitating a clear understanding of their decisions. They can, for example, abolish the reprehensible practice of treating a writ of error as an independent suit, under which the party prosecuting the writ becomes the plaintiff in the appellate court, although he may have been the defendant in the court below. They can abolish the equally reprehensible practice of referring, in their opinions, to the parties as plaintiff in error or defendant in error, or as appellant or appellee. They should refer to the parties in their opinions, in all cases, as the plaintiff or plaintiffs and the defendant or defendants, so as to keep in the mind of the person reading their opinions a clear idea of the alignment of the parties as they stood in the court below. The practice alluded to turns judicial opinions into puzzles, and burdens and oppresses the mind of the reader with the effort of trying to keep in view the relation of the parties to each other.

VI. Abolishing Roman Numerals. — Among the obvious improvements in what may be regarded as the mere mechanism of reporting, is the abolition of Roman numerals. Roman numerals are like words derived from a foreign language; they do not catch the eye, or fasten themselves upon the understanding as quickly as arabic figures do. The reason is that arabic figures, based as they are upon the decimal system of numeration and notation, appeal readily to the understanding, and besides, are the kind of representatives of numbers most commonly in use. Mistakes in citations are often traceable to the use of Roman numerals in designating the volumes and chapters of law books. The use of these clumsy representatives of numbers is due merely to that stolid conservatism in which the universities take the lead. There is absolutely no sense or propriety in it.

VII. Designating the Volume at the Top of Each Page. — Another important help to the practical use of law reports is the practice of designating the volume and the report in some manner in the head-lines of the pages. The best way is for the court to prescribe the manner in which the reports shall be cited, and for the abbreviated citation to be printed in brackets at the inside corners of every odd and even page. To omit altogether the designation of the volume in the head-lines of the pages, is unpardonable. I have a heavy bill of damages against

[1] A printed argument of the late George Dixon, of Tennessee, came into the hands of the writer some years ago. The case was important; large interests were involved; it related to the parol dedication of land to the uses of the public; it exhausted the subject as it rested upon the judicial authorities of that day. After receiving this very great aid from counsel, the Supreme Court of Tennessee decided the case in favor of his client without even writing an opinion! Briefs and arguments of the most finished character, upon which counsel have expended considerable periods of time, carefully studying and discriminating every authority cited by them, have often been brushed away by hurried judges without even being read, and the case has been examined and decided and the opinion written in a single day. In such cases, if the profession could only have the brief, they could well spare the opinion.

the reporter of the Supreme Court of the United States, growing out of the number of times he has compelled me to turn over his volumes and look at the back to recall the volume from which I was reading and which I desired to cite. I have several times called attention to this defect in reporting, in the *American Law Review*, and with the result that the English reporters have now adopted the suggestion universally, and that several of the American state reporters have adopted it; while other reporters, including, I am sorry to say, the reporter of the Supreme Court of the United States, stick to the beggarly old system of allowing the person using their books, to turn them over and look at the back every time they cite them, and then to find them numbered in Roman numerals. Many errors of citation are due to the failure to designate the volume in the head-lines of the pages.

VIII. Head-lining the Head-Notes.— Every head-note ought to have a head-line indicating the subject of it. Where there are half a dozen or more head-notes, to throw a lot of catch-words together in a mass preceding all the head-notes, is a wretched and inexcusable style. The searcher, whose time is limited and who must proceed rapidly, must sometimes read portions of most of the head-notes before he comes to the one which embodies the proposition which he wishes to examine.

IX. Numbering the Head-Notes and Indenting the Numbers in the Opinion. — The practice of numbering the head-notes and of indenting corresponding numbers into the text of the opinion, as is done in the Iowa Reports, is very much to be commended. In every case where more than one point is decided, it saves the time of the searcher in finding the point he wants, and it is especially valuable in long and complicated opinions. It is an example which could well be suggested to the reporter of the Supreme Court of the United States. It should be added that no reprint of a series of reports can be regarded as properly edited where this time-saving device is omitted.

X. Correcting the Grammar of the Judges. — Judges are often so overburdened with work that they find themselves in an almost comatose state; in this condition the judge, in writing his opinions, will often make bad slips of grammar, to say nothing of clumsy rhetoric. He will be obliged to the reporter for correcting any obvious grammatical or rhetorical misprision. For corrections of this nature Kent was under obligations to Johnson, and Story to Sumner. A blunder made by the best writers, and one which it is difficult to avoid altogether in our imperfect language, is the using of a singular verb with a double nominative. A judge will always be grateful to a reporter, and even to a proof-reader, for correcting an error of this kind.

Again, there have been judges of considerable reputation who never mastered English composition, and were never able to express their ideas in clear grammatical English. Such judges have even been found on the Supreme Bench of the United States. As belonging to this class, I happen to think at the present time of Catron, Woodbury, and of Davis. Woodbury's grammar and rhetoric were so bad — so bungling — that I am unwilling to believe that he had any very clear legal ideas; for a man who has clear ideas can generally express them clearly. Catron's opinions — not corrected by the reporter, who seems to have been as slovenly as the judge, — are disfigured by many faults of expression, some of which a capable proof-reader would have ventured to correct. Davis often expressed his ideas obscurely, and then, when he came to correct the proofs of his opinions for the official reports, he would change the language, even in substance, thus making an unwarrantable

alteration of what was really a record of the court. Some of these judges, and especially the one last named, were very considerably aided by the reporter, and were no doubt grateful for it.

NEW YORK, March, 1899.

(SUG)JESTIVE CASES.

II.

WILLIAMS *v.* STATE OF MISSISSIPPI (on appeal from the Mississippi Supreme Court, in 20 So. Rep. 1023, to the Supreme Court of the United States, in 18 Sup. Ct. Rep. 583; filed April 25, 1898).

1.

WHEN the civil war was fought
To remove the chains of race
From subject blacks,
We immediately thought
That a constitutional place
For the principle we sought
Would be safe and sound in case
Of new attacks.

2.

So to end the black's subjection,
Midst a righteous self-applause,
We embodied the correction
In a Constitutional clause
Of black and white,
Pledging equal due protection
Under State and Federal laws;
Clearly banning by this section
Race and color as a cause
For legal spite.

3.

In a social way, indeed,
—Theatres, lodges, clubs, and trade—
This complacent northern creed
Was in practice not displayed
To clear intendment;
But the justice, and all that,
Of the colored brother's claim,
South of Dixie's line, seemed pat;
So we hastened to proclaim
The new amendment.

4.

Yet the constant course of years
Under Constitutional pledge
Left the Southron's direful fears
Unabated; and a hedge
They strove to compass.
In a Mississippi scheme
Southern statesmen tried to prove
That things are not what they seem;
But this new and cunning move
Raised up a rumpus.

ADVOCATES OF THE NEW LAW:

5.

"We've a firm determination
In this case
To make no discrimination
Based on race;
But we're clearly in the limits of the law
If the statute has no Constitutional flaw
On its face."

6.

An immediate revision
Then they drew,
With an innocent provision
(Wholly new)
That a voter's name, when listed for election,
By the officer appointed for inspection,
If he knew
That the candidate was open to objection,
Should be liable to summary rejection;
And the cue
For the actors in this farce with leading parts
Was, *sub rosa*, plain to all true southern hearts —
'Twas the hue!
For "discretion," when a Southerner defines,
Is equivalent to drawing color lines,
—As they well knew.

ARGUMENT OF THE LAW'S OPPONENTS:

7.

Things when equal to the same are also equal
To each other; and this necessary sequel
Holds for politics precisely as for figures;
So, in essence, here's disfranchisement of niggers!
And it doesn't matter how
You proceed to make a sham
Of the Constitutional vow
For the dusky sons of Ham;
'Tis the purpose, and the fact, that ought to tell;
And the purpose and the fact, as all know well,
Is that darkey votes no longer can be sold;
— Which by constitutional right they could, of old.

OPINION OF THE FEDERAL SUPREME COURT.

8.

When we're pointed to a law that contains upon its face
No scintilla of express discrimination based on race,
You must make it very clear
To the judges sitting here
That its necessary working will *de facto*
Cause in every case the eligible black to
Lose his vote;
And, although we are judicially *quite* knowing,
You can hardly think in this case that we're going
To assume at once, upon a
Mere conjecture, that the honor
Of the South is such a 'goner
As you denote;
So, although this law *may* really hold a fake,
We are not prepared of such a fact to take
Judicial note;
And, though Constitutional error is abhorrent,
There's no color-able claim that *we* must warrant
The darkey's vote!

MORAL.

9.

Chorus of Southerners, to the air of "Dixie."

We grumbled at our Yankee bench;
But Time can every quarrel quench.
(Look away!
Look away!
To the law
Of the land!)
Such rulings make our hearts beat high;
The julep-glass we now drain dry!
(Look away!
Look away!
For we draw
A full hand!)
And now that you are on our side,
(Look away!
Look away!)
We hereby solemnly decide
To give up Willie Bryan!
(Look away!
Look away!
For all the courts of Zion
Can ne'er
Compare
With the Court that we rely on!)

10.

Chorus of Northerners, to the air of "Marching through Georgia."

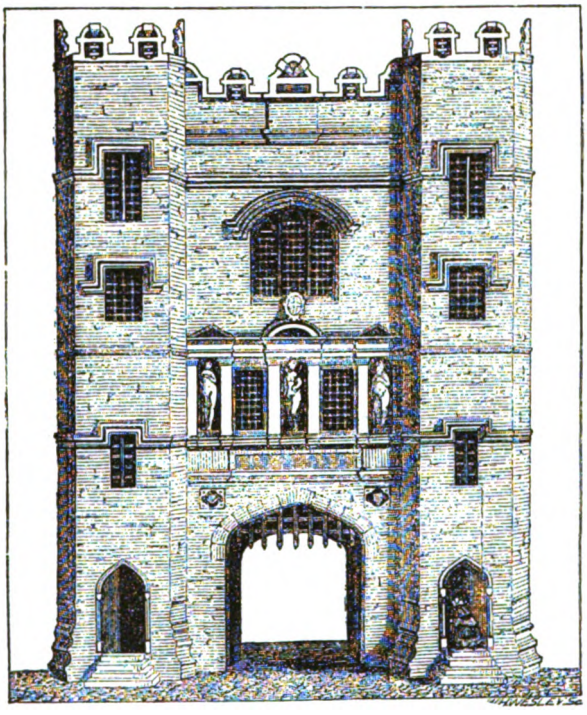
Where's the constitution now?
That's what we don't see.
Why did we stir up a row
To make the darkies free?
What was all the powwow
From Atlanta to the sea,
When we went marching through Georgia?

But p'raps we're better out of it;
The amendment's now "trun down";
The good old rules will hardly fit
Our new Imperial crown!
With Luzon, Cuba, Sandwich Isles, and populations brown,
Americans will all turn into Rajahs.
Hurrah! hurrah! A new discovery!
It is'nt law — That all men should be free!
Times are changed, as you must see, from what they used to be,
When we went marching through Georgia!

THE DEMOLITION OF NEWGATE.

IN order to make way for a new Sessions House, Newgate Prison, with all its weird associations, has been decreed to demolition. The occasion may be a suitable one for reviewing the history and describing the interior of this venerable pile.

Before entering upon this inquiry, however, we may state briefly the changes which the abolition of Newgate will probably make in prison administration in England. The first result will be to revive Brixton Prison as a penal establishment. Nothing could well be more unsatisfactory than the early records of this place. It was erected originally as a house of correction for Surrey prisoners, and in this capacity it soon obtained a bad preëminence among the prisoners of the day for maladministration and severity. The cells were overcrowded, the prisoners were treated more like beasts than men, riots followed, disease was rife; so scandalous did the state of affairs become that reform was indignantly demanded. The justices of the day, however, like the governors of Bedlam a quarter of a century earlier, not only refused to introduce any changes, but resisted all attempts to investigate the condition of the prison. On one occasion admission was refused, it is said, to the Duke of Wellington himself, who had visited the prison in order to ascertain how far fact and rumor in regard to it were in accord. At last the authorities intervened, the régime was reformed, and the prison was taken over by the government in 1862 and used as a convict establishment for women. Recently it has been devoted to the purposes of a military prison. For the future there are to be sent to it all male prisoners under "remand" from the metropolitan police courts, and prisoners sent for trial at the central criminal courts from outside districts. There is further to be provided, in a specially constructed wing, accommodations for juvenile prisoners.



CHAMBERLAIN'S GATE,
A MOST MISERABLE DUNGEON, REBUILT BY RICHARD WHITTINGTON AND CALLED BY HIM NEW GATE.
(*from an old Engraving.*)

Not only Brixton Prison, but Holloway Gaol, will be affected by the pending changes. The civil debtors and first-class misdemeanants who have hitherto been incarcerated there are being sent to Wormwood Scrubbs, while the female prisoners who have heretofore found a local habitation in Wormwood Scrubbs are being transferred to Holloway. In Holloway, also, special accommodation is to be provided for female juvenile offenders. (See valuable notes in "Yorkshire Post," December, 1898.) Now, to return to Newgate and its history.

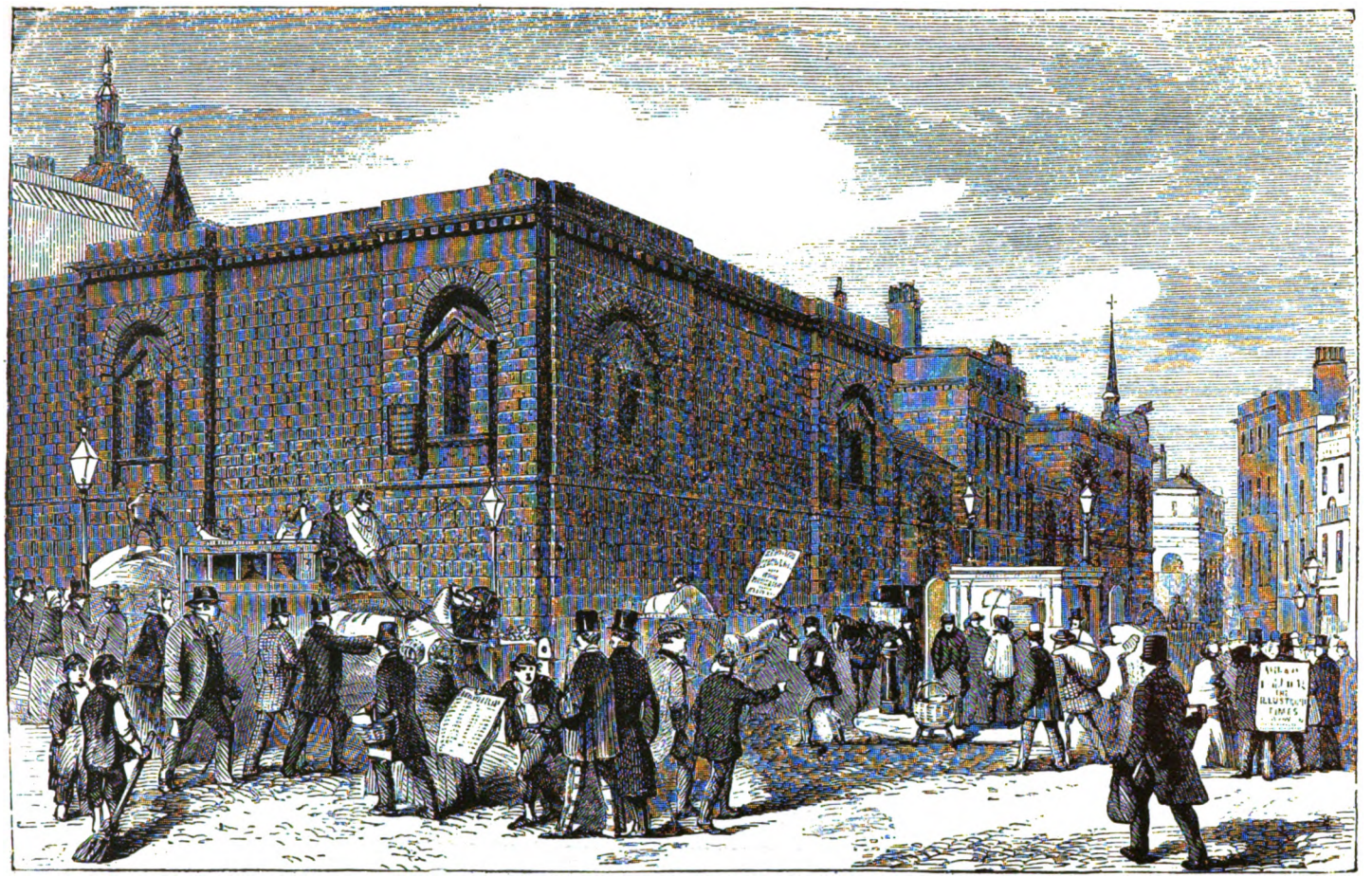
Newgate — the New Gate of the city

of London — was erected in the time of Henry I, and used as a prison soon after the middle of the twelfth century. It was rebuilt definitively as a prison by Sir Richard Whittington (the owner of the famous cat, of the harmless, necessary species, not an instrument of flagellation), and used as the common gaol for the city of London and county of Middlesex. In 1357 the lord mayor — perhaps in distant and belated recognition of Whittington's services — was named as a commissioner for the delivery of the gaol, and his successor in office remains to this day a justice of the Old Bailey, or Central Criminal Court. The functions of the lord mayor in this capacity are, however, now of a practically ornamental character. From 1357 the old prison remained without substantial change until 1770, when its reconstruction was undertaken during the Gordon riots of 1780 [as to which see "Barnaby Rudge"]. However, it was completely destroyed, and the modern prison, which was constructed on the plans of 1780, was not completed until 1783. With the completion of Newgate, Tyburn ceased to be a place of public executions, and these ghastly functions were perpetrated — in the case of persons sentenced to death at the Old Bailey — outside the prison, until the abolition of public executions in all cases except treason, largely in consequence of the humane efforts of Thackeray and other philanthropists in 1868.

Newgate was used as a prison not only for criminals but for debtors under the old law (which gave Dickens so much material for his stories of the Fleet) until 1815, when the latter were sent to White Cross Prison. In 1877 Newgate was transferred from the city corporation to the crown, and it has been under the control of the prison commissioners since that date. Under the statute which established the Central Criminal Court on its modern basis (1834; 4 & 5 Will. IV., c. 36, § 9), Newgate could be used as a place for the detention of persons committed from London, Middlesex, Kent, or Essex, for trial at the Central Criminal Court, and also for the execution of any sentence passed at that court (section 10), and for the detention of persons whose trial was removed to the Central Criminal Court, under 19 & 20 Vict., c. 16 (known as the Palmer Act, and passed to enable the Rugeley poisoner, William Palmer, to be tried in London instead of at the Circuit Court in Stafford, within whose jurisdiction his offense was committed, and where he could scarcely, owing to local prejudice, have obtained a fair trial), and the jurisdiction on Homicides Act.. Under the Prison Act, 1877, and the Central Criminal Court Prisons Act, 1881, Newgate has been used for the confinement of prisoners before and during trial at the Old Bailey, and also for the execution of some death sentences passed there, and for the birching of little boys, but not for any other sentences.

It may bring home to the mind of the reader the structure and internal regimen of Newgate if a visit to the prison, under an order of the Home Secretary, by the present writer, is described.

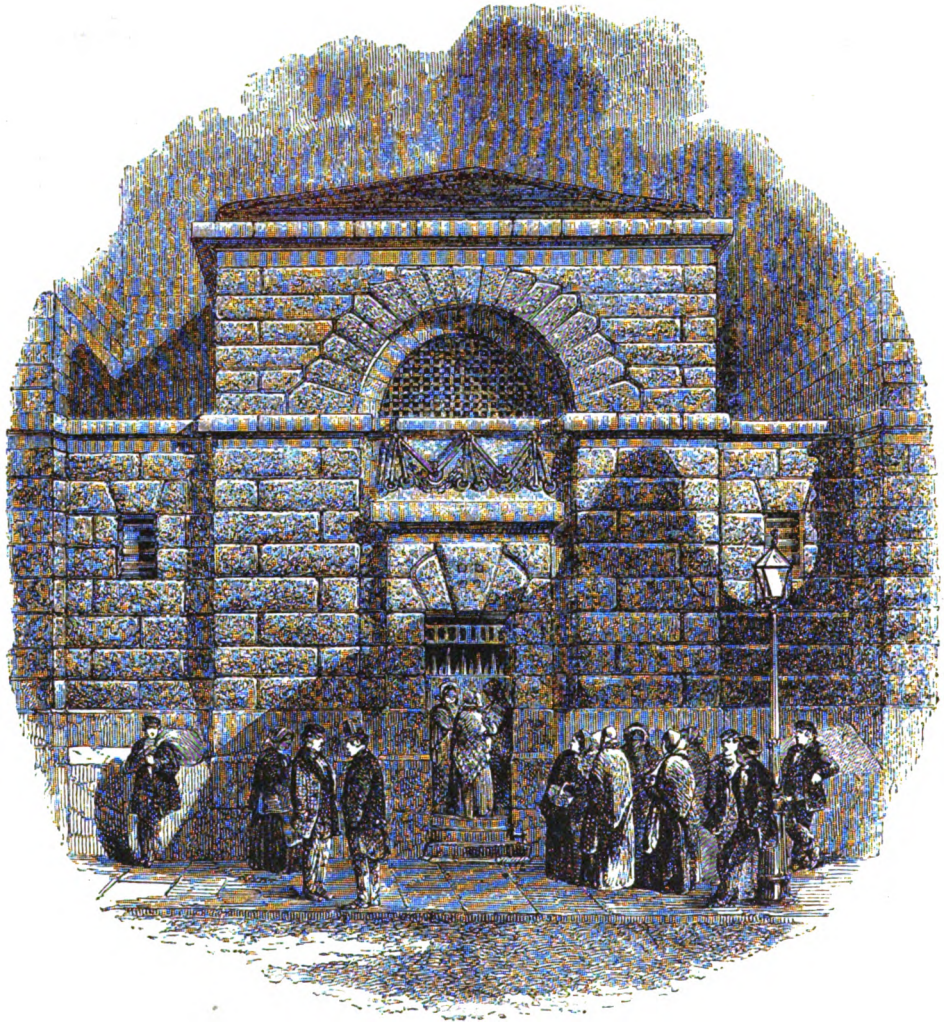
Some years ago the author of this article and a friend, who may be named for the present purpose, Grice (a dignitary in the Indian Civil Service) obtained a pass from Mr. Secretary Asquith to go through Newgate. The prison is situated in a lane, "Old Bailey," running off at right angles to Ludgate Hill. As one approaches St. Paul's the block in which it is comprised consists first of the Old Bailey — a gloomy building with several narrow, draughty and ill-ventilated courts imbedded in it — and then, as the wayfarer draws near to Holborn, Newgate prison itself. In front of the prison, in a rough square, is the site where the public gallows used to be erected. It is almost opposite one of the doors leading into the prison, and is now a scene of busy traffic. On entering the prison we were received by one of the principal warders, who, after



EXTERIOR OF NEWGATE.

having satisfied himself that our authority was in order, handed us over to a subordinate official.

The points of interest in the asylum are limited in number but of great dramatic intensity. First we were shown the condemned cell. It was occupied at the time by the murderer Thomas Neill or Cream (who incurred the last penalty of the law for poisoning prostitutes), who was awaiting execution two days later, and from him, of course, our proximity had to be, and was, carefully concealed. The cell is bare enough. It contains little more than a bedstead, a stool and a Bible and would attract scant notice but for the horrible associations with which it is so abundantly peopled. The routine of the day of a convicted murderer is as simple and monotonous as the furnishing of the cell in which he is confined; his fare is somewhat better than that of ordinary prisoners; he takes his exercise in a court in the shape of a parallelogram not far from the room that contains the scaffold; he has frequent visits from the prison chaplain, or the priest or minister of any denomination



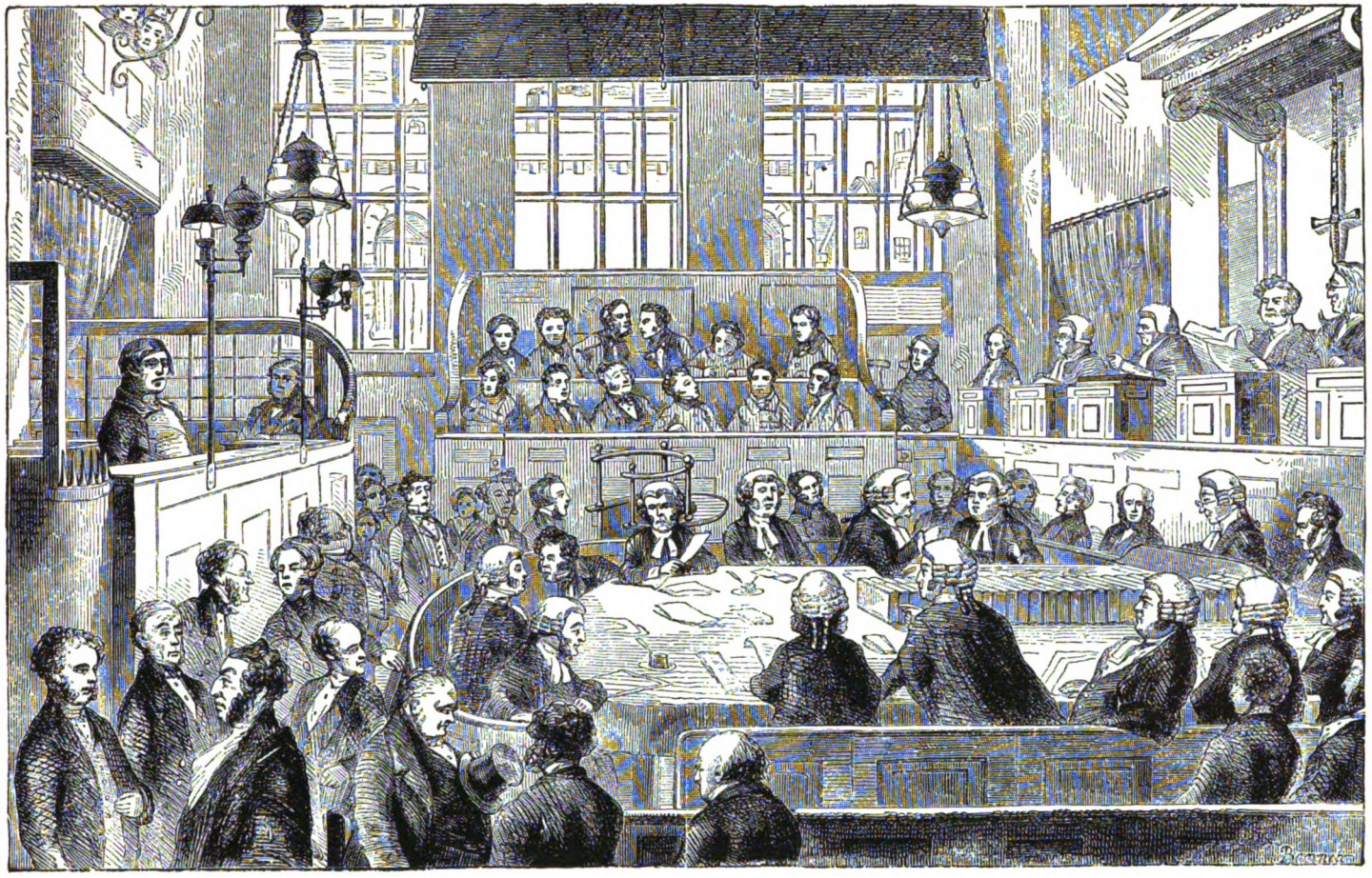
GATEWAY AT NEWGATE.

PRISONER'S CONSULTING ROOM, NEWGATE.

other than the Anglican, to which he may belong, and he is watched night and day. From the condemned cell we proceeded to the scaffold chamber, a plain room like a carpenter's workshop, unfurnished except with the apparatus of death, which was then erect and waiting for Neill; one side of the chamber opens out so as to enable representatives of the Press, when they are admitted, to witness executions. The gallows itself may deserve a brief description. The primitive gallows was the bough of a tree; a specimen of this type may still be seen at Braemar, in Scotland; the next form was that of a bracket delineated in an old eyre roll (1 Selden Soc. Pub. frontispiece) and perpetuated in Punch and Judy shows; a third form in use at Tyburn during the eighteenth century is sketched in the eleventh plate of Hogarth's "Apprentices," and that used for pirates at Executioner's Dock in plate 5 of the same series. The present gallows, as it stood in Newgate and is used elsewhere, consists of two upright beams with a cross-bar to which a rope of greater or less length, according to the stature of the condemned, is attached by a ring. Under the bar is a trap-door, which in Newgate, when we visited it, was level with the floor of the chamber and which is kept in position by a bolt underneath it, which can be instantaneously withdrawn by means of a lever worked from the floor of the chamber; the trap-door opens down into a pit of sufficient depth to allow the convict to disappear altogether from view when the bolt is drawn. In one corner of the room was a heavy bag of sand with which the executioner, after having taken note of Neill's weight, had been making ghoulish experiments to test the strength of his rope and the necessary "drop" to secure for the convict a painless and instantaneous dispatch.

Several other features of interest in Newgate were brought under our notice; one was the prison chapel with grillwork of a curious shape—which compelled the prisoners behind it to look at the preacher and prevented them from seeing their neighbors on the other side—placed in front of the prisoners' benches; another was an under-ground room used for birching juvenile offenders. It is now a settled line of statutory and judicial policy in England to keep this class of offenders out of ordinary prison life, and accordingly, in cases where the law allows it, as in convictions for malicious mischief, young boys are frequently sentenced to receive a few strokes from the birch rod and then to be discharged; this punishment is carried out, in Old Bailey cases, in the room referred to. The delinquent has his limbs placed in two holes in a small wooden erection, like the stump of a tree, set near to the wall, his hands are secured to the upper part of the instrument, and in this posture he receives the prescribed number of strokes from a police constable in the presence of a superior officer and of the parent or guardian of the child, if he desires to be there.

The last "view" that we had in Newgate, which it may be worth while bringing under the reader's notice, was of a narrow paved court yard near one of the exits from the prison; its pavement was deeply scored with initials and other marks. These were the epitaphs of generations of malefactors lying beneath; this was the part of "the precincts of the prison" in which the death sentence directs the bodies of executed prisoners to be buried. The preparations for the interment of Neill had already been commenced; a dramatic episode had taken place that morning in connection with them. At the same sessions of the Old Bailey at which Neill was condemned, the sentence of death had also been passed on a Mrs. Dyer, a baby-farming murderess; Mrs. Dyer was placed in a cell near the scaffold chamber to await execution; Neill's turn was to come first. If Mrs. Dyer was kept in her cell she



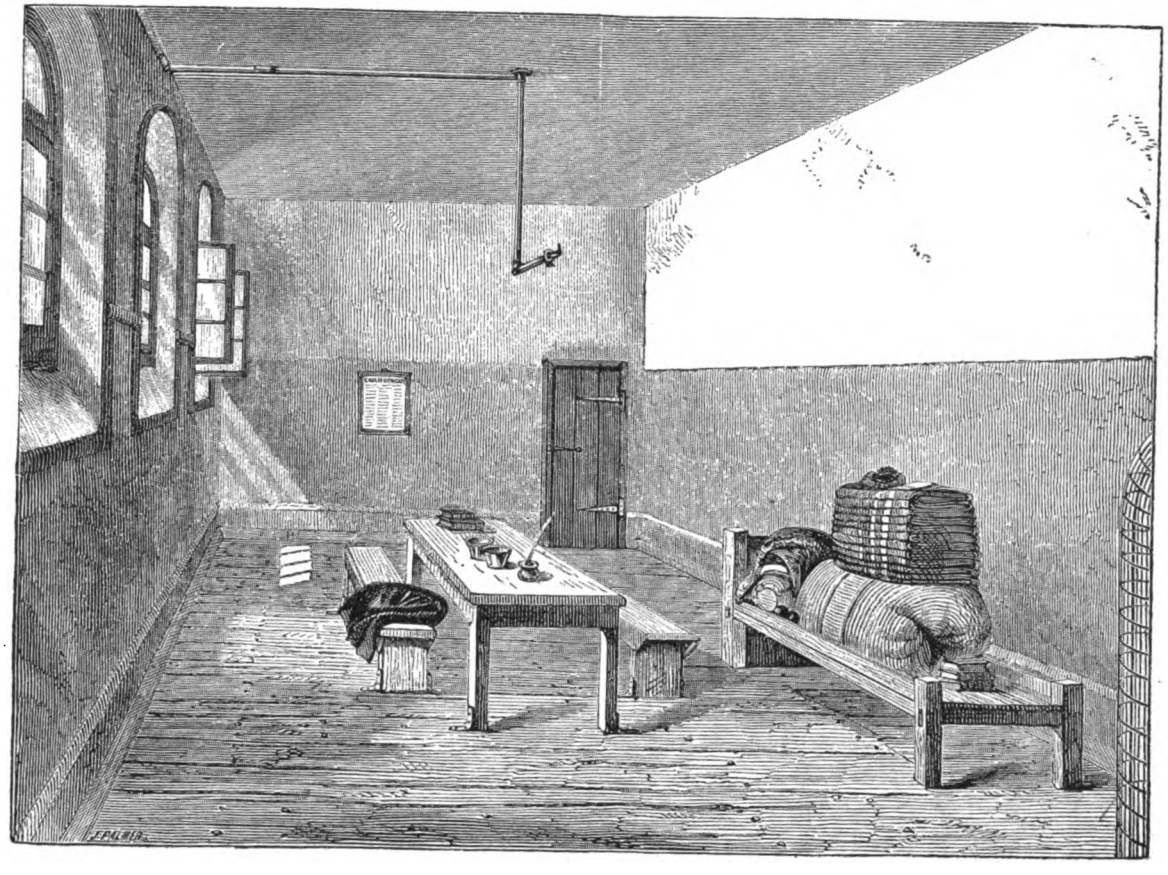
COURT, NEWGATE.

would hear the preparations for his execution going on, so she was removed to Holloway Gaol till it was over, passing, as she left the prison, along the courtyard with Neill's grave at her feet; when she was brought back her own was ready, but mercifully she saw neither of them.

It may be of interest to pass in review the cases of some of the most notorious criminals who have been associated with Newgate. We will begin with the story of Catherine Hayes, the authoress of one of the most revolting murders ever perpetrated, and herself one of the latest victims of the law of petty treason. This woman was married to an industrious workingman, whose life she made miserable by her violent and quarrelsome temper; after one of her outbursts she determined to take Hayes's life. There were two lodgers in the house, one, Billings who was either her lover or her illegitimate son; the other, Wood, who was with great difficulty persuaded to take part in the crime. The plot was simple enough; the husband was made drunk, if not drugged, and as he lay on his bed in a stupor, Billings fractured his skull with a hatchet while Wood finished the murder by a few extra blows. There remained the question how the corpse was to be got rid of. The first thing was to decapitate it; this Wood effected with a pocket knife, then Catherine Hayes suggested that it should be boiled, but this ghastly proposal was not adopted, and ultimately the head was thrown, by Billings and Wood, into the Thames. That noble, if somewhat dirty river, declined, however, to be the means of concealing what had been done. The head of the murdered man kept floating near the shore, was picked up by a watchman, handed over to the parish officers, and stuck on the top of a pole in the churchyard of St. Margaret's, Westminster. Meanwhile, the murderers, all unconscious of the evidence against them with which the Thames had just supplied the authorities, dismembered the trunk, packed the pieces in a box and conveyed it to Marylebone; where they threw the parts one by one into a pond. The head, however, was soon identified, and the police were set on Catherine Hayes's track. The conflicting versions of her husband's absence which she gave to different people led to her arrest. When she was brought into the presence of her murdered husband's head, her conduct, says Major Griffiths in his admirable "Chronicles of Newgate" (p. 103), passes belief. "Taking the glass in which it had been preserved into her arms, she cried, 'It is my dear husband's head!' and shed tears as she embraced it. The surgeon having taken the head out of the case, she kissed it rapturously, and begged to be indulged with a lock of his hair." The discovery of the body, which quickly followed, however, with the confessions of Billings and Wood, who were subsequently arrested, speedily reduced all posturings of this description to their true proportions, and all three prisoners were convicted and sentenced to death. By the law then in force (1726) burning alive was the punishment for the crime of petty treason, which consisted in the murder of a person to whom the murderer owed special obedience, as when a servant killed his master, a wife her husband, or an ecclesiastic his superior. Mrs. Hayes was actually burnt alive, as the fire reached the hands of the hangman and compelled him to let go the rope by which it was usual to strangle the victim in such cases before burning her. Petty treasons were put on the same footing as other felonies by 30 Geo. III. c. 48 and 9 Geo. IV. c. 31.

Another fiend in female shape was Sarah Malcolm, a laundress in the Temple, who murdered an aged lady named Duncombe, to whose rooms she had access as charwoman, and two servants who lived with Mrs. Duncombe, for the sake of obtaining possession of her property. She was committed to Newgate but executed at Tyburn.

When accused felons stood mute of malice they suffered what was called the *peine forte*



CONDEMNED CELL, NEWGATE.

et dure, i. e., they were pressed to death "by heavy weights laid upon a board that lieth over their breasts and a sharp stone over their backs, and these commonly hold their peace, thereby to save their goods unto their wives and children, which, if they were condemned should be confiscated to the Prince." In 1657–8, a Major Strangways suffered in this way in Newgate; he was arraigned for the murder of his brother-in-law, Mr. Fussell, but refused to plead unless assured that, if condemned, he would be shot as Mr. Fussell was, and so the *peine forte et dure* was administered to him. The process of killing him took eight or ten minutes, although an angle of the press had been purposely placed over his heart so that he might the sooner be deprived of life, "though he was denied what is usual in these cases, to have a sharp piece of timber under his back to hasten execution."

A curious light is thrown on the kind of life led by many apprentices, especially parish ones, by the cases of the Meteyards, mother and daughter, and of Elizabeth Brownrigg. The Meteyards, milliners, had as an apprentice a sickly girl named Anne Taylor; to escape the cruelty with which, owing to her inability to do as much work as her mistress desired, she was treated, the girl ran away. She was caught, brought back, flogged nearly to death with a broom handle, and tied with a rope to the door of a room so that she could neither sit nor lie down. After three days of this discipline she died.

Mrs. Brownrigg, a midwife, kept her apprentice, Mary Clifford, in a coal cellar; bringing her out from time to time to strip her naked and flog her with a horsewhip, an exercise in which, when weary of it, she was relieved by her son. All these three wretches were hanged. The mother Meteyard had a fit on the morning of her execution and was carried to the gallows and hanged in a state of insensibility.

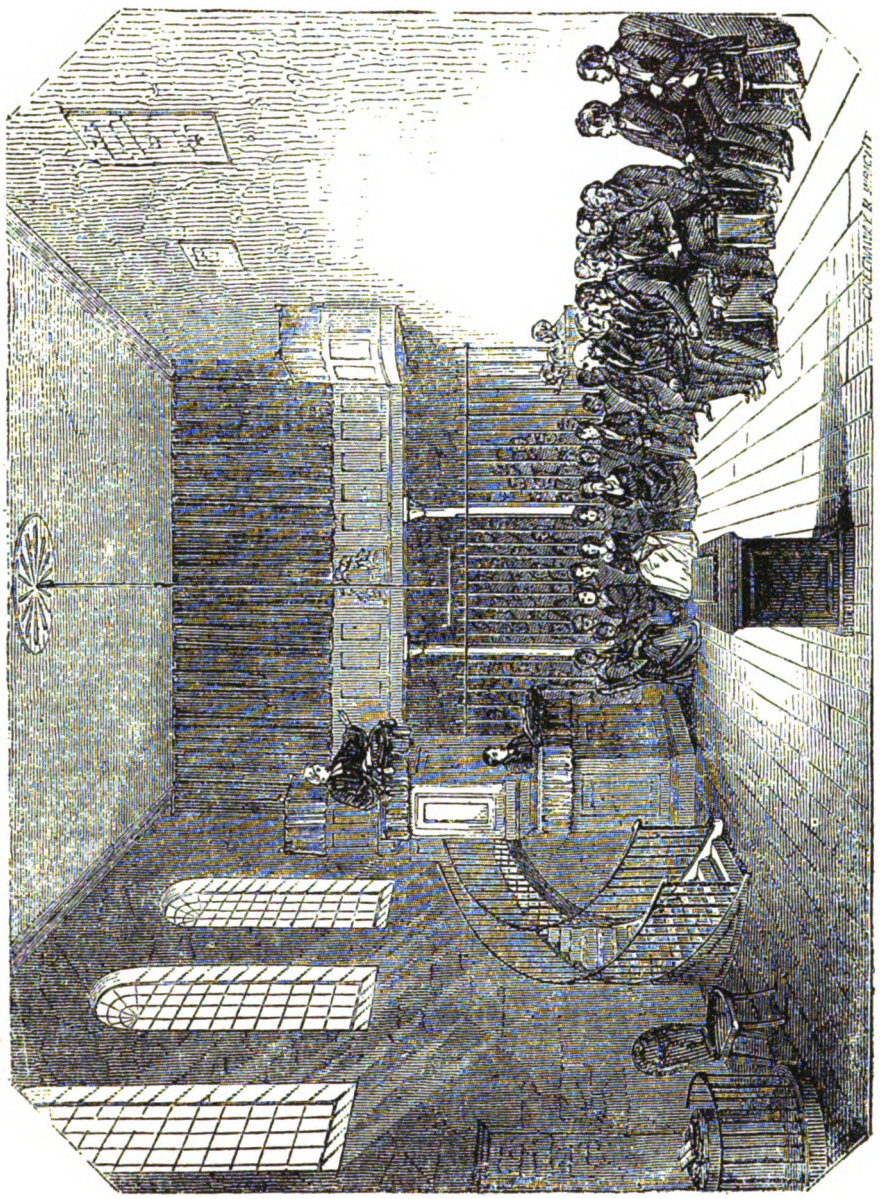
The executioners in those days were far from expert and frequently bungled their work. The rope broke with Captain Kidd the pirate, and he had to be tied up again in a perfectly conscious condition. "The friends of another pirate, John Gow, were anxious to put him out of pain, and pulled his legs so hard that the rope broke before he was dead, necessitating the repetition of the whole ceremony."

The successive hangmen to the city of London cannot here be described with any detail; one of them, John Price, who filled the office in 1718 and bore the *ex officio* title of "Jack Ketch," was himself arrested on the way to Tyburn, on a charge of murdering a woman whom he had attempted to outrage, and hanged at Bunhill Fields, his body being afterwards exhibited in chains in Holloway near the scene of the crime.

Calcraft started life as a cobbler and got his post through an accidental meeting with the then public executioner, Foxen. He saw a man leaning against a lamp post coughing violently, and advised him to take peppermint for it; Foxen — whom it proved to be — said that he could not carry on his duties much longer.

"I think I could do that sort of job," said Calcraft, and he got it. He retired in 1874; his successor, Marwood, a Lincolnshire man and also a shoemaker, was the first to make a scientific system of executions in England by careful calculations as to the necessary drop. The present public executioner is Billington.

Abduction was a common offense in the annals of Newgate. A typical case was that of Edward Gibbon Wakefield, a barrister who carried off a Miss Turner, a schoolgirl of barely fifteen, the only child of a gentleman of large property in Cheshire, and induced her to go through a form of marriage with him at Gretna Green, by persuading her that it was the sole way of saving her father from ruin. Wakefield and his brother, who had assisted him, were sentenced to three years' penal servitude, and the marriage was annulled by act of Parliament.



CHAPEL AT NEWGATE.

Forgery and every form of fraud have borne a great hand in peopling Newgate. The most famous of the forger felons was Fauntleroy, more sinned against, perhaps, than sinning; then there were the embezzlement cases of Watts, Pries, Robson and Redpath, all of whom illustrated the "double life" theory embodied by Stevenson in his immortal work on Jekyll and Hyde, and owed their conviction to its discovery. With many other cases readers of the GREEN BAG are perfectly familiar; Bellingham who shot Mr. Perceval; the Mannings (about the time when the murder of the Jenny family by Rush, the Norfolk farmer, seemed to set up a perfect reign of homicide in Enggland); Charles Peace the notorious burglar; Palmer of Rugeley; Wainwright of Whitechapel, who murdered his mistress, Harriet Lane, and spent his last night on earth in describing to the governor of Newgate his manifold immoralities, and Fowler, and Milsom the Muswell Hill murderess; a hideous throng whose memories will cling to Newgate in spite of any changes in its external structure.

LEX.

THE SECESSION AND ANNEXATION OF NANTUCKET.

BY CRAIG CORNISH.

FOR a number of years after its settlement in 1659, Nantucket, except for a vague allegiance to England, was wholly independent and governed her own affairs with much complacency; but in 1670 a summons came from the Governor of New York, in which Province the island lay, bidding them pay his tax and submit their transfers of property for his sanction. Nantucket hastened to comply, was confirmed in the decisions of her court, and for two years or so cheerfully paid her annual quit-rent of eight barrels of codfish.

In 1673 England and France were at war with Holland and the Dutch again seized New York, from which they had been driven nine years before and ruled the Province for eight months, so Nantucket once more became a part of the Dutch Empire. The island apparently was indifferent to the change. The annual tax of codfish would be claimed by the governor of New York were he Dutch or English. The difference was only nominal. Yet there were serious men in Nantucket who were troubled over the arbitrary position of their court. Experience had shown that New York cared little for island quarrels and the town must mend its own affairs. James Coffin, indeed, openly declared it would be far better that Nantucket should become part of the neighboring English Province, but he was silenced by Edward Macy, who reminded him that they were all Dutch subjects.

So matters stood in 1673: with Boston and Plymouth loyal to the English crown; with New Bedford hardly twenty years old, busy fighting Indians, and wholly ignorant of international politics; when one morning the Dutch town of Nantucket awoke after a storm to find a ship stranded on the northern point of the island.

When the gale had abated Isaac Melyne, master of the Venture, came ashore in a small boat to beg assistance in getting his ship off the Rip. Nothing could be done until the tide turned, so he walked about among the homely little houses clustered near the beach, recently named Sherburne by the governor of New York, and stopped at the inn, if such the corner house and general assembly place could be called. Here the men of Nantucket soon gathered in an informal town meeting to hear Isaac's story.

He told them how in the August preceeding he had just loaded his ship for England when the Dutch seized New York. He had slipped away in the night and almost reached New Haven when he was captured. Isaac's written declaration lies before us. "Three pinnaces and armed men overtook him," he said, and brought him back to New York, "where they felloniously Robbed and Ranged his ship and goods." Not content with this, the Dutch then proceeded to freight his vessel for Holland with "90 barrels of whale oyle, 83 hhds of Tobacco, 473 Peces of Logwood and 150 Cowhides." Isaac stated that this cargo was far less in value than that which the Dutch had robbed him of, but such as it was he intended to claim it for his own, if only the men of Nantucket would assist him. To dispose of the cargo himself, since it was consigned to Holland, would have made him liable to arrest for barratry, and the danger was considerable even in those troublous days. The cargo was now stranded on Nantucket. "The foreseeing providence of God had brought him to this his Majestie's Island," Isaac said, "with the loss of masts, sayles, rigging and furniture, which their worships might perceive," and he ended by asking their aid and offering them a share of the cargo.

The men of Nantucket hesitated to commit themselves. Isaac saw that the sympathy of his hearers was with him, and to remove all possible doubt of his honesty, he drew from his pocket and passed to Edward Macy a letter from the late (English) Governor Lovelace of New York, which certified that Isaac Melyne was a "free denisen" of that Province.

The men were excited and disturbed over the affair. Their sympathies were wholly with Isaac. What right had a Dutchman in New York to rob a man of his cargo and send him unwilling to Holland with another? Then, too, it was plain to them that the grounding of the Venture was not so obviously an accident as at first it had appeared. Here was an appeal to their English blood which it was all but impossible for them to refuse, and yet they had a wholesome remembrance of the fact that they were no longer subjects of the English crown.

Edward Macy was the first of the seamen to speak. "Where do you think you are?" he asked, handing the letter back.

"In New England, or may I die for it!" answered Isaac.

"Then you are like to die," said Macy dryly. "You are in the Province of New York and every man of us is Dutch."

Macy voiced the conservative opinion of the gathering, but many of the men agreed warmly with James Coffin, who retorted. "We're no more Dutch than he is, Edward Macy. I say we help him off the Rip and shift his cargo too."

"We'll help float his ship," answered Macy slowly, "but before we share his cargo we'd better lay his claim before the court, For myself, I've no taste to pay for his cargo to the next Dutch ship the governor may send us."

This was the better judgment of the meeting, it was the always sound appeal to the Anglo-Saxon love of law, and so the matter was left to the later decision of the island court. Meanwhile the tide had turned and all hands went to the aid of the Venture, which they easily floated off the bar and towed to a safe anchorage near the town.

Ten years before, in 1663, James Coffin had married Mary Severance, of Salisbury, Province of Massachusetts Bay, and from her first coming to Nantucket Mary had played no small part in the island life. The destinies of larger nations than Holland have hinged on the whimsical, but none the less enduring determination of one woman. Russia, France and Spain have followed the whispered advice of queen or courtesan; and when a state issue arose in Nantucket, like the sharing of the Venture's cargo, which in-

volved no less a question than the allegiance of the island to Holland or England, this small part of the Dutch Empire followed the precedent of the nations and listened to the woman.

When James Coffin came in to dinner after hard work upon the Venture, Mary fed him first and then, deeming him to be in condition, she gently instructed him.

"What do the men say?" she asked.

"That the Court must decide the matter at the next sitting," answered James. "Edward Macy fears the Dutch."

"And we're afraid!" said Mary, with much sarcasm. "A fine lot of men we are, and English blood in our veins every drop of it, to let the ship get off to Holland, and our fish catch none too good. I almost believe we are Dutch from the very slowness of us. If the same question asked itself in Boston, I'm thinking the Court would find but little to decide on," and Mary poked the fire until the sparks flew.

"Perhaps it's as well to let the Court give word on it," said James, "and belike their decision will be what we'd have it."

"And belike it won't," said Mary, administering more pokes to the fire, "and Rebecca Macy telling how the Dutch would do this or that, and she born at Plymouth with Myles Standish the only gumptious man in the place." And Mary was about to give her opinion of Rebecca when James wisely recalled a duty on the beach, and went out, leaving Mary to her own reflections.

In another humble little house by the shore Rebecca Macy was painting in lurid colors her estimate of Mary Coffin. The two women had met that morning. Mary, with real English loyalty, was stating to a few friends her view of the cargo problem; and Rebecca, impelled only by a sweet and simple desire to disagree with anything Mary might say, took up arms for justice and the Dutch. Whereby it may be judged that two state parties came to exist among the Nantucket seamen, known to history as the English and the Dutch, but really instigated by these two rival leaders of island life. And so Rebecca Macy told her husband she had cause that day to be proud of him, the one man at the meeting whose judgment stood unmoved by mere passing opinion, and she ended by recalling the words spoken in New York when Macy had delivered the tribute of codfish, which contained a pleasantly vague hint that the Dutch Governor was looking for the right man to appoint as magistrate on his loyal island and that the name of Macy was not unknown to him; which delicately pointed reminder of possibilities was not lost upon Edward Macy, who went down to his fishing boats with a pleasing consciousness of his recognized wisdom and with a growing determination to stand by the Dutch cause.

The Venture, in her dismasted condition, lay at her mooring for some weeks, waiting for the sitting of the island court which was to decide her fate, and Isaac Melyne passed the time with what patience he could. He fished for cod with the men of Nantucket, listening with friendly interest to their quarrels about land-holdings, dogs, Indians and sheep, and in a guileless way trying to turn the same to his own behoof. Mary Coffin and Rebecca Macy now openly slandered each other upon the highway. Mary had detected strong Dutch features in the Macy children, to which she called the attention of the town. Rebecca, while resolutely supporting a Dutch cause, with a sweet consistency, resented the supposed discovery of Dutch blood in her offspring, and loudly questioned the reasons which had brought the Severance family, of which Mary was a member, across the sea; stating her belief that it was nothing less than horsethieving, at the very least. Mary Coffin then called the Plymouth Colony a set of "prayer-mongers" and Rebecca Macy, who came from Plymouth, openly doubted if the Coffin family ever had prayed at all. So the days slipped away and the fateful 20th of October, 1673, drew near.

Again to justify Nantucket's action by appeal to history, it should be remembered how statesmen in France and England, and elsewhere too, have appealed for support of their views to a larger and a foreign power. Both island statesmen resorted to this method of gaining the victory and sought to be forehanded against defeat by the court. Edward Macy found means of communicating to the Dutch Governor of New York that a Dutch ship ashore on the island was liable to be seized by a disloyal minority against the better judgment of the loyal town of Sherburne. James Coffin, in a letter about a cargo of rum and sugar, sent secretly to a kinsman of prominence in Boston, asked that gentleman to convey his account of this "most doleful affaire" to his Excellency, Governor Leverett, whom he earnestly hoped might send aid to the Venture should a British frigate happen to be in the vicinity of Nantucket. So both island statesmen felt themselves secure of ultimate victory and, like others who have played at the international game before and since, they opened the way to results reaching far beyond their expectations.

On the 20th of October, 1673, the entire population of the island, not more than two hundred persons, crowded about the inn where the court held its sitting. The magistrate took his place and six canny seamen were impannelled as a jury. To this august body Isaac Melyne told his story, — every man of them had heard him tell it many times before, — and then he earnestly begged leave to sail away with the cargo for his own. His plea received the sympathy of all, but Nantucket men were not to be moved by mere sentiment, and they reserved their judgment until they should learn the opinion of the court.

The jurymen long deliberated upon the case. A deep sense of their responsibility as English-Dutchmen weighed heavily upon them, outbalancing the necessity of condemning or justifying Isaac's desire to confiscate the cargo. After three hours of hard work they brought in a verdict which justly has been called one of the masterpieces of New England diplomacy, broad in its sympathies and silent on all important points. The jury found:—

"In the appeal of Isaac Melyne:

"We do not find he is a subject of the King of England, and concerning the ship, we do not find it is his."

Mary Coffin and Rebecca Macy each had sought a certain seat. Arriving at precisely the same moment they had been forced to sit side by side, or else appear to retreat, than which they would have preferred a lingering death, and so it happened that when the verdict was rendered both these colonial dames for once perfectly agreed.

"It's a sickly lot of men you are!" said Mary Coffin, addressing herself with pleasing informality to the jury.

"And it's the same word I'd say to them, Mary Coffin," said Rebecca Macy. "And what can Melyne do with his cargo, will you tell him that now?" she continued, speaking to the jurymen.

How they would have defended themselves unfortunately is unknown, for the magistrate immediately dissolved the session and the talk became general in the little court-room. Melyne made some wild statements about appealing his case, but Edward Macy dryly asked him "Where?" to which question Melyne could find no answer.

Nantucket had shown herself truly loyal and Dutch, but it must be remembered how often the best official utterance on state issues is but partial, and so it was in this instance. Nantucket was silent, but she was not satisfied and Boston and New York were preparing to take action profound in its results.

It is certain that the Dutch Governor had the earlier information of the crisis. We do not know whether his delay was caused by an inherited love of sitting still and attending to no business not immediately his own,

but it is indisputable that he allowed considerable precious time to pass before he ordered an armed vessel "to proceed with all speed to the Cape of Nantucket."

Meanwhile Governor Leverett, in Boston, having only an imperfect knowledge of where and what Nantucket was and fearing the Dutch vessel might have some hidden mission for aiding King Philip's war which then was raging, lost no time in sending a frigate to aid the Venture.

The frigate reached Nantucket three days after the island court had given its famous decision and in open defiance thereof proceeded to put the Venture in condition for immediate departure.

Mary Coffin asked the captain of the frigate and Isaac Melyne to supper the night before they were to sail. The variety of dishes that remarkable woman managed to prepare still remains as an island tradition, and the best pieces of China and pewter ware, borrowed from all the English faction, gave an air of affluence to the table well calculated to impress upon their guests the standing and importance of the Coffin family. Out of a full heart and love of Boston Colony, Mary told these potentates of the political isolation of the island and how earnestly the people longed to be annexed to New England and to be rid of the Dutch. The captain of the frigate listened with surprise and finally he promised to report this interesting condition at Boston.

James Coffin decided to make a voyage to Boston in company with the frigate and the Venture. He accordingly took orders from all his fellow-townsmen, including Edward Macy, who commissioned him to bring back a large quantity of rum. The incident shows how these statesmen did not allow the vital issues of politics to interfere with their amicable relations. They fished, smoked and drank rum together with comfort and mutual benefit. It should also be said that Mary Coffin and Rebecca Macy borrowed salt and sugar of each other and with all friendliness even drank tea and tasted gossip together when not engaged in the more serious duties of political agitation.

So the Venture, the frigate and the Swallow, Coffin's boat, all sailed away to Boston and the Dutch town of Sherburne considered the matter disposed of and proceeded to catch fish quite as though nothing unusual had happened.

Nantucket might still have remained a part of New York had not the Dutch Governor, in compliance with Edward Macy's request, proceeded to meddle. Some three weeks after the departure of the Venture a Dutch frigate came to her aid. Macy told the captain of the English frigate's interference, which caused him to charge the town of Sherburne with gross disloyalty to Holland and even to threaten punishment. The fishermen protested their loyalty and received the threats of punishment with such evident skepticism that the Dutch captain could only swear in a tongue which had no meaning for Nantucket ears. So he sailed away and Nantucket again turned her attention to catching fish. Even then Nantucket might have remained Dutch had it not happened that James Coffin was just rounding Cape Cod, bringing a winter's supply of salt, sugar and rum to the island. Then it was that Holland made that fatal mistake which cost her the allegiance of a sturdy people. The frigate seized the Swallow and carried her to New York, taking along James Coffin and his companions as prisoners.

Arrived at the Dutch capitol, the Governor only ridiculed their indignant protests and assertions of loyalty, charged them with the Venture's escape and in payment confiscated the Swallow and her cargo and sent Coffin and his men empty-handed back to New England.

Their misfortune was shared by the whole town and it created an overwhelmingly English sentiment. Edward Macy mourned for his rum and refused to be comforted. Rebecca Macy told Mary Coffin things of

the Dutch which even Louis XIV would have found it hard to believe, and Nantucket resolved to have no more dealings with New York. What dealings Dutch New York might have forced upon Nantucket, it remains only to conjecture, for just at this juncture, 1674, Holland gave up the Province and New York again became English. But this did not in the least change the sentiment of Nantucket. She permanently withheld her tax of codfish and for a time enjoyed a real if unrecognized independence.

The more serious men, however, knew that this condition could not continue. Soon or late Nantucket would be looked to either by New York or Massachusetts and meanwhile the island court was supreme and island quarrels as bitter as ever. The desire for a more responsible government grew stronger, and those who favored joining Massachusetts realized their opportunity. James Coffin made numerous visits to Boston and explained the situation so ably that finally the Governor appointed him first judge of Probate on the island. No one questioned his authority and so Nantucket tacitly came to consider herself as distinctly connected with Massachusetts Bay.

But the final and official act in the annexation of Nantucket arose from a joint resolution of her two great rulers. Rebecca Macy and Mary Coffin were conscious of impending changes. Some years now had passed since the capture of the Swallow, history is made but slowly and Nantucket always has been deliberate in deciding state issues, and during these years both Rebecca and Mary had learned wisdom and had come to regard each other as a power to be conciliated rather than aroused, so they now sought sweet counsel together when public affairs demanded. It happened they were drinking tea one afternoon when Mary told Rebecca of rumors which had come from Boston that the king might grant a new charter to New England.

"We'll be like to lie in New York or Massachusetts," said Mary, "and we ought to make known where we'd prefer."

"I'm thinking none of us is much beholden to New York," Rebecca answered, thinking of the old loss of the rum and salt and sugar. "You and James were right about it, Mary."

She said this with the conscious tone of one making a large concession; time had not wholly softened the Dutch defeat, but the tea was exceptionally good and Mary seemed unmindful of her superior judgment.

"There was mistakes with all of us," said Mary, generously. "But it's ourselves, Rebecca Macy, that should guard against more of them, for the men will be minding our words. Set Edward up now to petition the governor to annex us, and I'll talk to James."

"I'm thinking you're right about it, Mary," said Rebecca, thoughtfully stirring her tea. "A petition would be the best way of fixing it and I'll talk it up to Edward. Just give me a taste more of that cream."

So the matter began and so it really ended, for Edward Macy and James Coffin found themselves filled with the same purpose about the petition. Each secretly wondered at the other's sagacity and was inclined to attribute it to his own enlightening influence, but each welcomed the other's aid and the petition was carefully drawn up and sent to Boston, and thence made its way to the king and queen far over the sea.

Months passed before Nantucket heard the decision upon her appeal, for by a strange coincidence her petition appeared at St. James just as a new colonial policy was being framed. But finally an official document arrived from Boston. A few of the leading men inspected it and then summoned all the inhabitants to assemble that it might be publicly read.

When all were gathered at the inn, James Coffin rehearsed the incidents which had led to this final scene. Their gracious Majesties, William and Mary, had directed that the bounds of the Province of Massachusetts

Bay be ascertained. Nantucket, mindful of a past experience with a foreign colony of which he would forbear to speak, had petitioned to be included within these bounds, their Majesties graciously had received their request, the General Court had confirmed the royal decision, and Nantucket was now to hear the answer to her appeal.

Then with great dignity James Coffin unfolded the document and read:—

Anno Regni Gulielmi et Mariæ, Regis et Reginæ, Quinto.

Act passed by the Great and General Court or Assembly of the Province of Massachusetts Bay, in New England, begun and held at Boston the 31st day of May, 1693.

WHEREAS, their most gracious Majesties, our Sovereign Lord and Lady, King William and Queen Mary, in and by their royal Charter and letters Patent, bearing date at Westminster, the 7th day of October in the third year of their sd Majesties Reign: for the uniting, erecting, and incorporating of the Colony of Massachusetts Bay, the Colony of New Plymouth, the Province of Main, the Territory called Accada, or Nova Scotia, and all that tract of Land Lying between the sd territories of Nova Scotia and the sd Province of Main, into one Real Province, by the name of the Province of Massachusetts Bay, in New England; have therein particularly named, comprehended and included the islands of Capawok and Nantucket as part of the sd Province of Massachusetts Bay and annexed the same thereto.

It is, therefore, declared and enacted by the Governor, Council and Representatives, Convened in General Assembly, and by the Authority of the Same.

LAWYERS IN THE ENGLISH PARLIAMENT.

By Edward Porritt.

AN old grievance arising out of the connection of lawyers with the House of Commons was raised in a new form in the parliamentary session of 1898, when the leader of one of the Radical groups of the Opposition protested against the action of the Committee of Selection in systematically excusing practicing barristers from their full share of committee work. Lawyers at times have undoubtedly been of great service to the House, but all through its history, lawyers, nevertheless, have been a somewhat troublesome element, and more resolutions of the House and more proclamations have been required to deal with gentlemen of the long robe than with men of any other class who have engaged in parliamentary service.

In the early centuries of the House of Commons there were royal proclamations aimed at lawyers and intended to prevent their being chosen by the constituencies. After such measures were found to be unavailing many resolutions had to be passed by the House itself to compel lawyers to discharge the parliamentary duties they had undertaken. From the earliest days of Parliament it was of advantage to lawyers to be of the House of Commons. They were always eager to be chosen. No one, however, who is familiar with the history of the House, can deny that while lawyers were eager for the advantages of membership they were not equally ready to undertake to the full all the duties attendant upon parliamentary service.

It was largely owing to the eagerness of lawyers to be of the House of Commons that the residential qualification was abrogated, and that the law concerning the payment of wages to members of Parliament fell into desuetude. The landed aristocracy had its part in breaking down the early laws which enacted that members should be residents of the constituencies they served, and which threw upon the constituencies the burden of paying the wages and expenses of the men they elected. But it is venturing very little to assert that lawyers had discovered the advantages attendant upon a seat in the House of Commons as early, if not earlier, than the aristocracy discovered that it was of advantage to be able to nominate members, and that the lawyers made many of the early inroads on the constitutional usage in respect to the payment of wages.

In the municipal records of the old English boroughs, and in historical manuscripts of the period prior to the Stuart dynasty, there is no lack of proof of the eagerness of the lawyers to be chosen members of the House of Commons. In a few instances wages of members of the House of Commons were paid out of municipal funds after the Tudor dynasty had come to an end. During the Commonwealth, when there was some reversion towards the Democratic parliamentary system of the Middle Ages, and when an attempt was made to restore to the House of Commons some of its early representative character, wages were paid to many members out of national funds. But before the days of the Stuart dynasty anything like a general payment of wages by the constituencies had long ago come to an end; and by this time the residential qualification in respect to both borough and county members was a usage of the past.

The laws in respect to wages and residence were still on the Statute books when the first of the Stuarts came to the throne. Those in respect to wages are there yet; and it was not until the middle years of the reign of George III that the statute enacting that members should reside in the constituencies they represented was repealed. So far as being of any use this law might have been

repealed two centuries earlier when an attempt was made by the House of Commons to get rid of it. So might the statutes concerning wages; for both sets of statutes ceased to be heeded after seats in the House of Commons once became in demand and men were outbidding each other in their eagerness to find constituencies to elect them.

In the fourteenth and fifteenth centuries no men were more eager to be elected than the lawyers. All through the fifteenth century they were laying siege to the boroughs, which were fortunate enough to be possessed of the much valued right to send members to the House of Commons. Bribery in parliamentary elections is often spoken of as modern. It has been written of beginning with the Stuarts. Bribery of individual electors may perhaps be dated about that time, although it was not general until after the Restoration. But for a century or a century and a half before the beginning of the Stuart dynasty candidates for Parliament had been bribing constituencies in bulk.

Bribery really began when candidates first offered to serve for nothing, and gave written undertakings that, if elected, they would not claim from their constituents the wages which the law enacted should be paid to all members of the House of Commons. To lawyers the credit or the discredit of introducing this practice of bribing constituencies in bulk must be given.

It was begun in the boroughs; and it was begun there for two reasons. In the first place it was easier to arrange a bargain of this kind in the boroughs than in the counties. In the counties, the electors were scattered over a comparatively large area of country. In the boroughs, the electors were concentrated in comparatively small places. They were few in number and were easily assembled, and in most places they had municipal corporations to act as go-betweens in the making of a bargain. In the next place, the lawyers had more to do with the boroughs than with the counties. In the period between the beginning of the House of Commons and the end of the Tudor dynasty it was a poor borough which was without a recorder. Later on it came to be regarded as not absolutely necessary that the recorder of a borough should be a lawyer. In the seventeenth and eighteenth centuries members of the House of Lords and other owners and patrons of parliamentary boroughs, who had never been called to the bar, often held the office of recorder. In these cases a deputy who was a lawyer was necessary.

Prior to the beginning of the reign of the first of the Stuarts, however, the recorder was a lawyer, and was usually the actual as well as the nominal holder of the office. He was the guardian of the privileges of the citizens or the burgesses and the custodian of the records and charters of the municipality. It was his duty to register new acts and by-laws. He was also a justice of the peace, and was the public orator for the municipal body on all ceremonial occasions.

To these duties in the fourteenth and fifteenth centuries, especially in the fifteenth, the recorder frequently added the representation of his borough in Parliament. As lawyers, the recorders found that it added greatly to their importance to be of the House of Commons; and in many of the municipal records of this period there are entries showing how the recorder secured election to Parliament.

The plan was very simple. In the earliest days of the House of Commons, even when payment of wages and expenses was assured, citizens and burgesses had not competed much among themselves for the honor of representing their cities or their boroughs in Parliament. Membership of Parliament was not regarded in those days as conferring honor, and when a town or a county chose its representatives from its own midst, the sheriff was careful to make the members find sureties for their attendance. When

the recorders sought election they offered to serve without wages. Frequently they went beyond this offer, and pledged themselves, if elected, to undertake the legal work of their boroughs in London without recompense. In the archives of the old boroughs, as shown by the publications of the Historical Manuscripts Commission, and by the numerous city and borough histories, there are many agreements of this kind. On the one side the municipalities agreed to choose the recorder as their representative in Parliament; on the other, the recorder agreed to claim no parliamentary wages and to serve the town or borough in other capacities than as member of the House of Commons without fee or reward.

Before the landed aristocracy began to fasten itself on the boroughs, the recorders had few competitors when they were seeking election, and in many instances a recorder found it easy to persuade his borough not only to elect him as one of its members, but also to permit him to nominate the second member. This was one of the ways in which the nomination system to the House of Commons was begun. In instances like these, there was generally an undertaking that both the recorder and his nominee would put the borough to no expense.

Occasionally the recorder did not serve for nothing. As late as 1523, the city of Lincoln paid parliamentary wages to its recorder. The mayor was the recorder's fellow-member, which perhaps accounts for the fact that wages for the two members were insisted upon. Twenty years later, however, a recorder who had been elected to the office on the recommendation of the Duke of Suffolk, was chosen to represent the city in Parliament, and in 1543 he remitted "all the burgess money due to him for the last Parliament." Thereafter Lincoln was represented in many parliaments by its recorder, who, however, usually followed the example of 1543 and remitted the wages legally due him for service in Parliament.

The story of the services of the recorders of Lincoln as representatives of the city in the House of Commons is pretty much the story of many of the cities and boroughs in the period when seats in Parliament were becoming of value, and when the lawyers and the landed aristocracy were breaking through the early enactments as to residential qualification, and the payment of parliamentary wages. Engagements not to claim wages were made long after the last wages to members of the House of Commons had been paid. These agreements are to be found among municipal documents of as late a period as the eighteenth century; although, as has been explained, the payment of wages as a system had come to an end before James I succeeded to the throne.

It would be difficult to determine the proportionate responsibility of the lawyers and the landed aristocracy in connection with these two most important inroads on the Constitution of the House of Commons. I lean strongly to the opinion that the first movement against wages, and against the residential qualification came from the lawyers. In the second period of the House of Commons, that beginning with the Stuart dynasty, the landed aristocracy were able to possess themselves of the parliamentary boroughs to the exclusion of all but their nominees, and were able to hold on to them until the early part of the eighteenth century, when the moneyed class came into competition.

The landed aristocracy were well on their way to this exclusive possession in the case of numerous boroughs long even before the Tudors had disappeared. Many of the boroughs created during the Tudor régime fell, in fact, at once into the possession of the aristocracy; and the privilege of sending members to the House of Commons from these newly enfranchised places was, even as early as Queen Elizabeth's time, bequeathed in wills, given as marriage portions bought and sold, and mortgaged and in other ways treated as property.

From Elizabeth's reign onwards until 1832, in some instances until 1867, lawyers had to accept nomination to the House of Commons from the landed aristocracy, instead of getting the election direct from the municipal corporations, as was so often the case in the fourteenth and fifteenth centuries. But whatever changes took place after Queen Elizabeth's time in respect to these boroughs, in the early race for them the lawyers often led. Their claims in those days often had priority over the claims of peers and other large landed proprietors anxious to secure borough influence, and the lawyers may be credited, I think, with showing the citizens and burgesses of the fourteenth and fifteenth centuries, how their cities and boroughs might respond to the precepts from the sheriffs commanding the election of members to Parliament without inconveniencing any of their fellow-citizens, and without making any calls on the municipal treasury.

England to-day owes much of the preeminence of her Parliament to the fact that the residential qualification was broken down, and that parliamentary wages long ago disappeared. The House of Commons could not be what it is to-day; it could not tower as it does above the other representative chambers of the world, if the statutes of the Middle Ages with respect to residence in a constituency and in respect to wages had been maintained and strictly enforced. The fact that wages were paid in the early days was of immense value at the time. Without them, it is extremely doubtful whether the House of Commons could have survived its first century; and as long as wages continued, it was essential that the residential qualification should also be maintained. While admitting this, and while not ignoring what the House of Commons was between the Restoration and the Reform of 1832, and how inadequately it represented the English people in the two centuries preceding the great changes of 1832, it is still borne in on me that it would be easily possible to name many great statesmen from Cromwell to Gladstone, whose career might have been cut short had the residential qualification always and in every instance been insisted upon.

Cromwell was really a carpet-bagger when he sat for Cambridge, and in fact Cromwell's career might never have begun had there not been the non-residential freeman loop-hole ready for him. Gladstone's great career would have been checked time and again if the old residential qualification enactment, repealed in the reign of George III, had continued through the century, and had been in force up to the present time. The continuance of this Act would have left the Liberals of the present day without either Sir William Harcourt or Mr. Morley as members of the House of Commons. Both were defeated in 1895, in constituencies they had represented in the 1892–95 Parliament, and both of them to-day are carpet-baggers in the American sense of the term, as are hundreds of other members of the present House of Commons.

The lawyers of the fourteenth and fifteenth centuries, for their own advantage, broke down the payment of wages, and helped to break down the law as to residence. The disappearance of wages and of the residential qualification undoubtedly brought some evils in its train. But to-day those evils, I think, may be asserted to be at an end. They came to an end in 1832; and to-day the good remains, and is of untold value in the practical working of the English parliamentary system. Political life affords a career in the highest and best sense of the term; and a man who is in a position to devote himself wholly to political life, knows that, under the English system as it now stands, the work he loves cannot be taken from him for good by the capriciousness of a single constituency.

While the recorders were willing to serve without pay, it must not be inferred that they rendered their constituencies an indif-

ferent service. Many of them seem to have been as loyal to their constituents as are members of the House of Commons at the present time; and the recorder members seem to have kept up the early custom of addressing their constituents longer than most of the unpaid members of the period prior to the coming of the Stuarts. As long as local members were sent to the House of Commons, the meetings of members and constituents were general; because the members, in the boroughs at any rate, usually explained what had been done in Parliament when they received their wages from their constituents. When the non-residential member came in, and wages disappeared, these meetings of electors and elected came to an end, and they were not revived until the second decade of the nineteenth century — when Canning reëstablished the custom of addressing his constituents at Liverpool on other occasions than at the elections. Canning was an energetic opponent of Parliamentary reform, but no member who was of the unreformed House of Commons in its closing years had a higher ideal of the relationship which should exist between members and constituents. In his relations with the electors of Liverpool, Canning came nearer to the standard of the early democratic days of the House of Commons than many members who were in the forefront of the movement for reform.

The recorder members seem to have continued the early relationships between electors and elected well on into the sixteenth century. In the old records one frequently meets with a statement like this, taken from the "Letters and Papers of Henry VIII, 1529–30," which has reference to Nottingham — "Mr. Recorder related the acts and manner of the last Parliament, as a burgess of the city, and had hearty thanks therefor." In some places the burgesses went beyond "hearty thanks" to their recorder members, and occasionally gave them a gratuity for their parliamentary services. The ordinary pay for a recordership was never large. The office to-day, although much coveted by lawyers, is almost honorary. Whitelock, as recorder of Woodstock, Bewdly, Ludlow, Bishop's Castle and Poole, received a fee of only forty shillings from each place, except that at Ludlow three loads of hay were given him in addition.

In a few places the recorders may have been residents of the towns they served in Parliament; but in most places, especially after the beginning of the seventeenth century, they were non-residents, and from that time onwards the lawyer members have almost invariably been carpet-baggers — men who in the unreformed Parliament accepted a service in respect of any borough whose owner or patron would place a seat in the House of Commons at their service. Before Parliament was reformed, and even until the period, later than 1832, at which constituencies became larger and less corrupt, but more exacting and more critical, lawyers undoubtedly were the soldiers of fortune in English politics. "Everybody," wrote Sir George Trevellyan, in describing in his "Life of Fox" the lawyers in Parliament at the period just previous to the American Revolution, "everybody was ready to change sides with the rest of the connection to which he belonged; but the lawyer ratted alone, and at the moment which suited his individual interests. The Bedfords hunted in a pack; the Pelhams ran in a couple; but the lawyer pursued his peculiar prey with solitary avidity and with a clamour which went far to spoil the sport of the entire field."

As late as 1623, a royal proclamation was issued to the parliamentary electors counselling them "not to choose curious and wrangling lawyers, who may seek reputation by stirring needless questions." This was the last royal effort to exclude lawyers from the House of Commons. But before 1623, the House had settled down to the inevitable. Long before that it had been

demonstrated that it was impossible to keep lawyers out of the House, even if it were wholly desirable, and the House had turned its attention to devising methods for making the lawyers discharge their parliamentary duties. As early as 1373, the House adopted an ordinance which declared that lawyers were not "to follow causes in any courts, nor in the Lords' House, while they continued members of the House, and while parliament was sitting." They were to attend during the session "wholly and solely" to the service of the House.

Prynne, who was of the House of Commons in the time of Charles II, and who has left us the fullest and best picture extant of the dilettanti parliamentarians of the Restoration period, a picture which is corroborated and supplemented by Pepys, wished that the ordinance of Edward III's time might be revived. Prynne claims much for the ordinance, in particular that it made the lawyers attend the service of the House; that it kept them from drawing or promoting their clients' or projectors' private petitions to Parliament; and finally that it had the effect of shortening the sessions of Parliament. It had this effect, to quote Prynne's own words, because "when no lawyers who were members might so much as move or plead in courts, it engaged them to attend the House, and all committees were diligent, early and late, to make the session and all bills and debates as short as possible."

How long the ordinance of 1373 was enforced it is not possible to find out. The Journals of the House of Commons now in existence begin only in the time of Edward VI. There are traces of the ordinance as recently as 1820. These apply to that part of it which enacted that lawyers who were of the House of Commons were not to plead before the House of Lords. From 1558 to 1710, there are numerous entries in the Common's Journals recording the granting of permits to lawyers to appear before the House of Lords. There are also some instances in which members were censured for going before the lords without first obtaining the permission of the House of Commons. From 1710 to 1820, there are no entries of these permissions, and the lawyers seem to have appeared before the House of Lords without let or hindrance from the House of Commons. The custom of seeking permission was revived; and revived I think for the last time, in 1820, when Brougham obtained permission for himself and Denman as counsel for Queen Caroline to appear at the bar of the House of Lords to oppose the bill then pending against the queen.

Although the ordinance of the fourteenth century prohibiting members from attending business in the courts does not seem to have been long continued in its entirety, the House of Commons, up to the eve of the Reform of 1832, always kept a fairly tight hold over the lawyer members. Almost from the time the Journals begin, there are frequent entries of leave of absence to lawyers that they might go on circuit. Usually leave was granted to individual lawyers after application made by them or in their behalf. Sometimes on the eve of departure from London of the judges who were going on circuit, there was a general leave of absence to the lawyers to accompany them. Occasionally when individual leave of absence was granted, a statement was entered on the Journals that the lawyer in whose favor the motion was granted had served on this or that committee, as though a term of service on a hard-worked committee, such for instance as one that was dealing with a controverted election, entitled a member to some extra consideration from the House.

These entries of leave of absence occur from the time of James I until the second decade of the nineteenth century, in fact until the eve of the momentous change of 1832. Members who went without leave

might in the event of a call of the House receive peremptory instructions to return from the sheriff of the county in which the constituency they represented was situated. Calls of the House were made by means of speaker's letters to the sheriffs until the rule of party whips became well recognized. The treasury issued whips long before the office of the official whip was well established and duly recognized. But calls of the House made through the Speaker and the sheriffs were continued for half a century or more after the office of treasury whip was established, and a member who defaulted when the House was called was likely to have a representative of the sergeant-at-arms on his heels in a very short time, and to discover that quite a little bill of fees awaited his settlement when he was brought back to Westminster.

Even when lawyers went on circuit with the permission of the House, they were liable to instant recall if the business of the House demanded a full attendance. For some centuries, in fact until as late as 1883, the House of Commons and several of the law courts were side by side at Westminster. The Commons sat in the old Chapel of St. Stephen's, and the judges held court in rooms in or adjacent to Westminster Hall. In those days it was much easier than it is now for a lawyer to attend the court and also to attend the House of Commons; and in those days it was a common occurrence for the House to order the sergeant-at-arms to go with the mace into the courts in Westminster Hall, and bring in the lawyer members there engaged, to attend the service of the House.

There are many enlightening records in the Journals of the House in the seventeenth and eighteenth centuries concerning the lawyer members. They were often called upon to undertake special services in the work of the House. Not infrequently, following the list of the members of a committee to which a bill had been referred, comes the additional statement "and all the gentlemen of the long robe." Parliamentary committees sometimes met in the chambers of lawyers in the Temple. During the short interval in the latter part of the first half of the seventeenth century, when election cases were dealt with on their merits, and not as party questions, the lawyers rendered excellent service on the committees of privileges and elections. Many a borough owed the preservation of its scot and lot franchise and the victory of its householders over the freemen or the corporation when these were seeking to possess themselves of the right of election, to the lawyer statesmen who were of the election committees of this period.

Evidence is not wanting that the lawyers sought to extend the advantages accruing to them from membership in the House of Commons. In 1614, Sir Edward Hobby moved that "the sergeant may go to all the courts to move them from the House to hear those of the House before any other, that so they may attend their service in this House and yet not lose their practice." The motion failed. In 1640 there was another motion to the same effect, also unsuccessful. "The judges to be moved," it reads, "to give precedence in their motions to all such lawyers as are members of this House." At this period parliamentary privileges were being pressed in new and strange directions, and it is not surprising that the lawyers were anxious to turn parliamentary privileges to professional account.

Nowadays service in Parliament brings more advantage to lawyers than to men of any other class. It is a standing advertisement for a practising barrister to be of the House of Commons. The fact that he is in Parliament also helps him when he desires to become a Queen's counsel. The late Earl of Selborne, who was Lord Chancellor during the Liberal administration of 1880–'85, has left his testimony to that effect. Moreover, when a new administration is

formed, there are at least eight ministerial appointments, one of them a principal secretaryship of State, which must go to the lawyers: and of the patronage which falls to an administration, the more valuable part must of necessity go to the lawyers, and by long usage to lawyers who are of the House of Commons. The majority of the prizes in English political life fall to the lawyers, and if the grounds for the protest of the session of 1898 are as stated, the prizes fall to the lawyers for less public service than at any time in the history of the House of Commons.

It is true that constituencies nowadays are more demanding than ever, and that lawyers, no more than other members of the House of Commons, dare neglect the calls which their constituencies make on their time. But while this is so, there is, I think, no member of Parliament now prominent at the bar who has ever had to curtail a speech to a jury, because the sergeant-at-arms was at his elbow, commanding his immediate presence in the House of Commons. Off-hand I cannot say until what period, later than the Reform Act of 1832, these visits of the sergeant-at-arms with the mace to the courts were continued. It is safe to assume that the sergeant and the mace have not been seen in the courts on the hunt for delinquent lawyer members since 1883, when the judges moved to the Palace of Justice in the Strand, two miles away from Westminster Hall. The attractions of the House of Commons to members of the bar must also have become greater since the Reform Act of 1832; for in the first House of Commons chosen after the Reform Act, there were seventy-one lawyers; while in the House of Commons, elected in 1895, there were one hundred and thirty-one.

LONDON LEGAL LETTER.

LONDON, Feb. 1, 1899.

SO many inquiries have been made within the past year or two as to how admission may be obtained by Americans to the English bar, that I may be serving some GREEN BAG readers if in a line or two I allude to the subject. Heretofore the English bar has been open to all comers, and the same requirements have been demanded of every applicant, whether he be home-born or a foreigner. It was first necessary that he should pass an examination in Latin, English history, and literature, unless he could show a certificate from one of the universities of England, Scotland, or Ireland, in which case this condition was waived. Having passed this step, he applied for admission as a student to some one of the Inns of Court, of which there are now four surviving, viz., the Middle Temple, the Inner Temple, Lincoln's Inn and Gray's Inn. No question as to nationality was raised or will, it is understood, be hereafter raised at this stage. It is only necessary that the candidate file with the authorities of the inn he proposes to join a certificate of good moral character signed by two barristers, members of the inn of five years' standing, and that he pay to the treasurer certain fees and subscriptions which amount to about £140, or say $700. Having joined his inn, the student must then, if he desires to be called, keep twelve terms, and as there are four terms a year, this makes a course of three years. If he so desires he may attend lectures by good men on almost every subject connected with the law, and without extra charge; or he may, if he pleases, "cut" these lectures and work by himself, or with "coaches" and "crammers." But whatever else he does, or elects to omit to do, he must eat three dinners a term, if he is a graduate of certain of the universities of the kingdom, or, if he has not this advantage, he must eat six dinners.

These dinners are eaten in the grand hall of the inn and the students must appear in students' gowns, and the barristers in their robes. The ceremonies in connection with this function are most interesting, and the company thus assembled is of a remarkably unique character. Mingled together at the same tables and in the same messes, are patrician Englishmen, pushing South Africans, negroes from the West Indies and the Gold Coast, turbaned Brahmans, Hindoos and Mohammedans, regardless for the time being of their diet and their caste; Siamese, Chinamen and Japanese, and representatives of all the English colonies from Canada to Australia and New Zealand. Some are beardless boys, undergraduates of Oxford and Cambridge, and some are men of middle age, while not a few are those of mature years. A small percentage have no intention of being called to the bar, but regard membership in the inn, with the privilege it gives of residential chambers and of library and gardens, as something solely to be desired. Others go through the course to educate themselves to be county magistrates and to discharge the duties of landed proprietors. More of the foreigners remain to attempt to get work in this country, but the moment they are called, hurry back to the courts of their respective countries to reap the special advantage a call to the English bar will give them.

After six terms have been kept the student may go in for an examination in the civil law; and if he is successful, he may, a year later, submit himself for the final or pass examination. This is a "stiff" one, lasting for two or three days and being both written and oral. It covers a wide field of jurisprudence, from contracts and evidence to constitutional and ecclesias-

tical law. Having successfully passed it, the student may then be called. The "call" is made on a certain night in each term, which is known as "call night."

The ceremony is a simple one.

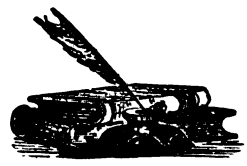
The candidates assemble in the first glory and the uncomfortable newness of their wigs and gowns, and go into the great hall where the treasurer of the inn, or some other of the older benches, delivers a short address, in which he will probably revive the time-honored jest about the many who are called and the few who are chosen, and in which he will exhort the newcomers to preserve the honorable traditions of the English Bar. This being over, the candidates, who are now no longer students but full-fledged barristers, take their places at the table and dine, without other distinction save that they keep on their robes and may invite a guest or two in to have dessert with them.

But within a month or two the members of the joint committee of the four inns which regulates the admissions to the bar, has passed a rule providing that hereafter no one shall be called who is an alien, unless by particular request of the inn of which he is a member. This will work unpleasantly to the hundreds who have come every year from distant parts of the world to join the bar, and it will prevent any American in the future from attaining that end, unless he is willing to abandon his allegiance to his native land. Commenting upon the committee's report, a local newspaper states some facts about the eastern consular courts which will have special interest for Americans at this juncture. It says: "Persons who are not subjects of the Queen, are evidently not acquainted with the method prevailing in consular courts abroad as to lawyers practicing there. They mention as one of the objections to admitting aliens to the English bar that it might create difficulties in places where there are international or consular courts. But no such difficulty does, or can, in fact arise. In international courts all lawyers qualified according to the law of their own nationality are admitted to practice, provided their nation is one having a treaty with the nation in whose territory the international court sits. In consular courts all lawyers admitted to practice in the consular court of their own nationality are by courtesy admitted to practice in every other consular court, so that there is, in fact, an international bar in all those countries in which the extra-territorial system exists. Thus British, American, and French lawyers practice without distinction of nationality in all consular courts in the Levant, Siam, and China, and in the Egyptian courts; and no such difficulty as the committee contemplate can possibly arise. There are several aliens at the English bar, but only one—an American—is in general practice, and I may add that he is one of the most popular and esteemed members of the bar. It is difficult to guess what has led to this elaborate investigation and report."

There are, all told, not more than four or five American lawyers permanently located in London. Of these only one, as above stated, is a member of the English bar; the others have offices where they advise on questions of American law and where they carry on such general business as results from the close connection between the two countries.

STUFF GOWN.

The Lawyer's Easy Chair.



. Current Topics, . . Notes of Cases, etc.

BY IRVING BROWNE.

CURRENT TOPICS.

THE OCCUPATION OF INNKEEPER. — Innkeepers were always in bad odor at the ancient common law, and so have continued, in legal view, down to the present time, except where relieved from their onerous and unreasonable liability by the intervention of legislatures. The ancient rule was adopted from the necessity of the case. The inns were infested by thieves and robbers who throve by plying their occupation there, or on the highways, and the innkeepers were frequently in league with them. "The rule is founded," said Chief Justice Shaw, "on the expediency of throwing the risk on those who can best guard against it." Nowhere can one obtain a more correct and vivid impression of the unsafety of inns two or three centuries ago than in Charles Reade's great novel, "The Cloister and the Hearth." Judge John K. Porter, of New York, was a great novel reader, and he was probably fresh from a perusal of that strong story when he wrote his fine opinion in Hulett *v.* Smith, 33 N. Y. 571; 88 Am. Dec. 405, which was instrumental in inducing a legislative relaxation of the strict common-law liability. But give a dog a bad name and it will stick, says the proverb. So although innkeepers are nowadays nowhere in league with robbers and do not practice felonious robbery, yet somehow they are not held as a class in high repute, and they have an unenviable reputation at least for extortionate charges. Judge Porter mildly hints when he says: "Open violence and robbery, it is true, are less frequent as civilization advances; but the devices of fraud multiply with the increase of intelligence, and the temptations which spring from opportunity keep pace with the growth and diffusion of wealth. The great body of those engaged in this, as in other vocations, are men of character and worth; but the calling is open to all, and the existing rule of protection should therefore be steadily maintained." Shenstone's classic picture of the inn and its welcome, and Goldsmith's idealization of its hospitality, and Dickens's fascinating picture of the The Maypole and its landlord and *habitués* in "Barnaby Rudge," are exceptional in modern literature. Dumas, in "Twenty Years After," speaks of innkeepers as "that particular class of society, which when there were robbers on the highway was associated with them, and since there are none, has advantageously replaced them." Balzac says, in "Cousin Pons," — "The famous innkeepers of Frankfort, who make law-authorized incisions in travelers' purses, with the connivance of the local bankers."

The modern prejudice against innkeepers is an ancient survival. Plato would have no innkeeper in his Republic. Plato's Athenian Stranger says: "All that relates to retail trade, and merchandize, and the keeping of taverns, is denounced and numbered among dishonorable things. . . . But now that a man goes to desert places and builds houses which can only be reached by long journeys, for the sake of retail trade, and receives strangers who are in need at the welcome resting-place, and gives them peace and calm when they are tossed by the storm, or cool shade in the heat; and then instead of behaving to them as friends, and showing the duties of hospitality to his guests, treats them as enemies and captives who are at his mercy, and will not release them until they have paid the most unjust, abominable and extortionate ransom, — these are the sorts of practice, and foul evils they are, which cast a reproach upon the succor of adversity."

In our day, a similar prejudice, or perhaps we should rather say, a contemptuous toleration, exists toward innkeepers as toward most other classes which minister simply toward the needs and convenience of the human body, such as tailors, shoemakers, dressmakers, milliners, bar-tenders, stable-keepers, and many others which will occur to readers without the necessity of invidious specification. That is a very funny scene in Dumas' "Bragelonne" where the aristocratic Porthas objects to being handled and measured in the ordinary way by the court tailor, and Molière devises the ingenious expedient of having the measures taken from his image in a mirror. A recent sojourn at Atlantic City brought to our mind a sense of the strangeness and unreasonableness of this feeling toward innkeepers, for innkeeping is the chief occupation of the town, and the existence of six hundred inns and boarding-houses in a population of thirty thousand, shows, by force of numbers alone, that these excellent and indispensable people must be

in a realm of their own. When one comes to analyze it, this contempt for the above-mentioned pursuits is very illogical, for it subsists only in the fact of proportion. The man who lets one a horse and wagon to travel ten miles, is not a guest to be invited to dinner by the highest or upper middle classes, but the owner of a railroad which conveys travellers on a large scale, is a highly respectable person. Society is rather contemptuous of the tailor but the contractor who furnishes uniforms to an army is respectable. Whether a man sits on the judicial or the cobbler's bench is of moment only as it concerns the man — Roger Sherman sat on the latter in his youth. Atlantic City is full of men who never will be President, although they would look with infinite contempt on a rail-splitter or a canal-mule driver. Franklin Pierce said at least one thing that deserves to be recorded: when asked about his family coat-of-arms, he said it was his grandfather's shirt-sleeves at the battle of Bunker Hill.

KNOWING YOUR ADVERSARY'S MOVES. — Lately we read a striking story of Paul Murphy, the great chessplayer, who, being shown a painting representing the devil and a young man playing chess for the stake of the young man's soul, and the devil having an overpowering advantage, exclaimed, "I can win the game for the young man," and proceeded to demonstrate his assertion upon a chessboard. But how did Murphy know what moves the adversary would make? We fear the tale is too thin. Lawyers cannot foresee what moves their antagonists will make, and we suppose the chessplayer has no definite prescience on the subject.

NOTES OF CASES.

MUTILATED MONEY. — There is a very numerous class of people in these United States who are crying loudly for base silver money, worth only about half its face, but who would refuse a clipped or punched pure silver coin. And now we find a decision in the New Jersey Supreme Court (North Hudson County Ry. Co. *v.* Anderson, 40 L. R. A. 410), to the effect that a dollar bill from the upper left-hand corner of which a piece one inch and a half by one inch and a quarter had been torn is not a legal tender for carfare, and the conductor may eject a passenger who refuses to make another payment. "He was not bound to accept a bill which was substantially mutilated. If any part was absent which might aid in determining whether it was genuine, he was under no duty to receive it."

In Jersey City, B. R. Co. *v.* Morgan, 52 N. J. L. 60. 558, it was held that a dime worn smooth but not light or indistinguishable, was good tender for carfare, and the Supreme Court of the United States held that there was no Federal question involved (160 U. S. 288). The conductor in Atlantic Consolidated S. Ry. Co. (Georgia Sup. Ct., 33 L. R. A. 824), was evidently not a coin-collector, for he refused a rare half dollar of 1824, supposing it to be counterfeit, and put the passenger off, and it cost the company $100 because he was "gruff" about it.

EVICTION. — The following is from the London "Law Journal": —

"An interesting point to tenants was decided recently by the deputy-judge of the City of London Court (Mr. G. Pitt-Lewis, Q.C.). An action was brought to recover the sum of 33*l.* 16*s.*, the rent of a flat. From the evidence it appeared that the defendant took the flat of the plaintiff at 70*l.* a year, in March last, and furnished it. He had since left it and his goods were still on the premises, but he would pay no rent. He declined to pay any rent, and thought he was perfectly justified in so doing. There was only one common entrance to the mansions, and soon after he went into possession with his wife and family he found that one of the other flats was let to people of a disorderly character, who drove up with men at all hours of the night and morning. No decent man could condescend to allow his wife and children to stay in such a place, and he immediately took them away. He had been compelled to go into rooms elsewhere, and he argued that the plaintiff had been guilty of a breach of covenant in letting the flat in question to the disorderly people, who were still there. If premises were occupied for a purpose which was unlawful, that, in law, constituted a 'disturbance' within the meaning of the agreement of tenancy, and the landlord was responsible to himself and the other tenants in damages. Plaintiff's attorney denied that the flat objected to was occupied by disorderly persons, but contended that even if it were, that was no reason why the defendant should not pay his rent. The deputy-judge said that was so. The defendant might bring an action for a nuisance against the plaintiff, or the plaintiff might be prosecuted under the Criminal Law Amendment Act for letting a place for an illegal purpose, if he had done so, and he was not deciding whether he had or not; there must be judgment for the plaintiff for 14*l.* 11*s.* 6*d.* and costs."

As the tenant did not remove his goods, but thus continued in possession, the ruling was unquestionably correct. But according to Pendleton *v.* Dyett, 4 Cowen 581; 8 *id.* 727, if he had surrendered the premises and had shown that the landlord knew the character of the other tenants before the letting to them, he would have been freed from the obligations of the lease, on the ground of an eviction. The distinction between a physical eviction from however small a part of the premises and a constructive eviction on account of acts of the landlord diminishing the beneficial enjoyment, is generally recognized here, the former discharging the entire obligation to pay rent, but the latter not so if any possession is retained.

The *Pendleton* case is one of the most interesting in the New York books. In the Supreme Court the contrary view was held, but on appeal, the Court of Errors reversed this by a divided court. Two senators delivered written opinions in favor of reversal, and the chancellor was of the same mind, and two senators wrote in support of the judgment below. On the vote six were for affirmance and sixteen were for reversal. Some of the senators uttered high moral precepts, one of them observing: "If in the long track of ages which are past I could find no case parallel with the present, I should decide against the plaintiff, satisfied that if the same case had ever existed, the principal actor in it had not aspired to immortality by publishing his own infamy. But the constructive eviction must proceed from the conduct of the landlord himself, as in the *Pendleton* case. If he simply lets one part to tenants who thus create a nuisance, and does not connive at or consent to such occupation, there is no eviction." DeWill *v.* Pierson, 112 Mass. 8; 17 Am. Rep. 58; Gilhooley *v.* Washington, 4 N. Y. 217 (the last being covenant on a sealed lease), "which does not depend on the fact of occupancy or enjoyment." In the Massachusetts case, the *Pendleton* case was pronounced "an extreme case," "modified if not overruled," and the Supreme Court of New York, in Etheridge *v.* Osborn, 12 Wend. 529, said it "carried the doctrine of eviction to its utmost verge." This was the opinion of Savage, C. J. of the court in both cases. In the *Gilhooley* case, the Court of Appeals, Bronson, J., said it was a case where "the landlord himself drove the tenant out of his part of the house by bringing a moral pestilence into another part of the building." One judge dissented, and would not distinguish the *Pendleton* case.

An amusing evidence of the hostility of the old lawyers to the "reformed procedure" then recently introduced in New York is found in the opening sentence of the opinion of Bronson, J.: "If it be not unlawful to speak of things by their old names, this is an action of covenant on a lease," etc. How those old judges did kick! Bronson could not bring himself to say, "This is an action to recover rent on a lease." That would, to his conscience, have been an "uncovenanted mercy" to the code. But we have outlived all that lingo.

"CURFEW SHALL NOT RING TO-NIGHT." — So say in effect the Texas supreme court in *Ex parte McCarver*, holding that an ordinance making it a misdemeanor for a person under twenty-one years of age to be on the public street of any city or town after nine o'clock at night is an unreasonable exercise of the general powers of the municipality to preserve the public peace and protect the good order and morality of the community, and therefore void. The ordinance provided for the ringing of a "curfew bell" at that hour. The only exceptions were where the minor was accompanied by his parent or guardian, or was in search of a physician. The court conjured up a number of other reasonable exceptions, observing: —

"He may be at church or at some social gathering in the town, and yet, when the curfew bell tolls, in the midst of a sermon or exhortation, he would be compelled to leave and hie himself to his home, or if at a sociable gathering, he must make his exit in haste. He could not be sent by his parents to a drug store, or, for that matter, on any errand, save and except for a physician. The rule laid down here is as rigid as under military law, and makes the tolling of the curfew bell equivalent to the drum taps of the camp. In our opinion, it is an undue invasion of the personal liberty of the citizen, as the boy or girl (for it equally applies to both) have the same rights of ingress and egress that citizens of mature years enjoy. We regard this character of legislation as an attempt to usurp the parental functions, and as unreasonable, and we therefore hold the ordinance in question as illegal and void. See City of St. Louis *v.* Fitz, 53 Mo. 582; City of Chicago *v.* Trotter (Ill. Sup.), 26 N. E. Rep. 359."

The legislators could not have had a distinct idea of the meaning of "curfew" — derived, as every lawyer ought to know, from the French *couvre feu*, cover fire — an injunction to orderly people to cover their fires for the night, and get under the bedclothes. Fire, down in Texas, has only one meaning — to shoot.

FALL OF DRESS FORM. — A very singular case is Cavanagh *v.* O'Neil, N. Y. App. Div. 4; Am. Neg. Rep. 527. A saleslady was employed behind a store-counter, two feet two inches from a showcase six and a half feet high, on top of which was a row of dress-forms or busts, about three feet high, with no rail in front, and not secured in any way from falling. The iron rod supporting one of these was bent, and by the shock of moving furniture overhead or by a draft from a window opened behind, it was toppled over, and struck and injured the plaintiff. A nonsuit was set aside. The plaintiff came off more luckily than Mrs. or Miss Kendall in her suit against the city of Boston (118 Mass. 234), who was injured by the fall of Ben Franklin's bust from the railing of a balcony in a hall, on the occasion of a public reception given by the city to the Grand Duke Alexis.

PROXIMATE BEARS. — The most subtle and metaphysical question now discussed in courts of law is that of proximate and remote cause of damages. A very interesting decision on this question was made in the Massachusetts Supreme Court last summer, in Stone

v. Boston R. Co., 4 Am. Neg. Rep. 490. A teamster brought goods to the defendant's station for shipment, and while there lighted his pipe and threw the match under the station platform, where it set on fire rubbish, saturated with drippings from barrels of oil, and ignited several barrels of oil on the platform — and which had been there more than forty-eight hours, contrary to law — and then the platform, and thence communicated to and destroyed the plaintiff's premises on the opposite side of the street. It was held that the defendant was not responsible, the teamster not being in its employment, and the mere inflammability of the defendant's premises, although illegally caused, not being the original cause of the damages, and being too remote to render such a result probable or within reasonable foresight or contemplation. The court cited, among cases that are somewhat to the contrary, one that shows that bears were dangerous in New Hampshire so recently as 1876 — Gilman *v.* Noyes, 57 N. H. 627, where the defendant carelessly left down the bars of plaintiff's pasture, and his sheep escaping, wandered away and were killed by bears. This seems about as unlikely to be foreseen as a consequence as anything that can be imagined, but the court approved a verdict, and held the defendant responsible. This, however, was away up in Coös County, the northernmost of the State, and bordering on Canada, where bears do prowl. The sheep were valued at $9.00 and the expense of hunting for them at $13.16, but there were six lawyers on the case and three judges wrote separate opinions. Ladd, J., was somewhat humorous on this occasion, and said: —

"*Causa causantis causa est causati* may be true, but it obviously leads into a labyrinth of refined and bewildering speculation whither the law cannot attempt to follow. This case furnishes an illustration. The jury say the sheep would not have been killed by bears but for their escape, and would not have escaped but for the bars being left down. But it is equally certain, without any finding of the jury, that they would not have been killed by the bears if the bears had not been there to do the deed; and how many antecedent facts the presence of the bears may involve, each one of which bore a causative relation to the principal fact, sufficiently intimate so that it may be said the latter would not have occurred but for the occurrence of the former, no man can say. Suppose the bears had been chased by a hunter, at any indefinite time before, whereby a direction was given to their wanderings which brought them into the neighborhood at this particular time; suppose they were repulsed the night before in an attack upon the bee-hives of some farmer in a distant settlement, and, to escape the stings of their vindictive pursuers, fled, with nothing but chance to direct their course, towards the spot where they met the sheep; suppose they were frightened that morning from their repast in a neighboring cornfield, and so brought to the place of the fatal encounter just at that particular point of time. Obviously, the number of events in the history not only of those individual bears, but of their progenitors, clear back to the pair that, in instinctive obedience to the divine command, went in unto Noah in the ark, of which it may be said, but for this the sheep would not have been killed, is simply without limit. So the conduct of the sheep, both before and after their escape, opens a field for speculation equally profound and equally fruitless. It is easy to imagine a vast variety of circumstances without which they would not have made their escape just at the time they did, though the bars were down, or, having escaped, would not have taken the direction to bring them into the way of the bears just in season to be destroyed, as they were. Such a sea of speculation has neither shores nor bottom, and no such test can be adopted in drawing the uncertain line between consequences that are actionable and those which are not."

SURRENDER OF PATERNAL AUTHORITY. — Most lawyers take their Bible, and most their Shakespeare, it is to be feared, at second-hand, and therefore when we come across pertinent quotations from them in their judicial opinions (possibly derived from the briefs of counsel), we like to reproduce them so that all the profession may read them. Just now we ran across the following, in Soper *v.* Guernsey, 71 Penn. St. 223: —

"It is not an uncommon arrangement for a father to make a conveyance of his farm to one of his sons, in consideration of being supported, nursed and attended during his life. The wisdom of such a contract is very questionable, even where the most entire confidence is felt at the time in the affection of the child. The son of Sirach pronounces emphatically against it: 'Give not thy son and wife, thy brother and friend, power over thee while thou livest, and give not thy goods to another, lest it repent thee, and thou entreat for the same again. As long as thou livest and hast breath in thee, give not thyself over to any. For better is it that thy children should seek to thee than that thou shouldst stand to their courtesy. In all thy works keep to thyself the preëminence; leave not a stain in thine honor. At the time when thou shalt end thy days and finish thy life distribute thine inheritance.' (Ecclesiastes xxxiii: 19–23.) The most striking illustration of the same thing is in the pathetic tragedy of Lear, where the fool confirms the opinion of the wise man of the Apocrypha: 'Would I had two coxcombs and two daughters. If I gave them all my living, I'd keep my coxcombs myself.'"

There is, however, one argument in these days in favor of giving while living rather than leaving by will or to succession, — one may possibly thus evade the inheritance tax.

CAIN'S PUNISHMENT. — In Turbeville *v.* State, 56 Miss. 798, commenting on the temporary absence of the judge from the bench during a trial, the court said: "We do not mean to say that he must actually listen to every word that falls from the lips of counsel while they are addressing the jury, for this might impose a burden too heavy to be borne."

The Green Bag.

PUBLISHED MONTHLY, AT $4.00 PER ANNUM. SINGLE NUMBERS, 50 CENTS.

Communications in regard to the contents of the Magazine should be addressed to the Editor, HORACE W. FULLER, 344 Tremont Building, Boston, Mass.

The Editor will be glad to receive contributions of articles of moderate length upon subjects of interest to the profession; also anything in the way of legal antiquities or curiosities, facetiæ, anecdotes, etc.

IT is with a feeling of sincere sorrow and a sense of personal bereavement that we have to announce the death of IRVING BROWNE, who died at Buffalo, N. Y., on February 6. His death removes from the ranks of the legal profession an able lawyer, a brilliant writer and a most courteous and genial man. The readers of the GREEN BAG will feel his loss especially, for the "Easy Chair" which he has so long and ably filled is now vacant, and after this issue will cease to be a feature of the magazine.

FACETIÆ.

THE late Charles Matthews now and then failed, like some of the rest of us, in meeting his bills as promptly as the tradespeople concerned could desire. On one occasion a brisk young tailor, named Berry, lately succeeded to his father's business, sent in his account somewhat ahead of time. Whereupon Matthews, with virtuous rage, seized a pen and wrote him the following note: "You must be a goose — Berry, to send me your bill — Berry, before it is due — Berry. Your father, the elder — Berry, would have had more sense. You may look very black — Berry, and feel very blue — Berry, but I don't care a straw — Berry, for you and your bill — Berry."

THE trial of a doctor's suit was published in a Connecticut newspaper some years ago, in which a witness was called for the purpose of approving the correctness of the doctor's bill. The witness was asked by the lawyer whether the doctor did not make several visits after the patient was out of danger. "No," replied the witness. "I considered the patient in danger so long as the doctor continued his visits."

THE late Senator Vance, of North Carolina, when arguing a case in the Supreme Court at Washington, received a note with R. S. V. P. in the corner. The interruption annoyed him, but he scribbled off a short reply with S. B. N. in the corner. His friend on meeting him asked what S. B. N. stood for. Vance, affecting to be ignorant, said, "Pray, tell me first what R. S. V. P. stands for." His friend replied, "Why, governor, I thought every educated man knew that they are the initials of a French phrase which means 'answer requested'; now, what does S. B. N. stand for?" "Why," said Vance, winking at the crowd, "I thought every educated gentleman knew that they are the initials of an English phrase which means 'sent by a nigger.'"

THE late Hon. B. F. Moore, of North Carolina, a very able lawyer, was often rough on witnesses. On one occasion, in Warren Superior Court, a highly respectable old gentleman who was roughly cross-examined by him as to the testator's handwriting in a contested will case, stopped as he was leaving the witness stand, and said, in reproachful tones and almost with tears in his voice, "Mr. Moore, you question me like you doubt my knowing Mr. Powell's *handwrite*. Why, I could *swar to his spelling*."

MR. LYNCH and his friend were discussing family names and their history.

"How did your name originate?" asked the friend.

"Oh, probably one of my ancestors was of the grasping kind that you hear about so often. Somebody gave him an 'ynch,' and he took an 'L.'"

NOTES.

SULBY parish, in Northamptonshire, made the following return to the county council's request for parish documents: "No church, no parson, no tithe, no public, no property, no documents."

ONE more experience in legislation is announced from New Zealand. This time it takes the form of a state system of old-age pensions, by which the poor are to be provided for in their old age in all cases in which they have not made a sufficient provision to secure themselves against want. As yet the details of the scheme are not available for criticism, but its main features are sufficiently distinct to arouse interest and attention. Unlike the German system, which is paternal in its operation by compelling workmen to contribute to a provident fund while they are young and vigorous, the New Zealand plan is evidently socialistic in idea. There is to be no special contribution by the workers to secure the advantage of the pension. As a citizen, the State recognizes that it is bound to see that he or she does not want food and covering in old age, and if it is clear that any one has not the means of providing these at sixty-five years, the State will supply it. The pensions are to be paid out of the general taxation of the country, and will, of course, be made to take the place of other State aid as administered elsewhere, in the various forms of workhouses, refuges, and other State charities. Many things may no doubt be urged both for and against the experiment in theory, but it can hardly be doubted that the civilized world may be the gainer by having it presented as an object lesson in practice. New Zealand has already tried many things — some of them with marked success; it will be interesting to see the results that follow upon her last departure in state socialism. — *Harper's Weekly.*

UNDER no title of the law does it so often happen that a judge falls into the error of prejudging a case as in prosecutions for the publication of immoral literature. There is no reason for this except that a weak judge is liable to be overcome by the temptation to appear respectable at the defendant's expense. Admirable is the blunt honesty of the late Judge Nelson, of Boston, who, in a case of this kind, when Assistant District Attorney Almy was struggling to construe into a publication some objectionable notions that existed in his own fancy rather than in the book itself, dismissed the case with the remark: "The court is robust enough to stand that." London recently had a laugh at Sir John Bridge, who was so previous as to request ladies to retire from the court room before the reading of alleged immoral matter, and, of course, before it could be determined whether it were really immoral or not. A spectator hits off the scene in this way: —

There was a blushing magistrate
All in the street of Bow;
Said he: "This case is very blue;
Dear ladies, go! I beg you to —
It really is not fit for you."
And yet they would not go.

The magistrate he shook his head,
And said with air recondite:
"The law permits you to be here,
'Tis true; but mark, this book will sear
Your moral fiber; mine, I fear,
Was long since quite beyond it."

And yet the ladies stayed and stayed
Until the case was over;
Their friends now scan them eagerly
The awful difference to see
'Twixt what they were and what they be,
Yet naught can they discover.

CURRENT EVENTS.

NO less than five systems of law are in use in Germany.

THE English and Chinese languages are said to be the only two among all those known that class inanimate objects as of the neuter gender.

AN amusing "international" incident recently stirred up the Spanish legation at Berlin. The French cook beat the German housemaid for damaging a cake before he took time to discover that the English chambermaid was the culprit. As the crime was committed on "foreign" soil, the police would have been unable to right the wrongs of the housemaid had not the ambassador discharged the cook; otherwise the German woman would have been compelled to submit in her own country to Spanish jurisdiction, because the place where she received her beating is extra-territorial.

FRANCE has paid its last pension to Napoleon the First's soldiers. In 1869 a law was passed granting fifty dollars a year to all non-commissioned officers and privates who had served ten years in the armies of the First Republic or of the First Empire and had received a wound. For the first year the payments amounted to six hundred thousand dollars; last year the sum was fifty dollars; and the last recipient is now dead, at the age of one hundred and five years.

THE monotony of farm life in Australia, where houses are few and far between, has recently been modified by an ingenious use of the telephone. It would hardly have paid any one to lay wires from farm to farm, for those buildings are often separated by many miles of open country; but some one found that the wire fences which are in common use were most efficient lines of communication for telephonic purposes, and the discovery has resulted in friendly intercourse being established between the members of families separated from one another by as much as a dozen miles. A number of different stations are now connected in this way, and we can readily understand what comfort the thought must bring to the members of an isolated household that they are, in case of emergency, within call of fellow-beings.

IN the old days when the Spanish province of Aragon was a proud and independent monarchy, the people used, when choosing their king, the following singular form of election: —

"We, the freeborn inhabitants of the ancient kingdom of Aragon, who are *equal to you*, Don Philip, and *something more*, elect you to be our king, on condition that you preserve to us our rights and privileges. If in this you should fail, we own you for our king no longer."

A NEW BRAIN EVERY SIXTY DAYS. — A German biologist has calculated that the human brain contains 300,000,000 nerve cells, 5,000,000 of which die and are succeeded by new ones every day. At this rate we get an entirely new brain every sixty days.

LITERARY NOTES.

THE complete novel in the March issue of LIPPINCOTT'S is "The Sport of Circumstances," by Clarinda Pendleton Lamar, a tale of modern southern life. Joseph A. Nunez, in an article on "Cuba," gives timely and interesting facts relating to animal and vegetable life in our new possession. "Recollections of a London Lawyer," by G. Burnett Smith, tells amusing incidents of London Law Courts, especially connected with the career of Montagu Williams. "Brainerd's Idol," by Wm. T. Nichols, is a tale of an ambitious editor, and is followed by the "Perception of the Picturesque," by J. Hunter. Geraldine Bonner has a romantic story entitled "His Honor.'

"THE Etchingham Letters," which are now running serially in THE LIVING AGE are attracting wide attention by their range and their humor. They treat of everything, from cycling to theology, and with a brightness which shows that the art of letter-writing is not extinct.

SCRIBNER'S MAGAZINE for February brings forward several more of its attractive features for 1899. It is not a "War Number," although it contains one of the most graphic things yet written about the war—the second instalment of Governor Roosevelt's serial on "The Rough Riders." Senator George F. Hoar, of Massachusetts, one of the oldest and most conspicuous of the members of Congress, begins his reminiscences of the political events of the past fifty years. "Aunt Minervy Ann" is destined to take her place alongside Uncle Remus as one of Joel Chandler Harris's two most humorous characters. The first of her Chronicles, in this number, tells how she "ran away from home and then ran back again." A new writer of fiction, William Charles Scully, who has been highly praised by Kipling, appears with a tale of South Africa entitled "The Lepers." Miss Anne O'Hagan has written a very humorous tale of Irish-American political life entitled "Riordon's Last Campaign."

IN the February number of the AMERICAN MONTHLY REVIEW OF REVIEWS the editor seeks to apply the lessons of our national failures in the South during the reconstruction period following the Civil War to the present problems of a similar nature in Cuba, Porto Rico, and the Philippines. The editor warns us against a new type of "carpetbagger" who is threatening to invade Cuba—namely, the franchise-grabber. A large proportion of space in this number is given up to editorial and contributed articles on the management of foreign dependencies. Sylvester Baxter contributes an interesting study of the Dutch rule in Java, and Dr. Daniel Dorchester makes a statistical exhibit of the recent drift toward colonial and protectorate governments.

AN important discussion of the problems of politics, by Franklin Smith appears in APPLETON'S POPULAR SCIENCE MONTHLY for March, under the title "Politics as a Form of Civil War." Professor Robinson contributes an instructive as well as amusing account of a curious pet, a scorpion, of which he was at one time the possessor. A number of interesting portraits and two maps add very much to the value of Professor Ripley's account of "The Racial Relationships and Peculiarities of the people of the Balkan Peninsula." There is also an article of special timeliness on "The Recent Marvelous Increase in the Production of Gold," by Alexander E. Outerbridge, Jr., whose father was for many years director of the mint.

THE March ATLANTIC opens with a brief and well-considered editorial article setting forth clearly and dispassionately the present international situation, and the rights and duties of the hour. Dr. John Fiske in "Some Cranks and their Crotchets" details at length and most entertainingly some remarkable phases of what he denominates as Insane, or rather as Eccentric Literature. William Goodell Frost, in describing our "Contemporary Ancestors in the Southern Mountains," depicts a strange condition existing in a series of communities on the Appalachian Mountain slopes. Miss Marion Hamilton Carter's sprightly and amusing protest as a primary teacher, against certain kindergarten methods and kindergarten children, will furnish entertainment to all readers. President Hyde of Bowdoin College discusses earnestly and intelligently the wonderful career for thirty years of President Eliot of Harvard University. John Burroughs and Bradford Torrey for once forsake the book of nature for the books of man, and discuss respectively "The Vital Touch in Literature," and "Writers that are Quotable." Grant Squires in his "Confession of a Government Censor" reveals a striking chapter of the secret history of the war. "Comida," a touchingly realistic Cuban sketch; entertaining short stories; a group of brilliant poems, and other timely and interesting articles make up a number of unusual variety and value.

HARPER'S MAGAZINE for March contains "The Spanish-American War. Part II. The Coming of war," by Henry Cabot Lodge; "Major-General Forrest at Brice's Crossroads," by John A. Wyeth, M.D., an account of one of the most brilliant and decisive Confederate victories of the Civil War. "English Characteristics," by Julian Ralph; "The building of the Modern City House," by Russell Sturgis; "The Massacre of Fort Dearborn, at Chicago, in 1812," by Chief Simon Pokagon. The author is a son of the Chief Pokagon who, though friendly to the whites, was present at the massacre. The fiction in this number is "On the Steps of the City Hall," by Brander Matthews; "Without the Courts," by Sarah Barnwell Elliott; "The Way of the Cross," a story of Siberia, by Stephen Bonsal; "The Rented House," a psychological story, by Octave Thanet.

WHAT SHALL WE READ?

A NEW book has just been issued, entitled *White Dandy*, which is one of the best stories we have read, giving a horse's own story and teaching kindness to the horse as well as to other animals. It is announced as a companion to "Black Beauty," the noted book of which over two million copies have been sold. The author is Velma Caldwell Melville, a very competent and pleasing writer, and the book is issued by J. S. Ogilvie Publishing Company, 57 Rose Street, New York, and is sold for twenty-five cents per copy.

NEW LAW-BOOKS.

A TREATISE ON THE LAW OF BUILDING AND LOAN ASSOCIATIONS, WITH FORMS. By CHARLES N. THOMPSON of the Indianapolis bar. Second edition Callaghan & Co., Chicago, 1899. Law sheep. $6.00 *net.*

The rapid growth of Building and Loan Associations during the past few years, has required on the part of our legislatures and courts especial attention; and the recent enactments and decisions have recorded many new and important changes in the law regarding their control. This new edition of Mr. Thompson's well-known work covers exhaustively the entire field of building associations. It has been entirely rewritten, new chapters have been added and a vast amount of valuable new matter has been incorporated, so that the treatise is brought fully down to date. A complete set of forms is given, taken from those in use among the best managed societies in the country, and covering every style of document used by them; so drawn as to be of service in every State. We commend the work to our readers as one that they will find invaluable if they have occasion to familiarize themselves with the laws of building societies.

THE LAW OF BANKRUPTCY, including the National Bankruptcy Law of 1898: the rules, forms, and orders of the United States Supreme Court, the State Exemption Laws, the Act of 1867, etc., illustrated by the Bankruptcy decisions under the Act of 1867. By EDWIN C. BRANDENBURG, LL.M. Callaghan & Co., Chicago, 1898. Law sheep. $5.00, *net.*

Having prepared and annotated the bankruptcy laws for Congress, Mr. Brandenburg has been led by numerous requests to prepare this compendium on the law for the benefit of the legal profession. The work is a very comprehensive and complete treatise on the subject. The Acts of 1867 and 1898 are largely parallel, and the decisions under the earlier act will largely control the interpretation of the present act; the author has therefore under every section and sub-division of the law of 1898 placed analagous provisions of the law of 1867, and the decisions of all the courts based thereon. Much labor and necessity for frequent cross-reference is thereby avoided. The treatise is in every way admirably adapted to the practitioner's needs, and should be heartily welcomed.

I am truly yours
Martin Ingham Townsend

The Green Bag.

VOL. XI. No. 4. BOSTON. APRIL, 1899.

HON. MARTIN INGHAM TOWNSEND.

BY GENERAL EDWARD FITCH BULLARD OF THE NEW YORK BAR.

MR. TOWNSEND, the subject of this sketch, was born at Hancock, Mass., February 6, 1810. The Townsends came from England in the year 1668 and settled at Weston, Mass.

The mother of Martin I. was Cynthia Marsh, who was a descendant of Miles Standish of the Mayflower and of Mary Adams of Braintree. His grandfather, Rufus Marsh, was a soldier in the war of the American Revolution, and was in the sanguinary battle at Bemus Heights at the age of nineteen years. His parents removed from Hancock to Williamstown, Mass., in 1816, when Martin, the son, was six years of age, and he was there brought up on his father's farm amidst the romantic scenery of that historical country. From the farm Mr. Townsend entered Williams College and graduated from that distinguished seat of learning in 1833, and was admitted to the practice of law in New York, May 13, 1836.

Mr. Townsend became a resident of Troy, N. Y., December 1, 1833, where he has ever since been an active member of the legal profession, and is now the oldest man in active practice in the State.

He has been a prominent figure in public life for more than half a century. He was district attorney of Rensselaer county from 1842 to 1845, and was United States district attorney from March, 1879, to October, 1887. He was a member of the constitutional convention of 1867, and of the constitutional commission of 1894. He was made a member of the board of regents of the University of the State of New York in 1873, and is still a member of that body. From 1833 to 1848 he was one of the most active Democrats in Rensselaer county, having as a co-laborer during the latter part of that time Col. Charles L. MacArthur, of the "Troy Northern Budget," and Thomas B. Carroll, subsequently mayor of Troy.

In 1848 the encroachments of the slave power caused him to abandon the Democratic party, and from that time forward he acted with the same zeal in behalf of the Republican party. He has participated in many notable debates at home and abroad on the leading issues of the day. He was, in 1874, elected to Congress, and was honored by a reëlection, being one of the most conspicuous members of the national legislature, and his speeches attracted wide attention. Besides devoting a great deal of time to professional and public affairs the venerable gentleman has been an enthusiast in stock-raising and in agricultural matters. In 1863 he acquired a tract of 1,100 acres of land in Iowa, and devoted it to the raising of beef cattle and corn. His enterprise in this direction is still such as to require a very considerable amount of attention.

Besides being very active in the political field, Mr. Townsend has participated in the trial of several noted criminal cases, prosecuting as district attorney Henry C. Green, who poisoned his wife in Berlin, in 1844, and acting for the defense in the noted case of Henrietta Robinson, known as the veiled murderess, and Andrus Hall, accused of murdering the Smith family in Petersburgh.

He also defended Whitbeck and three other farmers of Rensselaer county, who were indicted for killing Willard Griggs, a

deputy sheriff of that county, while he was delivering possession of Whitbeck's farm to a representative of the Van Rensselaers under a judgment for non-payment of rent. Although the killing was clearly proved, the prisoners were acquitted. This was one of the trials that grew out of the great anti-rent cases which arose under the leases granted by the Van Rensselaers during the last century. These leaseholds embraced a great portion of the lands in Albany and Rensselaer counties. These acquittals at the time were regarded as a great legal triumph.

About 1865 he defended George E. Gordon, on his second trial, on the charge of murdering Owen Thompson, a wealthy butcher of New York city, who went to Albany to buy cattle with some three thousand dollars in currency in his possession, and was found dead September 17, 1864.

The first trial was held before the elder Judge Peckham in Albany, when the accused was defended by the writer of this article and by Rufus W. Peckham, junior, now a judge of the supreme court of the United States. The circumstantial evidence very clearly showed that Thompson was killed by Gordon. At the close of the trial Judge Peckham made a fierce charge against the prisoner, and among other matters stated that the failure of the prisoner to show where he got his large amount of money, under the circumstances of that case, became of a conclusive character. An exception to this was taken, and it was held error by the court of appeals, the conviction reversed and a new trial granted in September, 1865. (33 New York Reports, 501.)

A large number of lawyers from Troy and Albany were present when the judge made that charge to the jury, among whom was Mr. Townsend. He came over to the writer and stated "that was the fiercest charge made since the charge of the British at Balaklava."

After the reversal, the trial was changed from Albany to Schoharie county. The writer being then in ill health, by his advice Mr. Townsend was employed and made the defense. On the second trial, the prisoner was convicted of murder in the second degree before Judge Ingalls and sentenced to imprisonment for life. It may be stated here that after an imprisonment of over thirty years Gordon's character became so improved, that the prison officers unanimously recommended his pardon, which was wisely granted by Governor Black within the last two years.

At the bar Mr. Townsend entered into the cause of his client with great earnestness, and almost vehemence. He was always ready at repartee. The distinguished William A. Beach was in practice in Troy for many years before he removed to the city of New York, and in most of the important cases in Troy they were brought in collision.

On the trial of an action against the People's line of steamboats on the Hudson River, Mr. Townsend was prosecuting a case for personal injuries, and Mr. Beach was defending.

Mr. Beach seemed to fear a verdict against his client, and besought the jury to render a light verdict because the stock of the company was very largely held by widows and orphans.

In Mr. Townsend's answer, he told the jury that "we all know a few of those widows and orphans; among their number we remember the widow William Kelly, the widow Daniel Drew, and the widow Cornelius Vanderbilt; and the jury must naturally feel great sympathy for these destitute widows."

It is needless to say the jury did not reduce the amount of their verdict in sympathy for those distinguished widows.

There was another case in which a sharp controversy arose between Messrs. Beach and Townsend. Mr. Beach dyed his hair so it was as black as a raven, while the hair of

Mr. Townsend was left as white as the driven snow. Mr. Beach was two months the senior. Mr. Beach rather sneeringly said of Townsend: "That remarkable old man in his long life has seen things which nobody else ever saw."

In reply Mr. Townsend, referring to those remarks, stated, "Mr. Beach is my senior in point of fact, and so it would appear if nature had her course, but even as things are, the difference in age between the gentleman and myself is merely *colorable*."

In October, 1898, a new court-house was dedicated in the city of Troy with highly interesting public services. On that occasion the Bar presented a fine oil painting of their venerable brother member, Mr. Townsend, to be hung upon the walls of the new building.

Mr. Townsend spoke upon the occasion, and his topic was, "Some of our Dead." At that date Mr. Beach had not been among the living for several years; but Mr. Townsend paid the following eloquent tribute to his memory: —

"William A. Beach came to us from Saratoga with a State-wide reputation as a very eminent lawyer already secured. He remained with us for about twenty years, and then advanced to the city of New York, where great reputations are amplified and perfected, and where great fortunes are lost and won.

"Mr. Beach had early adopted a personal carriage of the most elevated character, and had schooled himself in the use of a vocabulary, as well in his public and legal discussions as in conversation and social intercourse, suited to the most elevated conditions of life.

"From the time when he entered Troy as an accomplished lawyer, until the last hour of his last visit amongst us, he was never heard to utter a word or phrase below the elevated standard which he had adopted. He was always eloquent before the public, and charmed every ear so favored as to come within the sound of his superbly educated voice.

"He never entered court without a complete preparation for every exigency which might be expected to arise. He was not a better judge of legal questions than many of his brethren, but it was rare that any of us could present our conclusions to the court and jury in as elevated and attractive a form as he.

"When, at an advanced age, he entered the tribunals of New York city, he there maintained to the close of his life the elevated position which he had vindicated for himself in the lands of his early efforts."

A biography of Mr. Beach appears in Vol. II. of the GREEN BAG.

Mr. Townsend, like Mr. Lincoln, always had great confidence in the plain people. He was an early advocate in this State of the election of judges by the people, for short terms, which was adopted in 1847.

He had much experience in the United States courts while he held the office of U. S. attorney for the Northern District of New York, and used to speak of those courts as made "for the benefit of sons-in-law."

As a political speaker on the stump he had long experience and few superiors. His ready wit, genial humor, and strong expressions, had great power before a popular audience.

During his four years in Congress, he took an active part in many important debates, especially in support of appropriations for the Centennial of 1876. Also he entered actively into the great contest in the House when the electoral commission was formed to decide the title to the Presidency between Hayes and Tilden.

When the War of the Roses in England occurred between Edward and Henry, the latter offered to submit the question of title to the Court of King's Bench, but the latter court refused to entertain it for want of jurisdiction, and left the matter to be settled by the sword. Our Congress, with greater wisdom, assumed jurisdiction, and probably avoided a civil war.

The Hon. Ingham Townsend, of Floyd, Oneida county, N. Y., a cousin of Martin I.,

loaned Grover Cleveland twenty-five hundred dollars, without security, with which he obtained his education, all of which was duly repaid.

Randolph W. Townsend, of New York City, a prominent member of the Bar, who is upwards of eighty-six years of age, is a brother of Martin I.

Mrs. Nason of Troy is the only child of Mr. Townsend, and she has but one child, Hon. Henry T. Nason, the present judge of Rensselaer county.

Mr. Townsend has always maintained a high reputation for ability and integrity, and his neighbors, among whom he has resided for over sixty-five years, fully appreciate and respect him.

On February 5, 1899, the day before he became eighty-nine years of age, the "Troy Northern Budget" thus spoke of him: —

"Hon. Martin I. Townsend, the Nestor of the Rensselaer County bar, and one of the three oldest active members of the State bar, closes to-day the eighty-ninth year of his distinguished, and in many respects remarkable, life, and will to-morrow enter upon his ninetieth year. Mr. Townsend is the most vigorous man of his years known to the profession of law in the State. His only professional rivals in years are Mr. Austin of Chautauqua, who is ninety years old, and Mr. Silliman of Brooklyn, who is ninety-three years old. He attends daily to his professional business, and is as much interested as ever in the work of his profession and the events of the day. Nature has been very kind to him, equipping him for the battle of life with splendid physical powers and talents, which have given him a place of high honor among men of mark."

The writer of this sketch has been personally acquainted with Mr. Townsend for over sixty years, and deems it a duty as well as a pleasure to place upon record a brief biography of an eminent citizen, a distinguished and venerable member of the American Bar.

CONSTITUTION OR THEORY,— WHICH?

By Eltweed Pomeroy,

President National Direct Legislation League.

Talk about anarchy! talk about breeding the spirit of commercialism! What does it more than the representative citizens of Chicago? Who bribes the common council? It is not the men in the common walks of life. It is you representative citizens, you capitalists, you business men.

Ex-Mayor Swift, *of Chicago.*

Prominent merchants who were "on the inside" as to contracts, manufacturers enjoying special municipal privileges, wealthy capitalists, brokers, and others who were the holders of securities of traction, and other corporations, had their mouths stopped, their convictions of duty strangled, and their influence before, and their votes on, election day preempted against us because identified with the city ring.

The support of great steam railroads and the largest manufacturing corporations was thrown against us because, as one frankly explained, it was much easier dealing with a "boss."

We even found the directors of many banks in an attitude of cold neutrality, if not of actual hostility, because their bank either was or wanted to be the depository of the city's funds (to be enjoyed without interest), or because of the profits in discounting municipal obligations. As one of them puts it, "If you want to be anybody, or make money in Pittsburg, it is necessary to be on the side of the city ring."

The venality of some of the newspapers was another surprise to us. This pitiable bartering of conscience and servile espousal of a cause they really despised was the price paid for a share in the city advertising, which was at the disposal, but not at the expense, of the city boss.

The extent of this demoralization among the higher ranks of citizens, of bankers, manufacturers,

capitalists, newspaper proprietors, and of professional men, we could not have believed possible if we had not verified it by actual experience.

OLIVER MCCLINTOCK, Esq.,
Of the Municipal League of Pittsburg.

The thing we have most to fear is not the depravity and criminality that are rampant, but the decency that is languid and the respectability that is indifferent, and that will go a-junketing when a State is on the edge of a crisis, or go fishing on a day when the city is having its destiny determined at the polls.

DR. PARKHURST.

"Are the people of the United States prepared to give up the experiment of constitutional self-government?" is the question with which Mr. Ben. S. Dean begins an article in a recent number of the GREEN BAG; and then proceeds to attack the Initiative and Referendum, which he says is "emerging from the academic into the realm of practical politics."

He answers this question "No," and so do I. He says the two systems are "diametrically opposed"; it is "as impossible to harmonize them as it is for oil and water to mingle." This I deny, and claim that the Initiative and Referendum constitute the method for self-government *par excellence*. That they are constitutional is shown by the fact that the Referendum is the method of amending the United States Constitution, and that of every State save Delaware. A certain prisoner was explaining his case to his lawyer, when the lawyer said, "Oh, but they can't put you in prison!" and thereat the prisoner replied, "But I am in prison!" Notwithstanding the arguments against its constitutionality, the Referendum is a part of our fundamental political system.

What are these things with the formidable names? They are very simple.

There are two forms of the Referendum. The Obligatory Referendum is that by which all laws are referred to the people for ratification or rejection. This is in use in Berne, Zurich, and other cantons in Switzerland; in New Zealand and Australia, regarding liquor licenses, the land tax, and other local matters; in Germany, Sweden, Norway, France, England, and other European countries, on many questions of taxation, license, bonding, etc. It is in use in the United States in amending the national and State constitutions; in many State matters, such as the removal of the capital, the forming of a State bank, the going into debt beyond a certain limit, etc., and in innumerable local matters. For instance, the cities of Massachusetts vote every year on the question of licensing saloons. In E. P. Oberhaltzer's book, "The Referendum in America," almost endless examples of its use, as well as that of the Initiative, are given.

But the more stringent form of the Obligatory Referendum is not advocated for general use here. We advocate the Optional Referendum, by which only such matters are referred to the people as a minority of the voters by petition ask to have referred; or sometimes such a demand might be made by a minority of the legislative body, or the governor, or a supreme court judge. Coupled with this is the provision that the laws shall not go into effect until sufficient time has elapsed to allow petitions to be signed and filed, say ninety days for a State; with, however, the important exception that urgent laws for the "immediate preservation of the public peace, health, and safety" can go into immediate effect. This provision is in the Swiss constitution, in the constitutional amendments adopted by the legislature of South Dakota and Oregon, the model drafted by the National Direct Legislation League, and in almost every other draft I have seen. This does away with the objection which Mr. Dean makes, that "in case of a war a few people might suspend a law from operation," and the enemy meantime "have burned half of our coast cities and laid the country in waste." By writing thus, Mr. Dean shows that he has not carefully looked up the matter he is criticising.

By the Initiative, a reasonable minority of the voters can, by filing a petition, force the legislative body to consider a law, and if it is not passed it goes to a referendum or poll of the people at the next election. The two constitute direct legislation, which is the constant control of the people over the laws which are to govern them.

It is the method used whenever a body of people get together to transact any business. One man rises and says, "I move so and so," and another seconds him — that is the Initiative. After discussion it is voted on — that is the Referendum. Often a matter is referred to a committee for investigation and report. When the report is in, the body votes to accept or reject, as it sees fit — that is the Referendum.

Mr. Dean closes with an eloquent paragraph conjuring up all sorts of evils, and ending with "it ought to be discountenanced by every man who has the welfare of mankind, the hope of popular government at heart." Now, if anything is "popular government," direct legislation is. It is the enacting of laws by the people. It is popular government. It is self-government. Too often, alas! our government is not popular. The laws are enacted by some special clique of men for their own interests and against the interests of the people. Direct legislation will restore and strengthen popular government. It will make self-government.

Notice one thing about it. It will not do away with legislatures. By taking away the corrupting power to enact laws, it will lift them to their old and high place of councils for the people. Then our legislative halls will become true council chambers for the people, instead of, as now, the lobby's registering hall.

Mr. Dean quotes Washington, and misapplies him; conjures up an awful bogy about the Roman Catholic church, and then says, "there is no disposition to reopen the religious controversies of the past"; that it would be "impossible for the courts to enforce their decrees against the majority," and overlooks the vast mass of unenforced and obsolete laws on our statute books; complains of the uncertainty as to what the laws will be under direct legislation, forgetful that we labor under that uncertainty now, and that when the people do speak their voice is final; treats the proposition to elect the President, Vice-President and United States senators by direct vote as a feature of direct legislation; and finally states that it will array "the people in two great hostile camps at each presidential election," just as if that was not the case now! And so one might go on cataloguing his inaccuracies, misapplications and misunderstandings.

Seven or eight people have asked me to answer this article, and when I first read it with that end in view, it seemed to me only worthy of ridicule, so palpable and gross were these bulls of logic and statement; but as I looked at it more closely, I saw two things needing serious treatment because they are characteristic of all the opposition to direct legislation: First, a cloudiness and indefiniteness of grasp as to what is the real source of authority in this country; and second, a fear or dread of the people.

He quotes from the Declaration of Independence about the "consent of the governed" as being "the keystone of our constitutional system," and then refers to direct legislation as the "surrender of their great principle," and laments that we are asked "to accept in its place the cruel and arbitrary will of an irresponsible majority." He objects to the fact that under the Initiative and Referendum "the majority shall rule"; and "he denies the right of the majority to rule." The placing of adjectives such as "cruel," "arbitrary," and "irresponsible" before the thing one objects to, is a common trick of those that have no argument.

Now, if the majority is not going to rule,

who is? If so, how are we to tell which one? There may be a number of minorities but only one majority. Mr. Dean does not express his choice. If the words "consent of the governed" do not mean a majority of the governed — which is what direct legislation obtains — but of the minority of the governed as well, then the pickpocket will have to consent to the law by which he is imprisoned, and the murderer to the law which hangs him before such can be the law punishing either. This is a *reductio ad absurdum*. There is only one way out of the dilemma; we will be governed by the dead hand — the institution which our fathers founded shall govern us without change; because if change is allowed, who is to decide what, and how far it shall go? Is a majority of the people of our present time to decide this?

If so, the whole case is given away. No one reveres more than I the political wisdom of the fathers of our country. "There were giants in those days." And because they were giants, they did not believe in this changelessness; they provided a way by which a majority of the governed could change the fundamental law of the land. While revering their far-sighted sagacity and nobility of purpose, I deny that they knew better than we what is good for us. Conditions, times and problems have changed. Many of our modern questions would be strange, alien, incomprehensible to them. They would have been the first to reject such domination. If they had not, our Puritan and Cavalier ancestors would never have emigrated to this country, and our Colonial ancestors would never have rebelled against King George. We should cease to progress, and sink to a Chinese deadness. Whoever accepts government by the dead hand rejects self-government.

Under this mistiness as to the real source of authority in this country, the people, the real common people, of whom Lincoln said, "God must have loved them, he made so many of them," — lies a fear and dread of the people. They are "the populace," "the great unwashed," "ignorant, irresponsible, cruel, arbitrary." Many will shrink from this plain statement of their real feelings, who would accept the fact when glossed over with fine, swelling words. Some will accept it even when plainly stated. With such there is no argument save to urge them to go down amongst the people — the plain people of every day, live amongst them, and know them. You will find reservoirs of patient endurance, loving brotherly kindness, righteousness and justice which, when tapped for political purposes by means of direct legislation, will result in the purification of our now foul body politic. Until you have done this, do not flout the great common people.

And this derision of the common people is becoming more systematic, more sustained, more general among the so-called upper classes. For this reason I gave at the beginning of this article the testimony of three men who have been fighting for municipal righteousness. They speak of our cultured, our educated, our wealthy classes. Our degradation has come from above, not below. Our wealthy citizens are our bribers, our corrupters, our anarchists — not anarchists of the red hand of violence, but of the foul black hand of rottenness. Not all of them are this, thank heaven; many of them pass by indifferent, like the priest and the Levite, on the other side of the way. But the active corrupters of our political life do not belong to the lower classes.

The mass of the people are right. But should they ever become corrupted, should our civilization sink into the slime of its own rottenness, it will be a rottenness spreading from above downward, from the wealthy and educated to the ignorant and poor. But should our country and our civilization rise, as I think they will — out of the mire of partisan politics into the lofty tableland of brotherhood and hope, it will

be because the people, the great, common people say, in a voice which the politician who hears will tremble at and hasten to obey, that they want that complete and constant control over the laws by which they are governed, which the Initiative and Referendum give; and because they, the people, practice this fullest form of popular government, of self-government.

Then will be tapped those now hidden reservoirs of faith and hope and love in the hearts of the masses, and they will flow for the purification of the classes who are the degrading and corrupting element in our organic life, till in the words of Tennyson:

"There the common sense of most shall hold a fretful realm in awe,
And the kindly earth shall slumber, lapt in universal law."

CHARLES LAMB AND THE LAW.

I WAS born and passed the first seven years of my life in the Temple." With this simple preface "the best loved of English writers," as Mr. Swinburne calls Charles Lamb, begins his famous essay on "The Old Benchers of the Inner Temple." Lamb was a true child of the Temple. He considered it "the most elegant spot in the metropolis." He loved its "magnificent ample squares, its classic green recesses," and within its precincts he spent twenty-three years altogether, undoubtedly the happiest years of his life. Lamb must ever be an interesting figure to lawyers, not only because of his life-long connection with the Temple, but also because many of his best friends and closest associates were members of the legal profession.

It was at No. 2, Crown Office row — "cheerful Crown Office row" — that Charles Lamb first saw the light. One is glad to find that the place of his "kindly engendure" remains unchanged. No. 2 is at the east end of Crown Office row, the end which bears the date 1737, and it was in one of the two rear rooms of the ground floor that Charles Lamb was born. In one respect Lamb would now find a change. The windows at the rear of Crown Office row used to look out upon Inner Temple lane, and, of course, they no longer do so, owing to the fact that the view is intercepted by the buildings of the new hall. Lamb was born on the tenth of February, 1775, and on the tenth of March he was baptized at the Temple Church by the Rev. Mr. Jeffs. Lamb's father was clerk to Samuel Salt, the old bencher described in the essay above referred to, and appears under the name of "Lovel" in the same essay. John Lamb, senior, was evidently a superior sort of barrister's clerk. He was a man of "incorrigible and losing honesty, and 'would strike.'" Not only that, but much of the credit which Salt received was by right due to his clerk. "When a case of difficult disposition of money, testamentary or otherwise, came before him, he ordinarily handed it over with a few instructions to his man Lovel, who was a quick little fellow, and would despatch it out of hand by the light of natural understanding, of which he had an uncommon share." "Some barristers' clerks," writes Mr. Augustine Birrell, wittily, "make fortunes for themselves; others only tea for their masters." Although John Lamb was not an ordinary "tea-making" clerk, it is certain he did not make a fortune either, for on Samuel Salt's death, in 1792, the Lambs left the Temple and went to live in comparative poverty in Little Queen street, Holborn, where, not long afterwards, John Lamb died. But we anticipate. The first seven years of

Charles Lamb's life, as he tells us, were spent in the Temple; and we are to think of him at this time as a dreamy, dark-eyed boy, playing about the Temple courts with his sister, "astounding the young urchins, his contemporaries," by his manipulation of the fountain in Fountain court, and no doubt wandering down at times to the garden foot to watch the boats go by on his beloved river. His first school was in a little court off Fetter lane, and very familiar to him must have been King's Bench walk and Mitre court and Fleet street, in those early days. It is not difficult to see why Charles Lamb loved the Temple. "A man would give something to have been born in such places." One day, long after Lamb had finally left the Temple, John Forster was asked by Mary Lamb to "go and look for Charles." He found him at Crown Office row, looking up at the house where he was born:

"Ghost-like I paced round the haunts of my childhood,
Earth seemed a desert I was bound to traverse."

Lamb came back to the Temple at the earliest opportunity. In 1801, nine years after the family had left Crown Office row, he writes to Manning as follows: "I have partly fixed on most delectable rooms, which look out (when you stand on tip-toe), over the Thames and Surrey hills, at the upper end of King's Bench walk, Temple." This was No. 16 Mitre Court buildings, where Lamb and his sister spent the next eight years. Mitre Court buildings have been rebuilt, so that the chambers where the Lambs lived cannot now be identified. In 1809 they moved for a few months to a house in Southampton buildings (on the site of the new Birbeck bank), whence Charles writes to Manning: "About the end of May we remove to No. 4 Inner Temple lane, where I mean to die." And in the same year he writes to Coleridge: "The rooms are delicious and the best look back into Hare court, where there is a pump always going. Just now it is dry. Hare Court trees come in at the windows, so that it is like living in a garden." This was the pump where, as he says in another letter, "I used to drink when I was a Rechabite of six years old . . . the water of which is excellent cold with brandy, and not very insipid without." The pump in Hare court is gone, but the trees remain. The next eight years (1809–1817), were probably the happiest in Charles Lamb's sad life. In the old chambers in Inner Temple lane he gathered round him a brilliant circle of men who, like himself, acknowledged Samuel Taylor Coleridge as their master, and hailed Wordsworth as the rising sun. But Lamb was not to die in the Temple, as he hoped to do. In 1817 he left Inner Temple lane and went to reside in Great Russell street, Covent Garden. "It is well I am in a cheerful place," he writes to Miss Wordsworth, "or I should have many misgivings about leaving the Temple." From Covent Garden he moved to Islington, thence to Enfield, and thence to Edmonton, where he died.

Charles Lamb's "Wednesday evenings" in Inner Temple lane were almost as famous in their way as the contemporaneous gatherings at Holland House. If the latter could boast the presence and patronage of the great Macaulay, the former had the attraction of an occasional visit from Wordsworth and Coleridge. Besides these two great men — who only came at rare intervals, when they had a subduing effect on the merry-party — the Inner Temple coterie included Hazlitt, Crabb Robinson, Benjamin Haydon, Leigh Hunt, Thomas Noon Talfourd, the Lloyds, and several others. One who sometimes looked in was Wainwright, the poisoner, whose friendship with Charles Lamb was not the least curious incident in an extraordinary career. Lamb's informal invitation to these gatherings was good. "Swipes exactly at nine; punch to commence at ten *with argument;* difference of opinion expected to take place about eleven; perfect unanimity with some haziness and

dimness about twelve." These *noctes ambrosianæ cœnæque deum* have been well described by Hazlitt, Barry Cornwall, and Talfourd, and it is not our purpose to refer to them at length; but it may be interesting to enumerate the lawyers who attended them constantly, and to indicate their position on the scale of Charles Lamb's friendship.

First comes Thomas Noon Talfourd, afterwards Mr. Justice Talfourd of the court of common pleas. It was when Talfourd was a youth of nineteen, reading in chambers with Chitty, the special pleader, that he first met Charles Lamb. Talfourd, being a young man of literary tastes, had been introduced to Lamb's works by his friend Barron Field, and forthwith conceived a desire to know the author. Now it happened that Chitty's chambers were in Temple lane just next door to those occupied by Lamb and his sister, so that in the natural order of things it was not long before Talfourd met the essayist, and received an invitation to his Wednesday evening receptions. Talfourd was a true hero-worshipper and records his introduction into Charles Lamb's circle with pardonable pride and satisfaction. That was in 1815, and from that time until Lamb's death he was one of his closest friends. Lamb introduced him to Wordsworth as "my one admirer." Talfourd, indeed, was no mean *littérateur* himself. He wrote several tragedies of merit, one of which, "Ion," scored a great success with Macready in the leading *rôle*. Talfourd was for a time leader of the Oxford circuit, and was raised to the bench in 1849. Lamb seems to have had a genuine regard for him. Many letters from Lamb to Talfourd exist, one of which, congratulating him upon being made a serjeant-at-law, is worth quoting: "My dear T.,—Now cannot I call him serjeant; what is there in a coif? Those canvas sleeves — protective from ink when he was a law chit a Chitty-ling — do more specially plead to the jury court of cold memory. . . Methought I spied a brother! That familiarity is extinct forever. Curse me if I call him Mr. Serjeant, except, mark me, *in company*. . . Well, of all my old friends, I have lived to see two knighted, one a judge, another in a fair way to it. Why am I restive? Why stands my sun in Gibeon?" Talfourd was one of Lamb's executors. In 1837 he published the first part of his memoir of Charles Lamb, the second part appearing in 1848. These were subsequently incorporated into one work, which may be considered the standard life of Lamb. It is, of course, written with sympathy and insight, and contains a charming picture of the home life of Lamb and his sister, but Talfourd, strangely enough, thought fit to mutilate many of Lamb's letters, often for no apparent or conceivable reason.

Another legal member of Charles Lamb's circle was Barron Field, sometime chief justice of Gibraltar. Field was a Christ's Hospital boy, and had a brother in the South Sea house, so that he easily obtained an introduction to Charles Lamb. When he used to visit the Lambs in Inner Temple lane, Field was a struggling young bar student, who managed to support himself by literature. In course of time he became advocate-fiscal of Ceylon, from which place he went to New South Wales, where he was a judge of the supreme court. Then he returned to England for a few years, until he was appointed chief justice of Gibraltar. It was at Gibraltar that Benjamin Disraeli called on him, and afterwards referred to him contemptuously as a man "ever illustrating the obvious, explaining the evident, and expatiating on the commonplace." This is a harsh judgment, and is hardly borne out by facts. At all events, Field was one of Lamb's favorites. He is the "B. F." who accompanied him to Mackery End, in Hertfordshire, an expedition described in the essay of that name; and also of the "Essay on Distant Correspondents,"

which was written while Field was in New South Wales. Field was by way of being a poet, and Lamb wrote a review of his "First Fruits of Australian Poetry" for the "London Magazine." A very different person from the Gibraltar chief justice, was Martin Burney. Martin was a young barrister of the Inner Temple, of somewhat idle and dissolute habits, whose only claim to remembrance by posterity is that he was the nephew of Fanny Burney (Madame D'Arblay), and the intimate friend of Charles Lamb. There was really no reason why Burney should not have got on at the bar, for we are told that he used to travel the western circuit with Sir Thomas Wilde (Lord Truro), whose briefs he used to read, and give an opinion upon before Wilde considered them. Burney was rarely absent from Lamb's Wednesday evening receptions. Talfourd describes him as a little man with a disfigured face — the result of paralysis — and not over-clean in person or apparel, dealing out cards at the whist table, or carving the cold fowl for supper, "because a barrister should know everything." Burney is the hero of the well-known "dirt was trumps" story. Lamb and he, it will be remembered, were playing cards one evening, when the former thoughtfully remarked, "Martin, if dirt were trumps, what a hand you'd have!" History does not record Martin's reply. Martin Burney was, in Lamb's words, "on the top scale of my friendship's ladder." Lamb dedicated his collected works to him in 1815, addressing to him at the same time a sonnet, in which occur the following striking lines:—

> In all my threadings of this worldly maze
> (And I have watched thee almost from a child);
> Free from self-seeking, envy, low design,
> I have not found a whiter soul than thine.

This is a fine certificate of character, but there can hardly be any doubt that poor Burney like Lamb himself, was too fond of cards and punch ever to rise in his profession. After the Lamb *ménage* was broken up in 1817, we hear very little more of Martin Burney. Bryan Procter (Barry Cornwall) gives us a last glimpse of him standing at a street corner gravely informing Procter that he had finally, after long debating the question, come to the conclusion that Raphael was a greater painter than Hogarth.

It would hardly be fitting to dismiss this portion of our subject without a word or two about Henry Crabb Robinson, diarist, barrister, and friend of Charles Lamb, and of nearly every other literary man of note in the first half of the present century. Crabb Robinson was a great power in the literary life of his time, but, feeling that literature was not sufficiently remunerative, he joined the ranks of the bar in 1813. It was Crabb Robinson's first case (which he happened to win) that Charles Lamb referred to as "thou first great cause, least understood." Robinson travelled the Norfolk circuit, and proved as successful in law as he had been in literature. In 1828 he retired from practice, having made up his mind to do so when his income arrived at £500, net, a year. "The two wisest acts of my life," he said, "were being called to the bar and retiring from it." Besides the four we have mentioned, many other young barristers used to drop in at No. 4, Inner Temple lane, in those days, notably Thomas Barnes, who, however, soon gave up law to become editor of "The Times."

To glance for a moment at another phase of our subject, if Charles Lamb owed much to his early associations with the Temple and its lawyers, he has certainly paid the debt in full, in that finest of all his essays, "The Old Benchers of the Inner Temple." In particular, he gives us a picture of the ancient terrace in the gardens, in its palmy days, when "gods as old men covered with a mantle," in the shape of benchers of the Inn, used to stroll thereon in the morning hours. Curiously enough, none of the benchers whom Lamb enumerates have

come down to posterity as great lawyers. By a common irony of fate, they survive, like the proverbial flies in amber, because the little dark-eyed boy who used to watch them from afar off, thought fit in later years to "put them in an essay." Thomas Coventry, Samuel Salt, and the rest, apart from Lamb's mention of them, suggest nothing to us.

Daines Barrington, of course, is known as the author of an almost forgotten book or two on legal subjects, and also as the correspondent of Gilbert White. Maseres, a prolific author of mathematical and historical works, and "omniscient Jackson," who was at one time M.P. for New Romney, and Commissioner of the Treasury, are alas! both covered with oblivion. — *The Law Times.*

CHOICE ANECDOTES OF IRISH BENCH AND BAR.

MR. THOMAS HARRIS had a foremost position amongst the Q. C.'s who, a few years ago, practiced in the courts of equity in Ireland. He was deeply learned, a *bon vivant*, yet of an acridity of manner which covered up a rich and joyous heart. Some time before Harris's death, a "sub-inspector" of constabulary was tried for the murder of his "friend" Glass, a bank clerk in Ulster. The police officer was a Freemason, and, after his very proper conviction, it was commonly though no doubt, unfoundedly, said, that the Irish Executive would not dare to have him hanged. With that fatuity which has too often marked the "Castle" doings, the press were excluded from the scene of execution, and it was only through the *finesse* of an enterprising Dublin tailor, who surreptitiously got into the prison and furnished a report, that the newspapers were enabled to record the facts of the criminal's final exit. Those circumstances begot a good deal of gossip. The morning after the execution the counsel about the fireplace of the Four Courts library were discussing the matter, and the late Mr. George Perry said: "There are national peculiarities which repeat themselves at the last moment of the doomed man; a communard facing the firing party invariably smokes a cigarette and says: 'Vive la Commune! Tirez directement, mes frères.' John Bull's malefactor must eat a hearty breakfast provided by the governor. These are peculiarities, but the curiosity of the thing is the invariably calm sleep of the principal tragedian in the final act." At that moment Harris shuffled by. "Hullo, Harris," said Perry, "explain this. We're talking of the Omagh execution. Perhaps you can tell us how it is that without exception we hear from everywhere that the condemned man slept well during his last night." "Faith," said Harris, with a sententious shrug, "it's easy to understand. The fellow is always quite sure he'll be called in time."

Mr. John M— (still living, I think), a well-known Dublin solicitor, who whispered even professional confidences with a voice of a bo'sun in a gale, could nowhere be found on the eve of a certain case. The junior counsel who had been briefed for a motion "on short notice" in seeking him, ran against Harris. After apologizing, he said, "Have you seen M—? The Master of the Rolls will want him presently. You know him, big John M— !" "In truth," said Harris, "I have a sort of shouting acquaintance with M—, but he is not about, I'm sure, for I distinctly heard two peals of ordinary thunder lately."

The late Francis M'Donagh was at one time M.P. for the borough of Sligo, to represent which he had a severe tussle with

a brother Q. C. (Serjeant Armstrong); M'Donagh put up as a Conservative. He got the seat only on petition, for at the poll Armstrong beat him.

In early life M'Donagh had been a Roman Catholic. He was the son of a small trader who kept a hardware shop in Sligo, where M'Donagh was born at the commencement of this century. There, however, the handsome, successful lawyer was almost forgotten when he sought to represent it.

Amongst other voters there was a Mr. Madden, a merchant who had amassed a large fortune and resided in a pretty villa outside the city. Madden had been a repealer and continued to be a strong Liberal. He had not turned from the religion in which he was brought up. To him, however, "Frank" presented himself without asking the support of a single voter, Conservative or otherwise. Madden's dinner was just being served when M'Donagh arrived. The servant, accustomed to his master's punctuality, declared it was impossible to see him before next day, but the candidate was importunate, and after a little parley he was led to the study, and his old schoolfellow came in, watch in hand. M'Donagh was effusive, Madden impatient and imperative. It wanted but three minutes of six, and whatever the visitor wanted he must despatch in these three minutes. Spake Mac, "My dear Martin, I cannot address you but by the name I used when we were innocent boys together. I am a candidate for Sligo. I want you to second my nomination. Stop! do not say a word till I have done. I want you to second me, but I know your honest convictions. I would not outrage them for a moment. I expect, nay, I am sure, that you will vote against me, speak against me, in all ways act against me, yet, for the sake of our dear boyhood, I hope you will fulfil the desire of my heart, and second me—of course quite formally. Vote, speak, act, but do second me." Madden declined, protested, sulked. M'Donagh expostulated and wheedled. The dinner bell rang. He gave in, and jubilant M'Donagh went off, while Madden swore, "Mind I'll vote and fight against you and beat you, though I don't know what you mean by tricking me into backing your nomination." The day came. A prominent Tory proposed Mr. M'Donagh as a fit and proper person to receive the suffrages of their ancient borough.

Then Madden came forward. The surprised mob was silent. He spoke the formal words, and was assailed by jeers, curses, and a shower of bad eggs and dead cats. "Traitor! Coward! Renegade!" roared the boys. Madden stood unmoved with uplifted hands. Even human throats tire. In a lull the seconder roared: "Vote against the blackguard." A deeper silence fell. "Vote against and fight, aye, die fighting, against the trickster I have seconded." Hurrahs, yells, cheers from the dancing crowd. "I know the fellow; he came to my house and tried to humbug me, and would not go till I promised to second him because, when a barefooted gossoon, he went to school with me with a sod of turf under his arm. I told him I would fight against him, and I shall, but I did go to school with him, I did, many a morning long ago, aye, and many a morning I served mass with him. Good-day!"

The biter was bit. Mac's forgotten change of faith was out. In honor bound, every Catholic voter plumped against him, and even Mac's suavity was unequal to the task of thanking his seconder.

In bamboozling a jury, M'Donagh was supreme; as a cross-examiner, not so successful as others in upsetting witnesses: but he had the art to make adverse evidence seem on his side. Besides, he was a sounder lawyer than most of the craft who do much at *nisi prius*. The plaintiff for whom he led in a ticklish case was a wine merchant. M'Donagh commenced to address the jury: "Gentlemen, amongst the greatly-to-be-respected trading class of your city there is not one more distinguished for its severe and

universal probity than the grocers. The plaintiff whom I unworthily represent, is a grocer." The solicitor, sitting below, whispered, "Wine merchant." On M'Donagh went, expatiating in all possible ways on the virtues of grocerdom, and ringing the changes on his client being a grocer. Now and then the solicitor interjected a correction "Wine merchant." At length M'Donagh grew impatient of the solicitor's interruptions, and lowering his head, he pulled the solicitor to him and hissed in his ear, "Silence, sir! Damn you, silence! Don't you see nine of them are grocers?"

During the Parnell Commission the great hall was filled one morning with batches of Irish peasants. Detached from any group was a big woman, with a red homespun skirt, the cloak, white "kerchey," and black-ribboned "quilled" cap, which indicates "a poor lone widdy woman of the west." She had lost her party, and looked bewildered. As some excuse for intruding an acquaintance, with a mind to help her, I said, with as much of the natural "rowl of the tongue" as remains to one in exile, "Faith ma'am, this same is a grand hall." "Bedad your honor, it is, and," with a pious glance upwards, "a real illigant place to say one's beads in if it wasn't for the law."

In a great trial Mr. Butt was setting forth a most recondite view of the law, which few lawyers could follow or master without the most serious attention, certainly not the court of common pleas, where Monahan, no greater lawyer, presided. The most able of the judges under him was Mr. Justice Keogh, who several times interrupted the great Q. C., and, with some appearance of design, interposed remarks which showed his inattention or want of appreciation of the intricate point which Butt was urging. At length Butt's patience gave way. He swung himself towards the Bench with that imperious gesture which was so well known (though often feigned), and in a tremendous voice and burst of indignation growled, "Be Kent unmannerly when Lear is mad?" The auditors shuddered. The counsel resumed his line of argument, and, without any further interruption, the case went on and Butt triumphed. Keogh, in his decision, took pains to ground his dictum on the law of the great man who had rebuked him.

When, for the first time, Lord Morris went as a judge on the Connaught circuit, at which he had practiced before his election to the bench, he gave many specimens of his native quality of wit. At one assize town the judges arrived late, and after being sworn, the grand jury sent down a true bill in a very simple case, which might fill up the judges spare time for "the heel" of the evening which remained. It was a case of the "abduction" of a small farmer's daughter by a shopkeeper who could not arrange the matter of the dowry of the sweetheart to the satisfaction of her relations. The accused had met the maid near his shop and kept her, half resisting, half consenting, in his premises, and with an elderly female relative, so that the offense was only technically an abduction. But the girl's relatives were furious, the unwitting magistrates foolish, and the crown officials anxious to make fees. "Charlie O'Malley," without whose speech for the defense a Mayo peasant would scarcely believe himself not guilty, made a wonderful speech, in which he flattered, toadied and bullied, in a farrago ranging from the Newtonian theory to the rights of man and colleens. Finally he complimented in the choicest terms a box of frieze-coated jurors, "The most intelligent, highminded, naturally gifted men it had ever been the honor and privilege of counsel to address." Then came Judge Morris's turn. He ridiculed the magistrates, touched up the relatives, and rated the crown officials with short, sharp words, and then wound up in Galway Doric: "You have *seen* my learned friend Mr. O'Malley's amazing performance. Dismiss it from your minds, and don't go home to your honest wives with peacocks' feathers in your hats to pro-

claim the special distinction he piles upon ye. The law lays down certain definitions of abduction, and I am compelled to direct you to return a verdict of 'guilty' in this case. But you will easily see that I think it a trifling thing, which I regard as quite unfit to occupy my time. It's more valuable than yours — at least much better paid for. Find, therefore, the prisoner guilty of abduction, which rests mind ye, on four points — the father was not averse, the mother was not opposed, the girl was willing, and the boy was convaynient." The laughing jury returned "guilty." Morris resumed: "Prisoner in the dock, the sentence of the court is that you remain there till my rising." He stood up, saying, "Let's go, Mr. Sheriff." Then, before the boy was clear of the dock, the judge's head appeared again. "Marry the girl at once, and God bless your work."

A CLIENT TO HIS LAWYER.

A TRANSLATION OF MARTIAL'S EPIGRAM.

By W. H. Johnson.

THREE she-goats are the subject of my case,
Not poison, violence, or murder base:
I claim my neighbor stole the goats away, —
The Judge demands some proof of what I say.
You rave about the Mithridatic war,
Sulla and Marius, Cannae's livid scar;
The Carthaginian's treachery perverse,
The tale of Mucius wildly you rehearse:
Stop now your ranting, Postumus, I pray,
And something of my she-goats kindly say.

THE TRIAL OF JOHN BROWN.

By Bushrod C. Washington.

WITH the character and career of John Brown, history and biography are replete. Few men in so short a period have been so much written up and written down.

But fact and fiction are so inextricably mingled in everything yet written of him, that the searcher for truth must either bide his time for some decades, and then perhaps content himself by striking an average of the extreme and varying estimates of him; or else begin *de novo*, and sift out for himself facts from unbiased and original sources.

It is to this latter task we address ourselves, as to that part of Brown's history connected with his capture, trial and execution. Truthful history can hardly be written, while a remnant of partisan prejudice survives; but facts gathered from authentic records and credible witnesses will serve at least to supply trustworthy data for the honest historian who shall hereafter record those events in our national life, enacted while the North and the South were divided upon the question of slavery; when partisan strife had gone from words to blows, from appeals to law to use of force and arms.

The heredity and environment, the influences and processes under which John Brown evolved into the character now so famous or infamous, as you will, are not the subjects of this inquiry.

Forty years after the closing scenes in his "strange eventful history," the memory of it all is still too fresh to be dealt with from any standpoint, without danger of stirring again the embers of a once raging conflagration. Time may have mitigated, but has not altered the sentiment with which Brown has been regarded either south or north.

To those who advocated the abolition of slavery by any means, within or without the law, who appealed to a "higher law" than the Federal Constitution and denounced that sacred bond between the commonwealths, in tolerating slavery, as "a league with death and a covenant with hell," he remains the reformer, hero, martyr. To those who remember that slavery was an institution that antedated the American Union, that was once general throughout the colonies but had gradually from natural causes become provincial and local in the South, and who regarded the forcible abolition of it as the breach of a solemn constitutional compact and the infraction of a guaranteed right — he is still the desperado, outlaw and leader of insurrection.

By some he is canonized as a saint and compared to the Saviour; by others denounced as a brutal freebooter and red-handed assassin.

Opinions and sentiments so at variance will hardly be reconciled within the living generation. Of one thing however, all are agreed: it is, that *the issue is dead.* The provoking cause of John Brown's campaigns in Kansas and Missouri, his raid into Virginia, and the civil war of which it was the forerunner, no longer exists.

The form of involuntary servitude and ownership of negroes, called slavery, which existed in the southern States, with all that was good and all that was evil in it (and there was much of both), has, as a result of the civil war, disappeared forever.

It is no longer a bone of contention between the North and the South, a thorn in the side of the nation.

But while the issue is dead, *the facts of history remain;* and the time ought now to have arrived when the people of a reunited country, reserving their private judgments, may, with fairmindedness and toleration, and without suspicion of ulterior motive, entertain the statement of any authentic facts

relating to questions upon which they have heretofore differed, and accept them in the interest of *Truth*. It is in this spirit we approach the subject of this article. The incidents herein narrated are taken from reliable records made at the time of their occurrence; the observations upon them are intended to be from a conservative southern standpoint. It is mainly the trial of John Brown that is herein proposed to be treated, but it is necessary to give some account of his raid and capture in Virginia in order to fully understand the motives which impelled him and to ascertain the specific offences for which he was tried and executed.

JOHN BROWN.

The attack upon Harpers Ferry, Virginia, according to the confession of John E. Cook, a co-conspirator with Brown, and a captain in his forces, who was also captured, tried and executed, was planned by Brown some two years previous to its enactment, near Lawrence, Kansas. It was nothing less than a plan to instigate, organize, arm and lead, a general servile insurrection of the negro slaves throughout the southern States.

Harpers Ferry, Virginia, was selected for several reasons, as the most suitable point to inaugurate the insurrection; it being located on the northern boundary of Virginia, near the base of the Blue Ridge Mountains, only a short distance from the free State of Pennsylvania, from which he could with least danger of detection transport men, provisions and arms, to some safe contiguous rendezvous. On the plantations in the neighboring counties of Virginia, there were a large number of slaves, and at Harpers Ferry, there was located a United States armory and arsenal, containing many stands of arms and a quantity of ammunition, with which, when in his possession, he could arm his insurgent followers. His movement from Kansas towards Harpers Ferry was necessarily slow; and, in order that they should not miscarry, his plans were conducted with the greatest care and deliberation. As he was obliged to thoroughly test his recruits, before he dare trust them in so bold and hazardous an enterprise, the process of recruiting required no little time.

Moving with his party from Kansas to Tabor, Iowa, where he had a year before accumulated some two hundred Sharpe's rifles, two hundred revolvers, and a large quantity of ammunition, and continuing there for some time he obtained teams, and trans-

ported the arms and supplies by slow stages to Ohio, and thence to Chambersburg, Penn. From that place he proceeded to a farm he had rented in Maryland, on the Blue Ridge Mountains, about four miles from Harpers Ferry, known as the Kennedy farm. Here he further assured himself of the steadfastness and determination of his followers, who now numbered twenty-one men, of whom five were negroes.

While on the route from Kansas, they from time to time received some kind of military instruction under one Col. H. Forbes, who later deserted; and the fear that he might betray the object of the expedition somewhat delayed Brown's movements.

John E. Cook, who by agreement had preceded Brown to the neighborhood of Harpers Ferry by nearly two years, had secured work at the canal locks, opposite Harpers Ferry, on the Maryland side of the Potomac River, and later married a woman in the neighborhood and opened a school. He had then opportunity to become quite familiar with Harper's Ferry and the surrounding country.

John Brown assumed the name and became known in Harpers Ferry and the neighborhood as John Smith. From the mountain farm, now the headquarters of the party, under color of prospecting for ores, Brown and Cook reconnoitered the neighborhood generally.

They and others of the party often went into Harpers Ferry to purchase provisions, and at the same time to obtain such information about the armory and arsenal as would make the attempt to capture them reasonably sure. They also made frequent visits to the near-by plantations in Jefferson and Clarke counties, Virginia, under pretence of business by day, and clandestinely at night, for the purpose of communicating with the negro slaves and inciting them to join the proposed insurrection.

Although, as the result proved, he did not succeed in inducing them to join him, it is certain he had assurances from quite a number that they would do so; many of them, no doubt, consented in order to get rid of him; a few perhaps, intended to wait until the success of the attempt should be assured. Brown evidently expected that a large number would join him, as he added to the arms secreted at the mountain rendezvous fifteen hundred pikes, with which to arm such negroes as might not understand the use of firearms. They were conveyed in strong boxes, marked "spades, shovels and picks." These pikes, were deadly-looking weapons, consisting of a double-edged blade, fourteen inches long by two wide, tapered to a point, with cross-guard, and attached to the end of a stout pole or handle some six feet long. Specimens of them are still in possession of persons in the neighborhood.

A provisional constitution, for the government of the territory expected to be overrun, had been drafted and adopted at a secret convention of Abolitionists, held in May, 1858, at Chatham, Canada.

John Brown was elected Commander-in-Chief, J. H. Kagi, Secretary of War, and Richard Realf, Secretary of State.

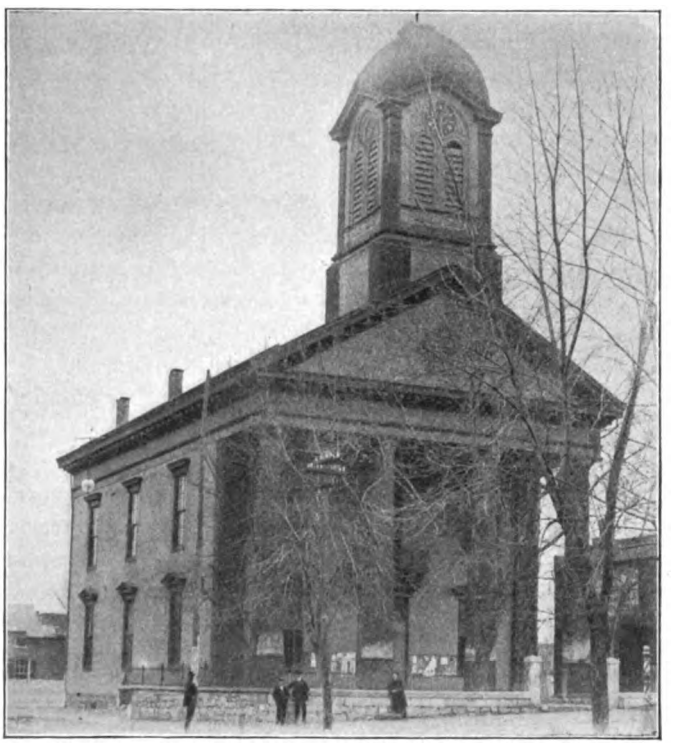
It provided for legislative, executive and judicial branches. The draft of this provisional constitution, was captured by the Virginia military, together with other papers, and a large number of letters addressed to Brown from northern accomplices.

A short time before making the raid, Brown issued commissions to the men appointed as officers, and he and all of them took an oath of allegiance to the provisional constitution.

The time first set for the attack upon Harpers Ferry was the 24th day of October, 1859; but owing to pressure from friends in the North, and fearing that the presence of his party in the mountain had excited suspicion, he suddenly determined to make the attack on Sunday night, October 16.

The movement, accordingly, began about

ten o'clock that night. The town of Harpers Ferry lies in an angle between the Potomac and Shenandoah rivers, which conjoin there, and flow through a gap in the mountain. A short distance above the point of junction, the Baltimore & Ohio railroad crossed the Potomac over a long bridge, where a watchman and lights were maintained. Approaching from the Maryland side, Brown and his party captured the watchman and extinguished the lights on the bridge. A guard of four or five insurgents left to occupy the bridge, "held up" the eastbound express train, which arrived shortly after one o'clock A. M.



THE COURT HOUSE
(In which the trial of John Brown took place).

At this time Hayward Sheppard, a negro porter, going upon the bridge to ascertain what was the matter, was ordered by the insurgents to halt and join them, and turning to run, he was shot down, dying in a short time.

A detachment of insurgents was sent to capture and occupy Hall's rifle-works, on the Shenandoah side of the town; while Brown and the main body proceeded to occupy the United States Arsenal and buildings lying along the Potomac, a short distance from the bridge. A part of his plan of campaign contemplated the capture of prominent citizens to be held as hostages, in order, as he explained, to enable him to make terms of capitulation in case of being besieged, and also to prevent the use of artillery against him. For this purpose, Captain Stephens of his command, with John E. Cook and others, proceeded to the farms of Col. L. W. Washington, John Alstadt and others, a few miles off in Virginia, arrested them, and taking a number of their slaves, compelled them to hitch horses to carriages and wagons, and brought them all back to Harpers Ferry; the citizens as prisoners, while the slaves having pikes placed in their hands, were ordered to join the insurrection. They took from Colonel Washington's house some valuable relics, a sword and a pair of pistols that had descended to him by inheritance from General Washington.

The town had now become alarmed, and the citizens realized that it was in possession of armed men.

A citizen named Joseph Boerly was shot standing in his door. Some citizens by this time appeared with arms, and the insurgents, seeing they would be resisted, began to withdraw within the armory grounds, leav-

ing a small detachment on the bridge, and a few occupying the lower part of the town. Express riders quickly alarmed the country as far as Charlestown, Va., some ten miles distant, and by ten o'clock on the morning of the 17th, the Jefferson Guards, a military company of the Virginia volunteers, and citizens singly and in quickly organized detachments, armed with whatever was at hand, were en route to the rescue. The Jefferson Guards crossed the Potomac above the town, and came down to the mouth of the railroad bridge on the Maryland side, fired a volley and charged the bridge, killing several insurgents and capturing most of the others stationed on it. There was desultory firing between the insurgents and citizens in the streets of the town.

Mr. Fontaine Beckham, an aged and respected citizen and local agent for the railroad company, was shot and killed by the insurgents near the bridge, and Mr. George Turner, a prominent citizen, a graduate of West Point, was killed on High Street by an insurgent from the corner of the street below. About the same time Mr. Samuel Young, a citizen of Charlestown, and a number of others were more or less severely wounded. Military companies from neighboring towns came in upon the scene during the day. Brown and the remainder of his party had now withdrawn within the engine-house in the armory grounds, barricaded the doors and from loopholes fired upon their assailants. On the evening of the 17th, an attack was made on the small party of insurgents who had occupied the Hall rifle-works, when one of them was killed.

A parley was opened by Brown's sending one of his hostages under parole to return, with a verbal proposition to the effect that if he would be allowed to retire with his men, living, dead, wounded and prisoners, a short distance across the bridge, he would release the prisoners.

To this Col. Robert W. Baylor, commanding the volunteer forces, replied, declining the proposal, but agreeing that if he would release the citizens held as prisoners, he would leave the United States government to deal with him as to the property he had seized.

Substantially the same proposal, submitted in writing, was declined, and operations ceased for the night.

On the night of the 17th, a company of United States marines arrived at Sandy Hook, on the Baltimore and Ohio railroad, a short distance east from Harpers Ferry, under Colonel, afterwards General, Robert E. Lee.

They were immediately marched over and stationed so as to closely invest the engine-house. Early in the morning Colonel Lee demanded the surrender upon terms previously offered by Colonel Baylor, which were declined, and the attack by the marines immediately began.

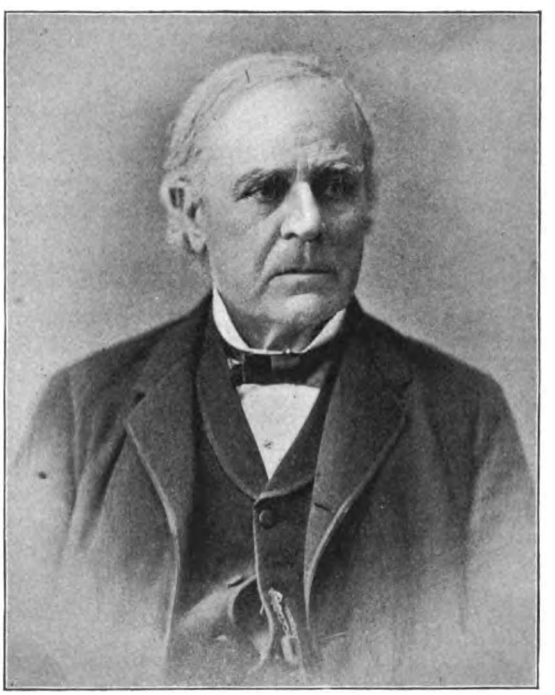
An attempt was made to batter down the doors of the engine-house with heavy sledge-hammers, but failed. An improvised battering ram consisting of a ladder operated by an assaulting party of marines led by Lieutenants J. E. B. Stuart and Israel Green, was successfully used against the doors, which gave way, and the marines pouring in soon overpowered Brown and his party and released the prisoners. One marine was killed in the attack and several wounded. Brown was twice wounded before he surrendered, and two of his sons killed. Of the twenty-two insurgents who invaded Harpers Ferry, twelve were killed and five taken prisoners; two others were subsequently captured in Pennsylvania.

They were conveyed as soon as possible on the day of their capture to Charlestown, the county seat of Jefferson county, Virginia, and confined there in the county jail.

On October the 20th, there was a formal commitment of the prisoners by Roger Chew, Esq., a justice of the peace, upon oaths of Hon. Henry A. Wise, governor of Virginia, Andrew Hunter, a leader of the Jefferson bar,

and John W. McGinnis, a constable, and upon the admission and confession of the prisoners, to wit: John Brown, Aaron C. Stephens, Edwin Coppie, white men, and Shields Green and John Copeland, free negroes.

At the same time a warrant was issued to the sheriff to summons at least eight justices of the county to meet at the court-house on the twenty-fifth day of October, to hold a court for the further examination of the prisoners as to the offenses with which they stood charged. This court, it may be remembered, which consisted of not less than five justices of the county, had the right to acquit a party charged with a criminal offense, but not the right to convict. If of the opinion that the party ought not to be acquitted, it became their duty to send the case on to the circuit court, as a court of *oyer* and *terminer*.



JUDGE RICHARD PARKER.

Pursuant to summons, the court of justices met on the twenty-fifth day of October, and immediately entered upon the examination of Brown and his associates upon the commitment, which was for treason and murder. Upon inquiry of the court it was ascertained that the prisoners had no counsel. Here Brown arose and addressed the court to the effect that he had been promised a fair trial, but he did not believe he would have it. He had no counsel, but if allowed time would have counsel of his own choosing. He did not care for the mockery of a trial, the court could save itself the time and expense of a mere form. The court explained that this was only a preliminary examination and could not await the arrival of counsel from the North. The court appointed Hon. Charles J. Faulkner and Lawson Botts, Esq., to represent the prisoners.

They were gentlemen of eminent standing and ability, who pledged themselves faithfully to represent the cause of the prisoners and secure them a fair examination. The witnesses examined were the citizens captured by Brown's party, citizens of Harpers Ferry and others who saw the operations of the insurgents.

Counsel for the prisoners subjected the witnesses to a rigid cross-examination, and threw every impediment in the way of the prosecution it was possible to do, under the law and rules of practice.

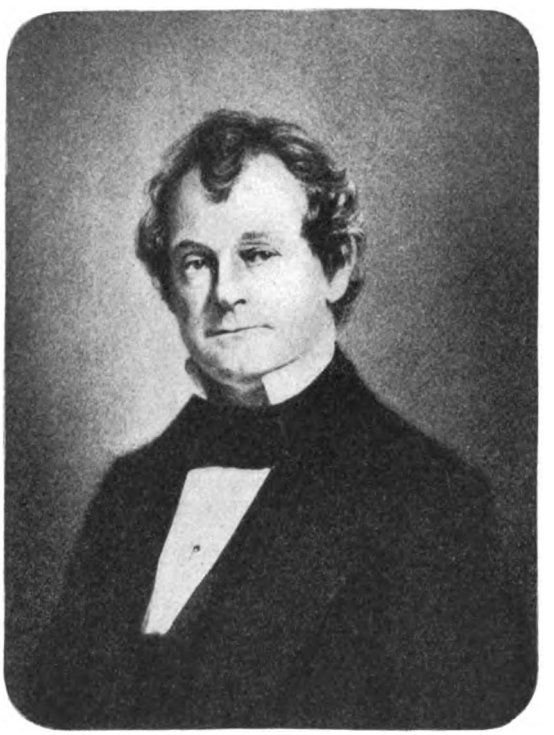
The examination being concluded, the prisoners were remanded for trial before the circuit court.

The upholders and apologists of Brown have repeatedly charged that his trial was a mere formality, and that the temper of the people of Virginia was such that he was practically condemned before his cause was heard.

In this connection it will be interesting to give in full the charge of Judge Richard Parker of the circuit court of Jefferson county to the grand jury. Nothing

could more fully refute the charge of prejudice.

"GENTLEMEN: In the state of excitement in which our whole community has been thrown by the recent occurrences in this county, I feel that the charge which I usually deliver to a grand jury would be entirely out of place. Those occurrences cannot but force themselves upon our attention. They must necessarily occupy a considerable portion of the time which you will devote to your public duties as a grand jury. However guilty these unfortunate men who are now in the hands of justice may prove to be, still, they cannot be called upon to answer to the offended laws of our commonwealth for any of the multifarious crimes with which they stand charged, until the grand jury after diligent inquiry, shall decide that for these offenses they are to be put upon their trial.



ANDREW HUNTER
(Prosecuting attorney in the trial of John Brown).

"I will not permit myself to give expression to any of those feelings which spring up in every heart, when reflecting upon the enormity of the guilt in which those are involved, who invade by force a peaceful, unsuspecting portion of our common country, raise the standard of insurrection amongst them, and shoot down without mercy Virginia citizens defending Virginia soil against their invasion. I must remember, gentlemen, that as a minister of justice, bound to administer our laws faithfully and in the very spirit of justice herself, I must, as to every one accused of crime, hold as the law holds, that he is innocent until he shall be proved guilty, by an honest, independent and impartial jury of his countrymen, and what is obligatory upon me is equally binding upon you, and every one who may be connected with the prosecution and trial of the offenders. In these cases as in all others, you will be controlled by that oath which each of you have solemnly sworn, that you will diligently inquire into all offenses which may be brought to your knowledge, and that you will present no one through ill feeling, as well as that you will leave no one unindicted through fear or favor, but in all your presentments you will present the truth, the whole truth, and nothing but the truth.

"Go beyond this, and instead of that intelligent inquiry and calm investigation which you have sworn to make, act upon prejudice or from excitement of passion, and you will have done a wrong to the law in whose service you are engaged. As I said before, these men are in the hands of justice. They are to have a fair and impartial trial. We owe it to the cause of justice as well as to our own characters, that such a trial shall be afforded them. If guilty, they will be sure to pay the extreme penalty of their guilt, and the example of punishment when thus inflicted by virtue of law, will be beyond all comparison more efficacious for our protection than any torture to which mere passion could subject them. Whether it be in public or private position, let each one of us remember that, as the law alone has charge of these alleged offenders, the law alone, through its recognized agents, must deal with them to the last. It can tolerate no interference by others with duties it has assumed to itself. If true to herself, and she will be, our commonwealth,

through the courts of justice, will be as ready to punish the offense of such interference as she is to punish these grave offenses with which she is now about to deal, in case the offenses be proved by legal testimony to have been perpetrated. Let us all, gentlemen, bear this in mind, and in patience await the result; confident that that result will be whatever strict and impartial justice shall determine to be necessary and proper."

On the day following the grand jury presented a true bill against each of the prisoners. The indictment was "for conspiring with slaves to produce insurrection; for treason against the commonwealth; and for murder."

In each of the three counts of the indictment the specific acts of the accused were minutely recited.

Brown being the leader of the insurrection, was first put upon his trial.

Mr. Faulkner, one of the counsel for the prisoner before the examining court, considering his duty to have been discharged, had gone home, and the court with the consent of Brown appointed Mr. Thomas C. Green to assist Mr. Botts in the defense. Mr. Green was a lawyer of well established ability who later became a judge of the Supreme Court of West Virginia, which office he filled with distinction to the time of his lamented death. In consenting to defend the prisoners, he assured the court that he would do so to the very best of his ability. To those who knew, the characters of Lawson Botts and Thos. C. Green, their consenting to act as his counsel was an assurance that Brown would have a fair trial, and one contested at every point.

JUDGE THOMAS C. GREEN

(Who with Col. Lawson Botts first conducted the defense of John Brown in the Circuit Court. They withdrew from the case because Brown preferred counsel from the North).

Charles Harding, Esq., was attorney for the commonwealth, assisted by Hon. Andrew Hunter, a leader of the Jefferson bar and whose ability was recognized throughout Virginia as of the first order. Mr. Hunter practically managed the prosecution.

The indictment being read, Brown pleaded "not guilty" and addressed the court, requesting delay of several days on account of his wounds, and also in order that counsel of his own preference from the North might arrive. Upon testimony of the county physician and the jailer as to his physical condition, and he also being unable to give assurance that other counsel would arrive, his request for delay was overruled.

The jury of twelve to try the case was selected with the greatest care, and as to intelligence and character was above the average of American juries. Judge Parker directed the sheriff to carefully guard the jury from all outside communication.

On the second day, a despatch from Acron Ohio, addressed to Brown's attorneys, stated that there was hereditary insanity in Brown's family, and that witnesses who could prove

the fact would, if desired, attend the trial. The despatch being read to the court, Brown arose in person and denied that there was insanity in his father's family, but admitted that on his mother's side there had been instances of it. But he refused to allow the plea of insanity to be put in, and remarked to the court, "I am perfectly unconscious of insanity, and reject so far as I am capable, any attempt to interfere in my behalf with that plea."

After further efforts to secure delay, which were overruled, the jury was sworn, and his prosecution opened.

The facts expected to be proved in the case were presented in detail by the prosecuting attorneys.

The attorneys for the defense each followed in strong addresses. Mr. Green warned the jury that no previous confession of the prisoner should influence them, that under our code "no conviction can be made on confession not made in open court," and in court Brown had pleaded "not guilty." As to the charge of treason, specific acts of treason must be proved; and it required two distinct witnesses to prove each and every act of treason; also it must be shown that he attempted to set up a separate and distinct government, and what was the purpose of the treasonable acts. Mr. Botts solemnly warned the jury not to be influenced by preconceived opinions and prejudices. He proceeded substantially over the ground taken by Mr. Green on each of the counts of the indictment; treason, insurrection and murder. Both gentlemen showed a determination to avail themselves of every advantage of the law, and to faithfully and earnestly defend the prisoner.

A large number of witnesses were examined, many of them subpœnaed at the instance of Brown. On the morning of the 28th Mr. Geo. H. Hoyt of Boston, arrived to act as counsel for Brown, and after presenting satisfactory credentials, was permitted to enter the case. During the examination of witnesses Brown made frequent admissions as to papers and signatures, as he said, to save time. Several witnesses for the prisoner being called did not respond promptly to their names, though most of them were within call. Brown became nervous, and addressed the court to the effect that his witnesses had not been subpœnaed, that he had no counsel in whom he felt confidence, and felt that he could not have a fair trial without time for counsel to arrive.

Mr. Hoyt of Boston, who had been sitting in close conference with Brown, also appealed for time to acquaint himself with the case, though expressing every confidence in the gentlemen who had been conducting the defense. At this point, both Mr. Green and Mr. Botts requested permission to withdraw from the case, in view of the prisoner having declared his lack of confidence in them.

The court assented to the withdrawal, and thereupon adjourned for the day. On the morning of the 29th, the fourth day of the trial, there arrived as additional counsel for Brown, Mr. Samuel Chilton of Washington, D. C., and Mr. Henry Griswold, of Cleveland, Ohio. The court, at request of these gentlemen, delayed the trial a few hours to allow them time to consult the prisoner, and get acquainted with the proceedings. The witnesses for the defense all appeared and testified. The remainder of the day was consumed in examination of witnesses, and the opening addresses of the prosecution.

On Monday, the 30th, Mr. Griswold opened for the defense in a temperate and masterful argument, followed by Mr. Chilton along much the same line. Both expressed themselves as pleased at the straightforward testimony of the witnesses, and the fair and impartial rulings of the court.

Hon. Andrew Hunter closed for the State with an elaborate summary of the facts proven, and a logical and forceful citation of the laws of Virginia applicable to the same.

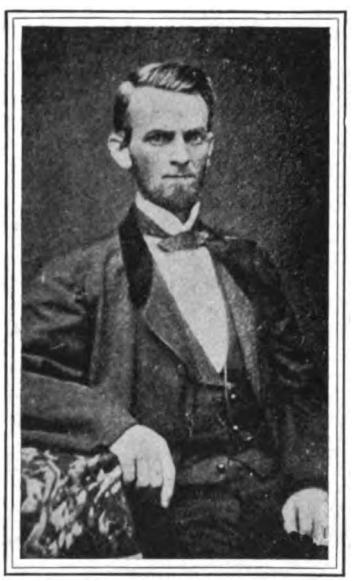
Mr. Chilton acting upon the point called to his attention and first advanced by Mr. Green, asked the court to instruct the jury "that if they believed the prisoner was not a citizen

of Virginia, but of another State, they could not convict on account of treason," which instruction was withheld. Exception was taken to this ruling, and is said to have been the only point the court of appeals found difficulty in deciding. He also asked the court to instruct to the effect that the jury "must be satisfied that the place where the offense was committed was within the boundary of Jefferson county," which instruction the court granted.

The jury immediately withdrew to consider their verdict, and returned in an hour with the verdict of "Guilty."

The eulogists of Brown, in order to present him in the rôle of a martyr, have assumed that not Brown, but the Abolition party had been on trial in Virginia, and that Brown, being in the hands of the Virginians, was hurried through a mere form of trial, and was the victim of a judicial murder.

There is, however, nothing to justify this assumption. The specific acts, under each count of his indictment — inciting slaves to insurrection, treason against the commonwealth, and murder — were fully proven, and the penalty for each, under the laws of Virginia, was death.



COL. LAWSON BOTTS

(Who with Judge Green was first employed in the defense of John Brown in the Circuit Court).

Could Brown's crimes have been committed in Maine, Massachusetts or any New England state, and his trial have been conducted in any of their courts, under a similar penal code, his conviction would have been inevitable.

The provisional government to which Brown and his followers swore allegiance clearly provided for the seizing and confiscating the property of slaveholders, and the setting up of the provisional government in the territory intended to be overrun; which, taken in connection with his invasion of the state, established both the animus and act of his treason.

The pikes and firearms put in the hands of the negro slaves, the capture of the arsenal and killing of citizens, showed beyond question that his intention was to incite and lead a servile insurrection, and was not, as was pleaded in his defense, a mere attempt to run the slaves off into free territory.

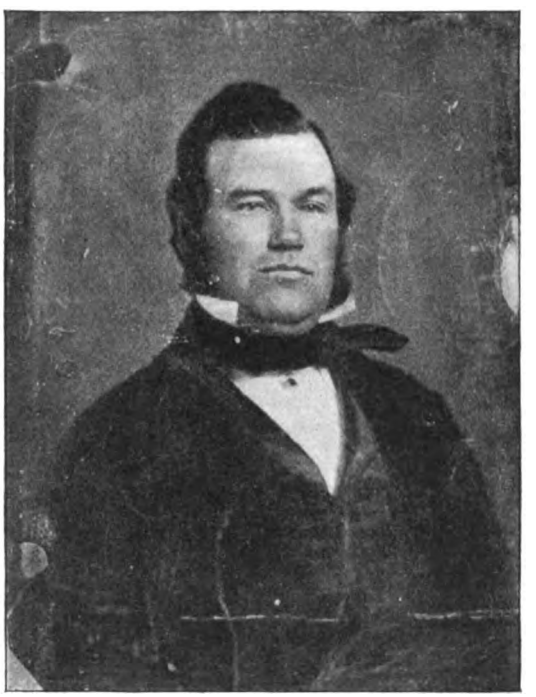
Exception was taken by the counsel for Brown to the jurisdiction of the court, upon the ground that he was arrested by United States troops, and within the armory yard, which was United States property; and consequently the jurisdiction was in a United States court. But the court overruled this plea to jurisdiction; first upon the ground that the offenses were committed outside as well as inside the armory yard, and secondly, that the State of Virginia had not divested itself of legal jurisdiction over the property when it was acquired by the United States, but had always exercised jurisdiction over criminal offenses committed within the government enclosures.

The precedent was cited of the trial and conviction of Ebenezer Cox for the killing of Colonel Dunn, superintendent of the United States armory at Harpers Ferry, the murder having been committed in the office of Colonel Dunn within the armory enclosure.

Cox was tried and sentenced by the circuit court of Jefferson county, Virginia, and was hanged at Charlestown. Application was made by counsel for Brown to the su-

preme court of appeals in Virginia, in arrest of judgment. The application was refused by the court of appeals and Brown was executed on the second of December, 1859, the day appointed in the sentence of the circuit court.

While in prison awaiting his trial, Brown deported himself with something of dignity, and while having fully reaffirmed the statements made before his trial, that his intention was to incite the slaves to insurrection, he justified his acts as being impelled by conscientious convictions and warrant of Scripture.



SHERIFF JAMES CAMPBELL
(Who executed John Brown).

At his request his will was written by Mr. Hunter, his chief prosecutor, with whom he had become friendly and confiding.

He went to his execution with composure and met death without trepidation.

In reviewing the trial, it was probably a mistake in Brown to have dismissed his original counsel; while they could not have prevented his conviction, yet being better acquainted with the laws of Virginia and the rules of practice in Virginia courts than the gentlemen who succeeded them, they would have perhaps secured for him some of the law's delays.

The acts of Brown for which he suffered the penalty, were either the acts of a bold and aggressive fanatic, or those of an incarnate fiend. The consensus of fair opinion has attributed to him the former attribute. A fanatic is aptly described as one, who, his mind run away with an idea misconceived, or its importance unduly magnified, would deluge a world in order to extinguish the fire in a haystack.

Ignorant of negro character, as well as of the true relation between master and slave in the southern States, Brown had totally misconceived the nature of the institution he attempted to overthrow, and unduly magnified the supposed unhappy condition of the slaves.

He determined upon a procedure entirely disproportioned to the end to be obtained. He deliberately proposed to subject the slaveholders of the South to the unnamable horrors of a servile insurrection, and if necessary to destroy them, a people of the highest development, culture and refinement of the Anglo-Saxon race, in order to set free some four millions of late Africans held in a servitude so mild that they were hardly conscious of it; and who, when he offered them the opportunity to rise, and placed the deadly pikes in their hands, were outraged at the suggestion of rising against their masters, and fled to them in terror for protection. An undertaking more diabolic or fanatical can hardly be imagined.

But whether fiend or fanatic, felon or martyr, John Brown will remain a unique character in our national annals. He was unquestionably a prime factor in hastening

the end of slavery, a riddance for which, barring the terms and incidents of its departure, the whole country to-day congratulates itself. But with the overthrow of slavery there was also overthrown that splendid social feature which made of the South an Arcadia, at once the admiration and envy of the outer world; a social state under which was developed and presented to our country its first president, and a line of statesmen, soldiers and jurists whose names and achievements are interwrought in our national foundations, and adorn the best pages of our country's history.

Upon the ruins of that ancient social fabric, founded upon agriculture and slave labor, there is erected another, based upon industrial development. The former will be known in history as an extinct civilization — the latter, the "New South" is a living, potent reality. In the place of slavery, local in the South, there is settled upon our whole country — the nightmare of the unsolved "negro problem."

(SUG)JESTIVE CASES.

III.

(WADSWORTH *v.* DUNNAM, Supreme Court of Alabama, May 17, 1898; 23 So. Rep. 699.)

1.

To prove a jury issue, we usually resort
To witnesses, or data of a circumstantial sort;
But is there any reason why opponents should demur
If the thing can prove itself, i. e., *res ipsa loquitur?*
On its face
It seems absurd
To raise objection;
But a case
Has just occurred
That's worth reflection:

THE FACTS.

2.

In an action on a note for the balance of a debt,
The alleged consideration lay in goods sometimes termed "wet,"
— Labelled here as "Ginseng Cordial"; and the law (it chanced) was plain,
That a claim based on intoxicating liquors would be vain.
So a spirited debate
Of course took place,
On the evidential weight
In such a case
Of the various modes of proving how the liquor really acted;
And the controversy thereupon becoming quite protracted,
The notion was suggested
By the counsel for the Cordial
That the thing itself be tested
By the jury, as an ordeal.

ARGUMENT FOR ADMISSION.

3.

Should these contents be really *spir. frumenti*,
This test will furnish evidence in plenty.
The jurors, if they'll smell or taste or drink
The stuff will know exactly what to think.
Besides, should they experiment *ad libit.*,
They might be put in as a *full* exhibit!
So if the Court thereon infer
That this had brought them half-seas-over,
Plainly, *res ipsa loquitur*,
And plaintiff ought not to recover.

OPINION OF THE COURT.

4.

We do not doubt the *jury* would be ready
To learn in this way if the liquor's heady.
But parties may not offer drink or meat
To jurors; and we certainly shall treat
— That is — not now! — we mean, that in reality
You're treating *them*, with too much Cordiality.
Here's to you! with a *quaere:*
Could a verdict stand, if beery?

5.

Moreover, every juror must report
His private knowledge here in open Court;
So should this test produce intoxication,
He could not share his weighty information;
Nor could he even take judicial note —
His fellows were on board the self-same boat;
E. g., should he discover this was rum,
In legal view the word would still be, Mumm!
In short, they couldn't know it,
— However plain they'd show it!

MORAL.

(1) This ban emphatic
Of proof dram-atic,
While granting as a rule *res ipsa loquitur*,
Rests on the notion
That tests by potion
Might make the juryman a tipsy locutor.
(2) It's somewhat risky,
When sued for whiskey,
To plead the Cordial bottle's true contents;
You won't be able,
Whate'er the label,
To "set up" for the jury your defense.
(3) There's many a slip
'Twixt cup and lip;
These jurors, when they were not charged with Cordial,
As like as not
Wished they had got
A chance to put it through the potent ordeal.

"THE OLD COURT — NEW COURT CONTROVERSY."

By John C. Doolan, of the Louisville, Ky., Bar.

WHAT is known in Kentucky as the controversy between the "Old Court" and the "New Court," ended in the triumph of the "Old Court," the supremacy of the constitution and the establishment of principles, which make possible the success of popular government. Had the first voice of the people been mistaken for the voice of God — had three men been less patriotic and more subservient to popular clamor, the result would have been different, and Kentucky's experiment in self-government might have served as a warning to her sister States and to the world at large.

This remarkable contest occupied the attention of the people of Kentucky and, indeed, of the whole country for nearly five years — from 1821 to 1826. Its importance was magnified by the fact that it was almost the first and was certainly the fiercest conflict in the history of our government between the two coördinate departments, the legislature and the judiciary.

Owing to conditions unnecessary to mention at this time, the people of Kentucky had during the first administration of President Monroe, plunged into a career of speculation that in a few years resulted in almost universal bankruptcy.

In obedience to the clamors of the populace, the legislature had passed a law for the benefit of debtors, giving them a right of replevin for two years upon debts (though reduced to judgment and execution), unless the creditor would consent to receive in payment a depreciated currency. Manifestly we would say this worked a material change in the effect of the contract between the parties and was an impairment of the obligation of that contract and, therefore, a violation of natural justice as well as of the Constitution of the United States which forbade the passage of such a law by the States. The situation, however, was deplorable; the people were desperate. They found the legislature and the executive such willing servants that they hardly expected anything else from the judiciary.

Of course such a law soon came before the courts, and it was speedily declared unconstitutional by the Court of Appeals and, bad as the policy of such a law may have been, all questions about it were soon lost to view in the assaults now made upon the court that had dared to thwart the popular will.

The judges of the "Old Court" were John Boyle, William Owsley and Benjamin Mills. They held their offices by appointment for life, or during good behavior, and could be removed only by impeachment or by address — in either case upon a two-thirds vote, and, while their opponents had a large popular majority, they did not have the two-thirds vote in the legislature required by the Constitution. The legislature finding itself unable to *remove* the judges, made a bolder attempt to *abolish the court* and claimed the right to pass that measure by a bare majority. With calm dignity the judges held that the attack on the court was an attack upon the Constitution and, through it, upon the liberties of the people, and this act too they declared to be null and void. Nevertheless the governor sanctioned it and appointed, as the four judges provided for in the act establishing a new court, William T. Barry, Chief Justice (afterwards Postmaster General under President Jackson), James Haggin, John Trimble and Rezin H. Davidge as associate judges.

The "New Court" organized and for nearly two years assumed authority as the Court of Appeals of the State. Francis P

Blair was elected clerk and, by order of his court, forcibly took the records of the "Old Court" from Achilles Sneed, the venerable clerk of that court. At the end of two years popular reason was restored and with it the judges of the "Old Court" resumed full discharge of their judicial functions, although at no time had they abandoned their post of duty.

Much has been written and told concerning the long campaigns that were waged before this controversy was ended. While it was at its height the periodicals of that day — the "Patriot" on the side of the "New Court" and the "Spirit of 76" on the side of the "Old Court" — contained many articles that for elegance of diction and force of logic might well compare with any papers in the Federalist. Little, however, has come down to us to show the extraordinary crises out of which these troubles arose and the important bearing which their solution has had on constitutional government. History repeats itself and, while some of the questions growing out of this conflict are perhaps forever settled, there are others still coming up to harass and to perplex us. Moreover we ought not lightly to dismiss a cause — albeit a lost cause — espoused by such men as Bibb, Rowan, Barry, Sharp and many others, and it is therefore proper to briefly review the conditions out of which these difficulties arose.

The United States Constitution is, of course, recognized as the prototype of all existing State constitutions mapping out (as Montesquieu had indicated) the three distinct departments of government — legislative, executive and judicial. From the time of its adoption down through the troubles with France, Spain and England to the end of the second war for independence in January, 1815, the affairs of the United States as a nation and as collective States were conducted on a war footing. Few real or severe tests of the Constitution had been made. A common danger united the people and occupied their attention to the practical exclusion of internal finances and economics. The people knew little of the workings of their government and even less of the problems of peace, such as the currency or commercial relations.

Long wars in Europe had done much to drive specie out of circulation and to substitute an inflated paper currency. In this country commerce was practically restricted to exchange and barter. There was very little specie here and, it is believed, only one bank during the Revolution — that established by Robert Morris in aid of the Continental Congress. In 1789 there were but three; in 1800 twenty-six; in 1805 thirty-eight; in 1811 eighty-eight; but two years later an abnormal demand for paper currency had increased the number of banks to two hundred and eight. A large proportion of the specie of the country was in New England which had kept up a sort of commercial intercourse with other countries (with neutrals if not with enemies) despite embargoes and proclamations. Most of the banks were located there.

In the South and especially in the new State of Kentucky, then known as the "West," there was but little money of any kind and the development of Kentucky's vast resources offered a promising field for investment and speculation. Of course the money for such purposes had to come from the East, mostly from Philadelphia. Philadelphia merchants supplied nearly all the increased and increasing demands of people in the new State for necessaries — then comforts — then the luxuries of life. In this way the population of Kentucky came to constitute one large class of debtors, the creditors residing outside the State.

The country was already suffering from the want of confidence caused by a depreciated paper currency, but the people seemed to think that the remedy lay in having more banks and more paper money. In 1814 the bank of Kentucky had come near suspending,

and the legislature established the unwise precedent of passing a temporary law allowing a twelve months' replevin on executions, unless notes of that bank should be taken in payment — a very unfortunate step as the sequel shows.

On January 26th, 1818, the Kentucky legislature, by a single act, incorporated thirty-nine different banks and, by amendments, eight days later added six more, making forty-five in all. These banks had practically no restrictions as to control or amount of stock or payments of subscriptions to stock. They were without supervision allowed to issue notes to an amount not exceeding three times their capital stock. By the end of the year 1818 there were fifty-nine banks in the State of Kentucky. The State then had a population almost exclusively engaged in agriculture, and Lexington, its largest town, had not more than 5,000 inhabitants.

Meantime, to relieve the situation all over the country, the Second Bank of the United States had been chartered with the purpose of forcing the State banks to resume specie payments and of providing a currency redeemable in specie anywhere in the country. The mother bank had secured a large part of the specie of the country and had imported more than $700,000.00. It was located at Philadelphia, with eighteen branches in different sections, two in Kentucky, one at Louisville and one at Lexington. The notes of these branches being redeemable in specie, they were eagerly taken up in Kentucky by exchanging large quantities of State bank notes at a great discount. In this way the United States Banks became the creditors of the State banks. "Hard times" coming on in the East, the United States Bank ceased to issue notes or make discounts (in great measure) in Kentucky, withdrew its specie from this State for use in the East and began to press the State banks on their notes, and those banks in turn began to press the people who owed them. In a little while the paper banks with their paper capital had gone to pieces and their depositors were left penniless and in debt. The people had idly imagined that with such an abundance of money, pay-day need never come and with that feeling had almost universally borrowed largely more than they could ever possibly pay. The rush of immigrants to this State and the introduction of the steamboat into the navigation of the Ohio had induced the most wild and reckless speculation. Improvements were projected that could not have been called for in fifty years by the growing civilization of the country. Believing that their wealth was assured, the people had spared themselves no luxury or piece of extravagance and when the cloudburst of financial ruin broke over them, they were totally unprepared for the storm.

At first the United States Bank was charged with all the trouble and, indeed, it was responsible for much of it. It had nearly all the specie and was about to take it out of the State. It held large claims against State banks bought at a great discount. It had made any number of loans to private persons which were now maturing.

In response to popular demand, the Legislature tried to drive out the United States banks, to tax them out of the State so as to give room for the rag-money banks of its own creation. In 1818 a tax of $400.00 per annum was laid on each branch in this State. In January, 1819, this tax was increased to $5,000.00 per month or $60,000.00 per year. March 6, 1819, the United States Supreme Court held, in the case of McCullough *v.* State of Maryland, that the States could not tax the United States Bank or its branches, and then, for the first time, the people of Kentucky seemed to realize that the Supreme Court of the United States could have any authority over them and Judges Boyle, Owsley and Mills of the Kentucky Court of Appeals, were severely censured for respecting its opinions.

Matters went on from bad to worse. Bankruptcy stared the whole State in the face. In every county the property of debtors was being sold or rather sacrificed under the forms of law, and none could buy but the creditor himself, who fixed his own price. The whole people cried out for protection from their own improvident contracts. In those days under the second constitution of the State, the legislature met annually, At the annual elections in 1819 all other lines of distinction were broken down and the candidates arrayed as Relief and Anti-Relief.

The plan of the Relief candidates was to administer some remedy that would allow the people to escape the consequences of their recklessness and improvidence. The Anti-Relief party, comprising all the creditor class and most of the sober thought of the community, held that to ignore the binding force of the contracts made, would put a premium on dishonesty and would work greater evils than those under which the body politic was then groaning.

The Relief party carried the election by a large majority. On December 16, 1819, the legislature, over Governor Slaughter's veto, passed a stay law *absolutely suspending for sixty days* the issue of any execution on any judgment and all proceedings on outstanding executions. This was to give time for devising some plan of relief for debtors. February 10, 1820, an act was passed repealing the charters of the forty-five "wild-cat" banks that had done so much (as recited in the preamble to the act) to endanger the public safety; but this very just measure came too late. The mischief they were capable of doing had already been done. The next day, and before the sixty days' stay law had run out, an act was passed allowing a two years' replevin on executions, unless the plaintiff would endorse on the execution that notes of the Bank of Kentucky would be taken in payment, in which event only twelve months' replevin would be allowed. This act, by its terms, was to continue for only about one year. It was the first of two acts directly questioned by the Court of Appeals, and while not so bad in effect as the second (for the Bank of Kentucky was comparatively safe) it established a dangerous precedent.

At the August elections in 1820 the Relief party was again successful. At its next session the legislature, on November 29th, 1820, chartered the Bank of the Commonwealth with the purpose of making money plentiful and of driving out the Bank of Kentucky (which was a conservative institution), although the State was a part stockholder.

The capital of the new bank was $2,000,000.00, owned exclusively by the State. It was authorized to issue notes in double the amount of its capital stock. Its function was to loan money on mortgage to the citizens in the various counties, distributing its loans on the basis of population. No money was to be loaned in the year 1821, except for the purpose of paying debts or buying stock or produce. The funds of the State, derived from the sale of certain public lands and the unappropriated revenues, were pledged for the payment of the capital stock.

All measures of relief thus far having proved ineffectual, on December 25, 1820, the legislature passed another law to give further time to debtors and to help the notes of its new bank to circulate. This act allowed a further replevin of two years on executions unless the plaintiff would endorse on the execution that he would take in payment either notes of the Bank of Kentucky, or notes of the Bank of the Commonwealth, in event of which endorsement only three months' replevin should be allowed. If only notes of the Bank of Kentucky would be taken, then twelve months' replevin should be allowed. It was further enacted that all executions issued prior to July 1st, 1821, should remain in the clerk's office for ninety days after date of issue and should be re-

turnable one hundred and twenty days after coming to the sheriff's hands.

The effect of all this legislation was simply to compel a creditor to take his debt in depreciated paper currency worth only half its face value, or to wait two years before getting any of it, taking the chances of both principal debtor and his surety in the replevin bond being utterly insolvent at the expiration of that time. Indeed, the policy of the laws allowed a replevin upon a replevin, amounting in all to a delay of four years. Of course, the creditors protested vigorously against the enactment and enforcement of any such laws and the matter was speedily carried into the courts. Many of the creditors resided in Philadelphia. The United States Bank was also located there and all the Philadelphia creditors combined to secure the defeat of these laws, so seriously affecting their rights. They were represented in the United States courts by Messrs. John Sergeant of Philadelphia and Langdon Cheves of South Carolina, two of the most eminent lawyers in America.

Before long the question came up before the State courts. In 1822 Judge Clark of the Bourbon Circuit Court, in the case of Williams *v.* Blair, promptly declared the endorsement and replevin laws unconstitutional and void as to contracts made before their passage. The legislature was then in session, and an attempt was made to remove him from office, which failed because some of the leaders thought best to wait until the highest court of the State had reviewed his judgment.

About the same time the General Court, in the case of Lapsley *v.* Brashear, had upheld the constitutionality of these laws and both cases came before the Court of Appeals at the same time. Threats of legislative vengeance and popular revolution were freely indulged in for the purpose of influencing that tribunal — but all in vain.

On October 8th, 1823, the Court of Appeals affirmed the case of Blair *v.* Williams and reversed Lapsley *v.* Brashear and held the obnoxious laws unconstitutional, the judges all concurring and each delivering an opinion. This precipitated open war by the legislature upon the judiciary.

It is curious to note that in the two cases which brought on these difficulties, the debtors were represented by ex-Chief Justice Bibb, Haggin, Barry and Rowan, while the creditors were represented by Wickliffe, Harrison and Breckinridge. In the troubles that ensued, Bibb, Haggin, Barry and Rowan took the most active part against the "Old Court," while Wickliffe was its most prominent defender. Can it be that their views on this question were influenced by their zeal in behalf of their clients?

When the legislature met about the first of December, 1823, it protested against the decision of the Court of Appeals; but the people in the August election previous had not anticipated that the court would disregard their threats, and so it happened that a majority against the court was wanting and nothing could be done in that session.

At the elections in August, 1824, the questions came before the people again, and Gen. Joseph Desha, by a large popular majority, was elected governor on a platform which called for the removal of the judges from office. The same ticket had a large majority in the legislature, and at the session of 1824 an attempt was made to remove the judges by address. One of the most exciting struggles ever known in a parliamentary body then ensued. For days the contest was protracted, but at last the attempt failed for lack of a two-thirds majority, the vote standing sixty-one to thirty-eight in the House, and twenty-three to twelve in the Senate.

The opponents of the judges charged treachery on the part of four or five members in the House and one in the Senate, and claimed that if the voice of the people had been obeyed, the vote would have stood sixty-eight to thirty-two in the House and

twenty-four to eleven in the Senate, citing the fact that General Desha had carried counties returning seventy-eight out of one hundred representatives.

Not to be daunted, the Relief party began to cast about for some methods of revenging themselves on the judges who refused to do their bidding. The governor recommended that, since the judges could not be removed from office, their offices should be removed from them — in other words, that the act organizing the Court of Appeals should be repealed and a new act organizing a new court should be immediately passed, whereupon he would appoint, as judges of the "New Court," only men known to be partisans of the relief party.

This plan was adopted. A bill to that effect was introduced and at midnight of December 24, 1824, "amid scenes of the wildest excitement, in which personal encounters were narrowly averted, while the governor and lieutenant governor were mingling in the tumult on the floor of the House," the bill was passed by a vote of a bare majority and it at once received the Governor's sanction. From this time on the contest assumed new shape. The "Old Court" declined to recognize the "New Court" as having any authority whatever. The adherents of the Anti-Relief party bitterly assailed the relief partisans for their attack upon the Constitution and charged them with responsibility for the anarchy that ensued. The names of the two parties were now changed to "Old Court" and "New Court." The latter party justified its action by citing the act of Congress in the early part of Mr. Jefferson's administration abolishing the offices of sixteen United States circuit judges, appointed by Mr. Adams just before his term expired; and also the acts of the legislature of Kentucky twenty-five years previous abolishing the courts of quarter sessions.

The "Old Court" party replied that in both cases those courts had been established by the legislative body itself while the *Constitution* had established the Court of Appeals and left only its organization to the legislature.

The "New Court" people claimed that the legislature had previously reduced the number of judges of the Court of Appeals from four to three, but their opponents said that had only been attempted in case a vacancy should occur, and it was an entirely different thing to legislate out of existence the court itself; that the constitution intended the Court of Appeals to be a check upon the other departments of government and had provided a check upon *it* by the power given to the legislature to remove a judge by impeachment or address; that, unless the Constitution should be observed, there could be no security for the people from absolute tyranny on the part of the legislature and that the independence of the judiciary from legislative influence was absolutely essential to free government. The "Old Court" met and on January 28, 1825, issued an address to the people of Kentucky which is one of the ablest and most dignified State papers ever composed and a most masterly vindication of their course.

Replying to the resolutions of the legislature they say: —

"We will not dwell long upon so much of the preamble as defies public opinion — applauds the people — bows to their power, and places the legislature so near the people in affection and interest as absolutely to supply the place of and become the people — while we are placed at a freezing distance, arrayed against the people, usurping their rights — subjecting them to control — and attempting to tyrannize over them — and raised above them by our exorbitant salaries [the judges received a salary at this time of $1200 per annum] . . . We stand this day in a defensive attitude against the united energies of the other departments of government, struggling to support the Constitution of our country, which we assert is assailed by the proceedings in question. After all, what is this war? The laws of God and man have said — "Pay what thou owest." Justice

and honor say the same — and the Constitution of the Union has in substance said the same, and has added that the legislature shall not prevent it. We have said no more, and for this we are called in question . . . We will not dwell upon the evils which may result from such a state of things. Without invoking the powers of imagination to our aid, we may conceive of the prostrated rights of a litigant, contending in this court against the fearful odds of executive and legislative influence thrown into the scale of his adversary; and his judges watching the legislative nod, and effectuating the ruin of this litigant, by sacrificing his life or his fortune at the shrine of popularity. He, perhaps, is humble and obscure; but armed with the justice of his case, while his adversary is popular and wealthy, commanding the homage and obeisance of all around him, and able to call to his aid legislative and executive influence and decide the contest."

After issuing this address the "Old Court" adjourned and waited to hear from the people until after the August elections in 1825. The most furious campaign followed. Nearly all the lawyers sided with the "Old Court" and by so doing brought down upon their devoted heads and their noble calling the most fiery denunciations. The people were told in effect that the lawyers were the enemies of all mankind and were conspiring with the old judges to take away their property and to enslave them. They lost sight of the fact that there would probably be lawyers on both sides in every case.

The "Old Court" party bitterly denouncing the "midnight caucus" that had brought to life the "New Court," as an invasion of the Constitution and of the people's liberties, sounded the alarm and, from every town and hamlet, the warning cry was taken up.

The elections of 1825 came on and the "Old Court" party was triumphant, carrying the State by a majority of 8000. The "New Court" adherents, though beaten, rallied again and renewed the struggle with even more bitterness than before. They claimed that the people had been bribed; that they had not understood the questions submitted to them, and with scarcely a lull the storm was renewed. The "Old Court," claiming that it had been vindicated, began again to hold regular sessions and to decide cases submitted to it. The "New Court" (by its opponents called the "Fungus Court" and the "Desha Moot Court") did the same. Some of the judges of inferior courts obeyed the mandates of one court; some obeyed those of the other; some obeyed both. Had this continued long, civil war must have resulted. All respect for law and public authority was fast dying out, and the whole country looked on while two sets of men claimed authority as the Supreme Court of the State when the Constitution provided for but one.

Numerous personal conflicts all over the State were provoked by the violence of political discussion. On the night before the meeting of the legislature, in 1825, Solomon P. Sharp, a distinguished lawyer, ex-attorney general of the State and one of the most prominent leaders of the "New Court" faction, was shot down by an assassin, Jeroboam O. Beauchamp, who claimed to have a private grievance against him.

So great was the violence of party feeling that his murder was immediately charged to the "Old Court" party who in turn held the leaders of the "New Court" party responsible for bringing personalities into the campaign and provoking Beauchamp to commit the murder. Beauchamp's father claimed that Governor Desha had promised a pardon to his son as an inducement to implicate some of the "Old Court" party.

Patrick H. Darby, editor of a Frankfort paper and an "Old Court" adherent, was openly charged with being accessory to the murder, though clearly without foundation, and the widow of the murdered man was dragged into the public prints in order to help fasten the charge on him. As a result of this, T. B. Monroe, reporter of the Court of Appeals and a "New Court" man, was caned by Darby, who in turn was indicted

for assault and battery. About the same time a son of Governor Desha was charged with the murder of a man for his money in Harrison County — was three times tried and convicted of the murder and sentenced to be hung. The "New Court" party claimed that it was a persecution by the "Old Court" party and the latter taunted the sorrowing father with faithlessness to official duty because he yielded to parental impulses and sympathized with his son. Finally the parent, broken-hearted, unlike the first Brutus in Roman history, pardoned his son and soon after, his term of office having expired, retired forever from public life.

The contest, which at first was conducted on a high plane and brought into play the powers and the classical attainments of Rowan, Barry, Kendall, Sharp, Bibb and Desha on the one side and Robertson, Marshall, Crittenden, Wickliffe and Hardin on the other, had now progressed so far towards anarchy that the very safety of the State was threatened.

The venerable Governor Shelby (first governor of Kentucky), in writing from his home on June 20, 1825, said:—

"The interference of the legislature has paralyzed the exertions of the people and effected an entire destruction of all confidence between man and man. Although this system was sanctioned by the will of the majority of the legislature, that does not justify it. The Constitution must be a shadow if it be made to yield to the will of each impassionate majority and those essential principles of a free government for which we have fought and bled must cease to be our pride and boast."

A writer in the "Spirit of '76," who signs himself "Plebeian," in a card to Governor Desha, gives the following description of the situation at this time: —

"The condition of Kentucky is acknowledged to be a good one. It is inferior to that of no State in the Union. The people of Kentucky are intelligent. Their soil is prolific. Their climate propitious. In these particulars they are eminently blessed; yet these people, so much favored by a beneficent Heaven, so much signalized by their peculiar natural capacities are oppressed with debt; their currency depreciated; their Constitution disregarded; their laws powerless; their lives and their property insecure; themselves driven to the verge of civil war; industry deprived of its incentives and despoiled of its rewards; fraud sanctified by law; the improvident living on the provident; the idle fattening on the sweat of the laboring; dishonest bankruptcy considered honorable; solvency, criminal; refusing to pay debts, a badge of patriotism; attempting to exact payment, called oppression; the punctual, laboring citizen denominated "aristocrat," "tory"; the lazy and dissolute, who live by fraud and stealth, lauded as patriots, whigs, republican; travellers murdered for their money and no punishment inflicted; citizens murdered weekly and no murderer hung; the fines inflicted on those who support "the powers that be," remitted; the honest alarmed; the upright miserable; the State degraded. This is a faithful, but very imperfect picture of the condition of our country. Who so blind as not to see the causes of all these effects, in an unjust and unconstitutional administration of the government? The best form of government corruptly or foolishly administered will be oppressive."

This may sound extravagant to people of this day, but it was written by an eye-witness — one of the most conservative men that ever lived — afterwards known to fame as Chief Justice Robertson, Kentucky's most eminent jurist.

After the elections in 1825 the tide of popular favor began setting towards the "Old Court." At the spring term in 1826 it had on its docket 736 cases. Out of that number it was in possession of about 350 records. The others had been borne off by the "Desha Court." In the six months preceding that time 274 cases had been docketed, more than ever before in the same length of time.

The "New Court" party had lost the House in the elections in 1825, but as only one-fourth of the senators were elected then,

it still had control of the Senate, which still refused to repeal the law creating the "New Court." A proposition from the Senate for a compromise court, to consist of three old and three new judges, was rejected as also a proposition that all judges of both courts resign and allow an entirely new court, equally divided as to political faith, to be appointed.

The "Old Court" judges and their adherents insisted that they were contending for a principle which involved the independence of the judiciary and the consequent safety of the people. With this issue again before the people in August, 1826, the "Old Court" party was overwhelmingly victorious and at the next session of the legislature, on December 30, 1826, the laws abolishing the "Old Court" and establishing the "New Court" were repealed and order once more brought out of chaos.

This repealing act is entitled "An Act to Remove Unconstitutional Obstructions thrown in the way of the Court of Appeals." It is prefixed to volume III. of T. B. Monroe's reports.

The decisions of the "New Court" are reported in 2d T. B. Monroe's Reports, and are not regarded as of binding authority. They have never been cited by the Kentucky Court of Appeals.

For more than two years before this conflict ended, the issue joined was *on the right of the legislature to control the action of the judiciary*. The obnoxious acts adjudged to have been void were repealed as to contracts made after June 1st, 1824, *before the first attempt to drive the judges from office had been made*.

It may not be amiss, before concluding this review, to say something of the men who were prominent on both sides of the struggle just described. On the side of the "Old Court" may be mentioned Judges Boyle, Owsley, Mills and George Robertson, afterward Chief Justice Robertson. These were all men of national renown in their time. They repeatedly declined honors and official positions which were tendered them.

Judge Boyle declined appointment as the first governor of Illinois, tendered him by President Madison, and after he resigned as chief justice of the Kentucky Court of Appeals, he was appointed judge of the United States District Court for Kentucky. He twice declined recommendation for appointment on the bench of the United States Supreme Court to succeed Justices Todd and Trimble.

Few men in the history of this country have enjoyed greater distinction than Chief Justice Robertson. He served on the bench of the Court of Appeals in Kentucky for twenty years and was three times elected to Congress. He declined appointment as governor of the territory of Arkansas offered him by President Monroe, and also declined the appointment as minister to the United States of Columbia, tendered by President Monroe, as well as the appointment of minister to Peru, tendered by President Adams. He four times declined seats in the cabinet of various grades and twice declined a seat on the bench of the United States Supreme Court.

On the "New Court" side of this controversy among the most prominent leaders were George M. Bibb, John Rowan and William T. Barry. Judge Bibb was twice appointed upon the bench of the Kentucky Court of Appeals, was chief justice of that court and twice resigned his seat. He compiled Bibb's Kentucky Reports, covering decisions during the period from 1808 to 1817. He was twice elected to the United States Senate and was the first chancellor of the Louisville Chancery Court, in many respects the most important court of the State of Kentucky. He resigned his office as chancellor to become secretary of the treasury in the cabinet of President Tyler.

John Rowan was a member of the convention that framed the second constitution of Kentucky in 1799. He was elected to

Congress several years later. He was appointed judge of the Court of Appeals, a seat which he resigned after occupying it two years, and subsequently he was elected United States senator for Kentucky.

William T. Barry, who was the chief justice of the "New Court" was elected lieutenant governor of Kentucky in 1820, was a candidate for governor in 1828 and was defeated then because of his alliance with the "New Court" party. Notwithstanding his defeat, however, he greatly helped to carry the State for Jackson at the presidental election in the same year. He was appointed postmaster general under Jackson and held that office as long as his health permitted. In 1835 he was appointed minister to Spain, but died in Liverpool before he reached his post of duty.

The lessons taught by the results of this contest have been of the greatest value, not only to Kentuckians, but to all who feel an interest in the institutions of free government. They serve to show that ultimate reliance can be placed in the honesty and good sense of the people. It was Abraham Lincoln who said that "You can fool some of the people all the time and all of the people some of the time, but not all of the people all of the time," and the history of Kentucky proves that he was right.

In the early days of the republic no lesson could be more important than to learn that the sudden impulses of the people are not to be trusted, and that the dangers of a republic lie in the substitution of popularity for patriotism and in forgetting that a true democracy is a government *of* as well as a government *for* and *by* the people.

The last and now the most important lesson to be drawn from this great controversy is one which the people then learned for the first time and, it is to be feared, are now too near forgetting — the importance of a pure and independent judiciary.

Said Chief Justice Marshall in the Virginia Convention of 1829–1830: "I have always thought from my earliest youth that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and sinning people was an ignorant, a corrupt, or a dependent judiciary."

In the days of Boyle, Owsley and Mills the judiciary of Kentucky was her crowning glory. May the memory of their distinguished services in behalf of constitutional government never fade away and, while it endures, let good citizens keep in mind the lessons of the "Old Court" "New Court" controversy, and remember that the triumph of the "Old Court" was the triumph of the people over themselves and is another proof that "Peace hath her victories no less renowned than those of war."

REFORM OF THE ENGLISH ECCLESIASTICAL COURTS.

THE Anglican Bishops have now introduced a scheme for the reform of the English ecclesiastical tribunals, based on the report in 1883, of a strong and representative commission presided over by Archbishop Tait, and, after his death, by Archbishop Benson. If this scheme becomes law it will profoundly alter the constitution of the church courts in England. It may be interesting to American readers, to have placed before them a brief sketch of the existing system of ecclesiastical jurisdiction in England, and of the present proposals for its amendment. The lowest order in the judicial hierarchy, if one may apply the term to a graduation which is partly secular, is the consistory court. A bishop has two kinds of jurisdiction, one is voluntary or non-contentious, the other is contentious. The former includes such matters as the grant of licenses and visitation. The other embraces procedure under such statutes as the clergy discipline act, 1892, and the issue of "faculties," as episcopal permissions to do acts affecting old fabrics or interiors of churches, otherwise illegal, are styled. It has long been the practice for the bishops to delegate both species of jurisdiction. The voluntary jurisdiction was delegated to the vicar-general; the contentious to the official principal. But these offices are now usually united in the chancellor of the diocese, who is appointed by the bishop by patent. It is in the consistory court that the bishop's contentious jurisdiction is exercised, and for all practical purposes, the chancellor is the judge of that tribunal. From the consistory court an appeal lies to the provincial courts, i. e., to the courts of the Archbishop of the province of Canterbury or York, as the case may be. In the province of Canterbury the name of provincial court has been and is applied to various tribunals, the court of the vicar-general, where bishops of the province are confirmed, and the court of the master of the faculties, where cases relating to notaries public are held. It is usually designated, however, the famous court of arches. This tribunal derives its name from the church of St. Mary-le-Bow — *Ecclesia Beatæ Mariæ de Arcubus* — in which it formerly sat. Its history past and present cannot be explained without a brief digression. In the English ecclesiastical system, as in that of the western church generally, there are a number of districts exempt from the jurisdiction of the bishop of the diocese in which they are placed. These are called "peculiars"; some of them, e. g., the Chapel Royal, St. George's, Windsor, and Westminster Abbey, are "royal peculiars," being under the immediate jurisdiction of the crown. Others are "bishop's peculiars," and the bishop, for instance, has four in the diocese of Lincoln, while yet a third class are "archbishop's peculiars." These last sprang from a privilege enjoyed by the primates of exercising jurisdiction in the places where their seats and palaces are. There were thirteen such peculiars in the City of London. One of them was the parish of St. Mary-le-Bow, and the archi-episcopal jurisdiction over them all was exercised in the court of arches by an officer called the dean of arches, while the ordinary metropolitan jurisdiction of the primate was exercised by his official principal. No dean of arches has been appointed for centuries, although the name has sometimes been given to the official principal. Besides its jurisdiction over the "archbishop's peculiars," the court of arches entertains appeals from the various consistory courts, and also exercises, under letters of request from the bishop of any diocese in the province, jurisdiction over causes of which the consistory court

might take cognizance. Under the Public Worship Act, passed in 1874, to "put down ritualism," it occupies a peculiar position. A judge (Lord Penzance) was appointed to exercise jurisdiction under the act. He was to be "Judge of the Provincial Courts of Canterbury and York," and on the retirement of Sir Robert Phillimore from the official principalship of Canterbury, he was to succeed to that office, and all proceedings taken before him in Canterbury were to be "deemed to be taken" in the court of arches. Lord Penzance did succeed Sir Robert Phillimore, and Archbishop Tait granted him a patent purporting to confirm him in the official principalship. But the patent was not in turn confirmed by the dean and chapter, and accordingly Lord Penzance's title has always been open to dispute. The ultimate court of ecclesiastical appeal is the judicial committee of the privy council which took over by act of parliament, in 1833, the jurisdiction of the high court of delegates. It adopts in ecclesiastical causes, the principle that its own decisions are always liable to be revised, and, if need be, reversed, in the light of fresh historical investigation.

Such are the English ecclesiastical courts as they stand. Wherein do they require reform? The answer is: at almost every point in their structure. The ritual prosecutions of twenty years ago, discredited Lord Penzance's court. The result was a cessation of appeals to it. The consequence of that, in turn, was the growth of a body of consistorial law, characterised by utter want of uniformity and numerous mutual contradictions. It is not too much to say that the issue of an application for a faculty for chancel gates, or a rood screen, or altar lights, depends almost entirely on the diocesan court in which it is made. Again the chancellors have largely usurped the jurisdiction of the bishops in their own courts. This has given rise to grave difficulties in regard to the granting of licenses for the remarriage of divorced persons. The objections to the court of arches have been already indicated. There is room for the contention, that it is now a purely secular tribunal and its methods of procedure are quaint. In a recently reported appeal, Lord Penzance gave judgment, through his surrogate, before he had heard a word of argument on one side or the other. The judicial committee lies open to the criticism of not being a spiritual court, and to the further disadvantage that only one judgment is delivered in causes that come before it. A striking illustration of this defect is afforded by what occurred in the case of Ridsdale *v.* Clifton. The point at issue was the legality of the eucharistic vestments, and notably the chasuble in the Anglican church. Under two earlier decisions of the committee, Westerton *v.* Liddell, and Martin *v.* Mackonochie, these vestments were lawful. Under the later case of Elphinstone *v.* Purchas, they were unlawful. There was an intensely strong feeling in legal circles that the last-named decision was (as both it and the Ridsdale case are now pretty generally admitted to be) bad law, and consequently the issue of the Ridsdale case was awaited with much interest. The committee again decided against the vestments. But Chief Baron Kelly, who was one of the judges, not only dissented, but took occasion to publish, in unusually emphatic terms, the fact of his dissent. An order in council soon afterwards reaffirmed the binding authority of the "ancient rule and practice" of the judicial committee against the publication of dissenting judgments, or any indication of how the voices of the judges went. But the episode is interesting as showing the inconvenience to which the existing rule may give rise in hotly contested cases.

The reforms now contemplated (on the lines of the report of 1883) are these. Any complaint, say as to ritual, is to be made to the bishop in the first instance, as under the Public Worship Regulation Act the bishop

may veto proceedings. If he allows them to go on, and the clergyman attacked consents, the bishop may, with the consent of the complainant, dispose of the case. Otherwise it goes before the consistory court, in which the bishop will henceforth be the *real* judge, with two assessors, one legal (usually the chancellor), the other theological. From the consistory court, an appeal lies to the court of the archbishop, who may be assisted by five theological assessors. The ultimate appeal is to a court of lay members appointed by the crown. Thus the secular element is retained. But there are highly important limitations. Each judge is to be an Anglican. If reasons for a decision are given at all, each member of the court is to deliver a separate judgment. The judges may, and, on the demand of any member must, consult the episcopate on ecclesiastical issues arising before them. Only the actual decree in each case is to be binding. The reasoning and the law on which it is founded may, in any subsequent proceedings, be impugned.

A. W. R.

A LEGAL ROMANCE.

THERE is ample material for a sensational novel in the old suit of the Countess of Strathmore *v.* Bowes, reported in 2 "Brown's Chancery" 345, again in rehearing in 2 "Cox's Chancery" 28, and eleven years later in Brown's "Parliamentary Cases" 427. The facts of this remarkable case are as follows: The Earl of Strathmore, one of the grandees of England, died in 1776. His widow then became seised in her own right of lands, castles, and many a fair manor. She soon wearied of walking the path of widowhood, and became engaged to marry one Mr. Grey, a plain esquire. There was a Mr. Stoney, a lieutenant in a regiment of foot, eking out a rather scant existence on half pay, who set about winning the fair widow and her fairer fortune. He saw no chance in the course of honorable courtship and resorted to stratagem, on the principle of the adage, "All is fair in love and war." To attract the attention of the lady, he caused a newspaper publication to be made shamefully aspersing her good name. He then came forward as her champion to call out her traducer. Then a pretended duel was reported in which the lieutenant shammed the part of suffering a wound. He was brought home from this fictitious field of honor to his lodging, apparently a dying man. Information was conveyed to the countess that the young soldier had fought the duel to vindicate her fair fame, had fallen, and lay dying. The countess was of a romantic turn herself and flew to his bedside to express her gratitude and her interest. He talked to her in the low voice of one in the agonies. He told her of his love, that his death was sure to come in a few hours. Emboldened by her manner and the apparent effect of his ruse upon her susceptible mind, he said that he could die happy if she would only condescend to marry him. His life would then go out in joy and peace. The romantic lady was completely taken in. She could not deny this request to one who lay dying for her sake. A clergyman was summoned, and the marriage took place at once lest death should be the first bride. Then the wounded man recovered rapidly. Never medicine operated before like the healing balm of that matrimony.

He at once began to look around for her

property. He learned that about a week before the marriage she had, with the knowledge and approval of Mr. Grey, her then intended husband, executed a settlement of a considerable part of her estate to her own use and that of her children. He began a course of most abusive treatment, and finally, four months later, by threats of personal violence and by the most cruel restraint, he compelled her to execute a revocation of this deed of settlement. Then the love-lorn lieutenant led the poor woman a weary race. She had jilted Mr. Grey, disgusted her relatives, and made such a conspicuous fool of herself, that she tried to live it out. She endured this life for seven years, and the brute treated her worse than a slave. He wasted the estate; he would not allow her to see her friends, forced her to make such conveyances as he desired, and finally carried her away to Sheatham Castle in Durham County, and kept her there a close prisoner.

Then she made a bold push for liberty, improved an opportunity to escape from the castle, went before a magistrate, swore the peace against her husband (who after his marriage assumed the name of Bowes), and filed a bill for a separation and to set aside the deed which he had forced her to sign revoking the settlement. Bowes filed a cross-bill to set aside the settlement as having been made upon the eve of marriage in fraud of his marital rights. The suit dragged on from 1785 to 1797, when the opinion of Mr. Justice Buller, sitting for the Lord Chancellor, was given that her deed of settlement should stand, and the deeds which her husband had by duress compelled her to execute should be set aside. The bills of costs were snug sums, however. One was taxed at £1,742 and more, another at £1,161.

The case went to the House of Lords, and was there decided in her favor. She got justice at last, and her husband died. But the estate had been sadly wasted by him and reduced by the litigation.

One amusing aspect in the case is the solemnity with which Sir John Mitford, as counsel for the husband, argued that if this deed of settlement, executed by this woman were not set aside, "a precedent would exist destructive of confidence in every matrimonial engagement, and leading to consequences subversive of all the grounds on which the law of England, with respect to the obligations of husbands, by force of the contract of marriage, is founded."

This is one of many stories to be found in the dry reports of the law reminding us that "truth is stranger than fiction," and that the legal profession meet in real life with more of the rascality, love, romance, foolishness, virtue, and nobility that make up the chapter of human life than has ever been told in novels, from the Book of Esther down to the story of Trilby.

LONDON LEGAL LETTER.

LONDON, March 5, 1899.

IT would startle the bar of any of the American courts to find a *nisi prius* judge sitting some morning in an appeal court to supply the place of an absent member of the latter body, or to find a supreme court judge on the bench of the circuit court ready to take the docket and to hear motions and try jury cases. It would be still more remarkable if a judge who had retired from office should from time to time reappear, without special warrant of appointment for that purpose, and sit with his former brethren of the appellate or supreme court and hear arguments and render judgment. And yet so great is the elasticity of the English judicial system that such occurrences happen here and excite no comment.

The Court of Appeal is composed of six lord justices of appeal and sits in two divisions, one to hear appeals from the Chancery side of the High Court and the other from the Queen's Bench or common law division. As in all cases where the subject matter of an appeal is a final decree or judgment the arguments must be heard before not less than three judges sitting together, it is necessary that there be six judges constantly available. The lamentable and sudden death of Lord Justice Chitty a fortnight ago reduced the number to five and this force was further reduced by the illness of Lord Justice Vaughan Williams to four. As the work could not be interrupted, the Lord Chief Justice, who was engaged in trying special juries, left that duty to one of the other *nisi prius* justices, and completed the requisite number in one of the Appeal Courts, while the Lord Chancellor, figuratively speaking, descended from the woolsack and filled out on the other.

Had Lord Herschell, whose sudden death in Washington startled and distressed the profession here, been at home, he would, although now no longer in office, have been available to sit in either of the courts, as the statutes constituting the Court of Appeal make every person who has held the office of Lord Chancellor an *ex officio* judge of that court. The president of the Probate, Divorce and Admiralty division (Sir Francis Jeune) is also an *ex officio* judge of the Court of Appeal and has from time to time taken his place in it. So, on the other hand, the lords justices have not thought it beneath their dignity to sit in the *nisi prius* courts, when their services are not required in their own courts, to help on occasions when the press of work was likely to cause delay. In addition to these *ex officio* judges, who are at all times available in the Court of Appeal, the Judicature Act of 1875 provides that the Lord Chancellor may request the attendance at any time, except during the time of the spring or summer circuits, of an additional judge for the Queen's Bench Division at the sittings of the Court of Appeal and he shall attend accordingly.

It is unnecessary to say that this arrangement works admirably and enables the Court of Appeal to keep well up with its work. In fact it is so well abreast of it that in the great majority of instances a cause is argued and finally decided in that court within two or three months after it has been originally heard at *nisi prius*.

Another cause which contributes even more largely to this rapid despatch of business is the simplicity of practice in the Court of Appeal, in which respect also it is widely different from the custom in the appellate courts of the United States. The appellant serves upon the respondent a very brief but comprehensive notice of appeal, simply notifying him when he proposes to move in the appeal court, and the grounds of his mo-

tion. He may appeal from the whole or any part of the judgment, and in case he appeals from a part the notice shall specify which part. He never prints a brief, or lodges such a document with the court, or exchanges it with opposing counsel. He must, however, supply each of the three judges with a copy of the pleadings upon which issue was joined below, of the judgment and of the transcript of the material parts of the evidence. When the case is called, counsel for the appellant states his case and argues his points, and has an opportunity to reply to his adversary's argument. Upon the close of his reply the judges at once, or at least in the great majority of instances, give their judgment. It is true that they now and then state that they will take time to write their opinions, but in such cases they will not permit counsel to hand up any printed arguments or briefs. The whole matter is concluded as far as counsel are concerned when their oral arguments have been heard.

The power of the Appeal Court is very wide. It has authority not merely to make an order or ruling which ought to have been made by the court below, but also to make such further order as the case may require, "notwithstanding that the notice of appeal may be that part or all of the decision may be reversed or varied, and such powers may also be exercised in favor of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision." The appeal is in the nature of a rehearing of the case on its merits. No technicalities are considered. The admission of improper evidence would not affect the judges unless they were shown that such a breach of the laws of evidence had materially contributed to work an injustice to the appellant. Thus it happens that not once in fifty times is a case reversed and remanded for new trial. If error has been committed below, the Lord Justices of Appeal considers what effect it has had on the verdict of the jury or the judgment of the court, and they save the parties, so far as is possible, the expense and delay of a new trial by giving such a judgment as to their minds seems to do justice.

STUFF GOWN.

The Green Bag.

PUBLISHED MONTHLY, AT $4.00 PER ANNUM. SINGLE NUMBERS, 50 CENTS.

Communications in regard to the contents of the Magazine should be addressed to the Editor, HORACE W. FULLER, 344 Tremont Building, Boston, Mass.

The Editor will be glad to receive contributions of articles of moderate length upon subjects of interest to the profession; also anything in the way of legal antiquities or curiosities, facetiæ, anecdotes, etc.

FACETIÆ.

WHITE brought suit in replevin against Brown to recover possession of an aged horse which the former had given the latter to put to death. Brown was to have the money arising from the sale of the carcass. Instead he sold the steed alive and retained the cash. White wanted the animal killed; hence a German justice of the peace of southern Indiana was called into service. After reviewing the evidence, his honor continued: "In dis case de horse vas von gift causa mortees, — dot ist, de horse vas giffen for de cause off tying; it vas a gift in exdremis, — dot ist, it vas de last tink dot von could do mit de horse. But as de horse dit not tie, unt Prown dit not do dot last tink, den dot gift vails, und dis gourt fints for de blaintiff."

"WHAT is your occupation?" the lawyer asked a boy on the witness stand.

"I work on my father's farm," the witness replied.

"You don't do much but sit around, do you?"

"Well, I help my father."

"But you're worthless, aren't you?" was the attorney's decisive question.

"I don't know whether I am or not," retorted the witness warmly.

Then the attorney took another tack. "Your father's a worthless man, isn't he?"

"Well, he works about the farm."

The attorney here fastened an eye which gleamed with triumph on the jury, and nailed the boy with a glance from the other, and said: "Isn't it true that your father doesn't do enough work to prevent his being called 'worthless'?"

The boy had chafed under these unpleasant questions, and summoning his courage, he said loudly: "If you want to know so bad whether my father's worthless, ask him; there he is, on the jury!"

AN exchange tells a story of a judge who could not control his temper, and so could not control other people. One day there was an unusual disorder in the court room, and at last the judge could endure it no longer.

"It is impossible to allow this persistent contempt of court to go on," he exclaimed, "and I shall be forced to go to the extreme length of taking the one step that will stop it."

There was a long silence, then one of the leading counsel rose, and with just a trace of a smile, inquired, "If it please your honor, from what date will your resignation take effect?"

THE old practice of badgering witnesses has almost disappeared from many courts, but in some it is still kept up — sometimes, however, to the damage of the cross-examiner.

Lawyer S —— is well known for his uncomely habits. He cuts his hair about four times a year, and the rest of the time looks decidedly ragged about the ears. He was making a witness describe a barn which figured in his last case.

"How long had the barn been built?"

"Oh, I don't know. About a year, mebby. About nine months, p'r'aps."

"But just how long? Tell the jury how long it had been built."

"Well, I don't know exactly. Quite a while."

"Now, Mr. B ——, you pass for an intelligent farmer, and yet you can't tell me how old this barn is; and you have lived on the next farm for ten years. Can you tell me how old your own barn is? Come, now, tell us how old your own house is, if you think you know."

Quick as lightning the old farmer replied: —

"Ye want to know how old my house is, do ye? Well, it's just about as old as you be, and needs the roof seeing to about as bad."

In the roar that followed the witness stepped down, and Lawyer S —— didn't call him back.

NOTES.

A NEW YORK firm applied to Abraham Lincoln, some years before he became President, for information as to the financial standing of one of his neighbors. Mr. Lincoln replied as follows: "Yours of the 10th inst. received. I am well acquainted with Mr. X., and know his circumstances. First of all, he has a wife and baby; together, they ought to be worth fifty thousand dollars. Secondly, he has an office, in which there is a table worth one and a half dollars, and three chairs, worth, say, one dollar. Last of all, there is in one corner a large rat-hole, which will bear looking into. — Respectfully yours,

"A. LINCOLN."

EARL RUSSELL, who has just entered his name as a student at law at Gray's Inn, is a grandson of England's famous premier, and until he came into his title made his living as a journeyman electrician. He is the second English peer to qualify for the bar. The first is Lord Coleridge, a son of the late chancellor.

PROFESSOR LOMBROSO'S daughter, Paola, has been sentenced in the criminal court of Turin to twenty-two days' imprisonment and a fine of sixty-two lire. Her crime was publishing an article in a socialistic paper in which she described the misery she herself had seen among the poor people, and declared that the social system which made such evil conditions should be overthrown.

A NEW JERSEY judge has created a decided sensation by declaring that boys sent to the State Reform School come out first-class criminals. In a State noted for the strictness of its judicial administration this seems a startling accusation. Unfortunately, this judge's opinion is shared, to some extent at least, by many high police officials.

Reform schools are benevolently intended to be a refuge for wayward children where they may be brought to a knowledge of their duties to themselves and to society. The system on which they are based has long been supposed to be the best that modern thought and wisdom could devise. If they fail in their mission, a most serious condition is created.

Experts in penology are, for the most part, agreed that the reformation of a boy is a far more uncertain problem than that of a girl, alleging that women and girls seldom become wayward from choice, and that where a depraved instinct exists naturally it is stronger in a boy than in a girl.

The present direction of thought to the subject is far from being new. It invites the profoundest study of practical humanitarians. Even wayward youth are of sufficient importance to enlist the best efforts to disprove in their behalf the police axiom, "Once a criminal, always a criminal."

A FAMOUS blunder was made in the last century by the trustees of Yale University when they leased a farm belonging to the college for an annual rental of about five hundred dollars a year for a term of nine hundred and ninety-nine years. They considered the land of little value and chuckled when they thought of the good bargain they had made in sticking the lessee and his heirs for a few months less than ten centuries. But it so happened that the rich and fashionable city of Newport rose upon the site of this farm, and the descendants of the original tenant have cut the farm up into lots and are now living in pampered luxury upon the rentals. They practically own the land, and the expiration of the lease about nine centuries in the future does not give them the slightest concern. It aggravates the trustees whenever the modest little payment for rent comes in to think that if the lease had been made out for ninety-nine years instead of nine hundred and ninety-nine, the university would now be in command of a princely revenue from this one property alone.

A BILL has been introduced into the New York legislature intended to prevent mistrials through the sickness of a juryman that at least possesses the element of novelty.

It proposes to amend the Code of Criminal Procedure by providing that when a trial jury is formed in cases where the crime is punishable with death, or in any case which in the judgment of the court is deemed extraordinary, the number of trial jurors drawn shall be thirteen instead of twelve.

The trial shall proceed in the usual manner in the presence of the thirteen jurors, but the thirteenth shall take no part in the deliberation or determination of the jury unless one of the twelve becomes physically incapacitated for further service, when he may be retired and the thirteenth man put on duty in his place. Next in order is a plan whereby our courts can be relieved of the incubus of "the obstinate juror."

IT is said that during the past year sentences amounting to a total of more than twenty-six hundred years' imprisonment have been imposed by the German courts for offenses described as high treason — that is, for expressions derogatory to the Kaiser.

CURRENT EVENTS.

THE first advertisements known were placed on the doors of St. Paul's Cathedral.

THERE are said to be fewer suicides among miners than among any other class of workmen.

SINCE the beginning of this century no less than forty-two volcanic islands have risen out of the sea. Nineteen of that number have since disappeared, and ten are now inhabited.

M. HENRI BOURGET, of the Toulouse (France) Observatory, has called attention in "Nature" to a common phenomenon which he believes has not been mentioned in any scientific book. If one end of a bar of metal is heated, but not enough to make the other end too hot to be held in the hand, and then suddenly cooled, the temperature of the other end will rise till the hand cannot bear it. All workmen who have occasion to handle and heat pieces of metal, he says, know this.

AN old Newcomen steam engine at North Ashton, near Bristol, England, as described by Mr. W. H. Pearson in the British Association, is still doing practical work after an active career of nearly one hundred and fifty years, it having been erected in 1750 at a cost of seventy pounds. The piston is packed with rope, and has a covering of water on the top to make it steam-tight. The working of the engine is aided by the vacuum formed by the injection of water into the cylinder. The old man now engaged in working this engine has held his post since he was a lad, and his father and grandfather occupied the same position.

"THE wonderful growth of the telegraph business is shown," says "Popular Science News," "in the fact that thirty years ago there were only 3,000 telegraph offices and little more than 75,000 miles of wire strung throughout the length and breadth of the land. At the present time there are about 25,000 offices and over 1,000,000 miles of wire. The annual number of messages handled thirty years ago was 5,879,282; to-day it is 80,000,000. The average cost to the sender 30 years ago was $1.047; the average cost to-day is 30.9 cents. At the start the cost to the company was more than twice what it is to-day to the sender."

A NUMBER of Confucian scholars, in long-sleeved gowns, kneeling before the palace gate, have petitioned the Emperor of Corea to remarry. "Their memorial," says Dr. Sherwood Hall, "attributes all Corea's calamities, including Christianity, to his Majesty's remaining a widower."

LITERARY NOTES.

THE March number of SCRIBNER'S shows Governor Roosevelt in the sort of description that he likes best — a narrative of a fight. With his usual candor he calls this "General Young's Fight at Las Guasimas," and pays a hearty tribute to his brigade commander and to the regulars who won equal honors with the Rough Riders in that hot skirmish. Senator Hoar, as a young man frequently heard Webster speak, and this instalment of his "Political Reminiscences" gives his impression of the character and oratory of Webster. W. J. Henderson, a well-known critic, has written of "The Business of the Theatre," revealing that side of theatrical affairs of which the public never hears. In fiction a new writer, Albert White Vorse, and a new field, the Eskimos of Greenland, are introduced with a dramatic short story. Another newspaper story, by Jesse Lynch Williams, tells the famous tale of a college lark that helped to make history. Robert Grant writes a "Searchlight Letter to a Modern Woman with Social Ambition," and in "The Field of Art" a critical review of Bartlett's "Michael Angelo," with illustrations of the statue.

THAT neither patriotism nor good sense is yet extinct among Spanish writers on public affairs is clearly proved by the article on "True National Greatness," which THE LIVING AGE publishes in its number for March 4. It is written by E. Gómez de Baquero, and is translated from "La España Moderna." The "Paladin of Philanthropy," about whom Austin Dobson discourses is General James Edward Oglethorpe.

THE most interesting or important article in a magazine is not always to be found at the beginning. Sometimes a striking feature is secured when half the forms are ready for the press, and room has to be made for it near the latter end of the magazine. It is so in the March number of THE CENTURY with Major General Greene's "Capture of Manila." General Greene commanded the second expedition from San Francisco and took a conspicuous and important part in the operations of the army. Lieutenant Hobson tells in this number of his experiences in prison in Santiago and his observations of the siege; Lieut. J. B. Bernadou, who commanded the torpedo boat Winslow in the action at Cardenas in which Ensign Bagley was killed, tells the story of May 11; Lieut. Cameron Winslow, who commanded the cable-cutting expedition at Cienfuegos on the same day, describes the hazardous operations which he directed; and Mr. Arthur Houghton gives a realistic glimpse of "Scenes in the Spanish Capital" on the eve of the late war. That an American woman has become Vice-Reine of India gives special interest to the opening article, "At the Court of an Indian Prince," written and illustrated by Mr. R. D. Mackenzie, but nothing in the number is better worth the careful consideration of American readers to-day than "British Experience in the Government of Colonies," by the Right Hon. James Byrce, M.P.

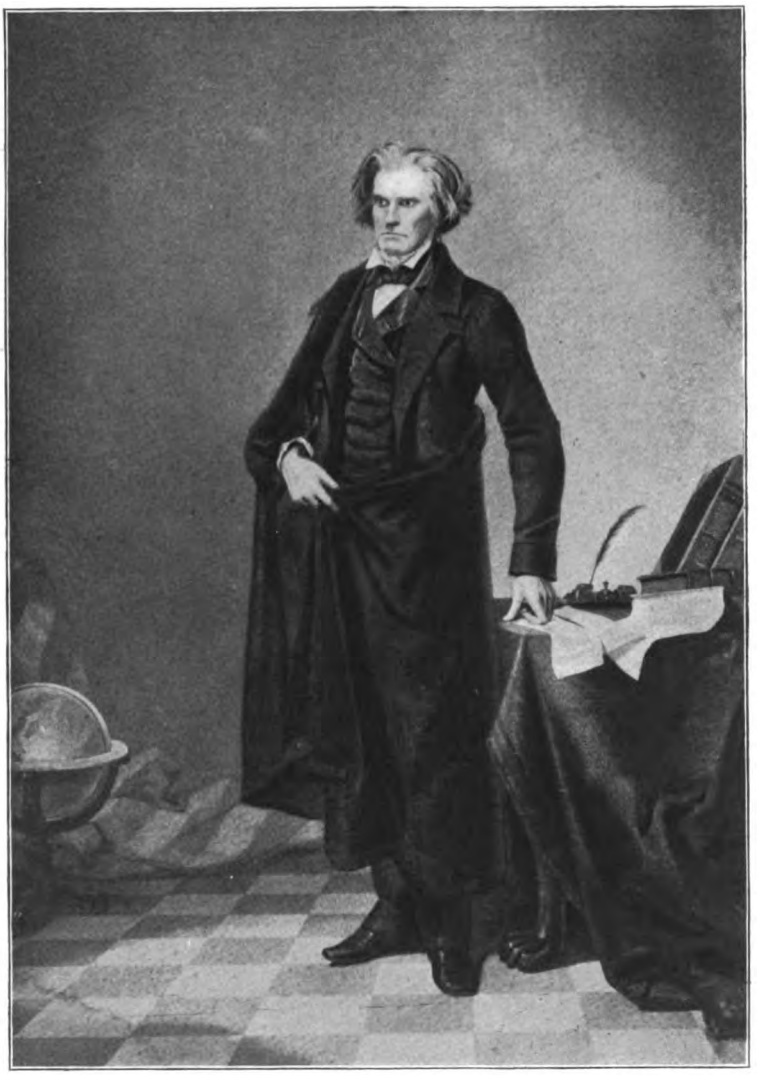
"THE White Man's Burden" gives the key-note of the AMERICAN MONTHLY REVIEW OF REVIEWS for March. The editor, in "The Progress of the World," discusses the Philippine situation and American prospects in those islands, as well as the bearings of the ratification of the Spanish treaty on the future of the Filipinos. Col. William Conant Church, contributes a sketch of Gen. Elwell S. Otis. There are two articles on Philippine native types and characteristics, one of which was written by Señor Caro y Mora, editor of the "Voz Española," of Manila. Dr. William Hayes Ward, who has recently returned from an extended journey through Porto Rico, contributes an article on present-day conditions in that island, with special reference to the effect of American occupation on the welfare of the people. This number also contains articles on the late President Faure, of France, on "An American Farmer's Balance-Sheet for 1898," and on "Characteristics and Possibilities of Middle Western Literature."

THE contents of HARPER'S MAGAZINE for April are "The Princess Xenia," a novel, Part I. by H. B. Marriott Watson; "Aspects of Rome," by Arthur Symons. The article describes with rare sympathy and insight modern phases of the life of the Eternal City; "The Trial of the Oregon," by Rear-Admiral L. A. Beardslee, U. S. N.; "The Sad Case of the Princess Esme," by Chalmers Roberts. A narrative from real life relating the tragic death of a Turkish princess; "The Spanish-American War. Part III." By Henry Cabot Lodge; "The Blockade of Cuba and Pursuit of Cervera"; "Thirteen Days in Unexplored Montenegro," by May McClellan Desprez; "Cromwell and his Court," by Amelia Barr. Incidents and Anecdotes gathered from Cromwellian newspapers and tracts; "Under an April Sky," a story, by Brander Mathews; "Of Her Own Household," a story, by Margaret Sutton Briscoe; "The Ape of Death," by Andrew Wilson, M.D.; "The Rescue of Admiral Cervera," by an American Bluejacket; "Honor to Whom Honor is Due," by Rufus Fairchild Zogbaum; "The Equipment of the Modern City House," by Russell Sturgis.

NEW LAW BOOKS.

A TREATISE ON THE LAW OF CONTRIBUTORY NEGLIGENCE or Negligence as a Defense. By Charles Fisk Beach, Jr., of the New York Bar. THIRD EDITION by John J. Crawford of the New York Bar. Baker, Voorhis & Co., New York, 1899. Law Sheep, $6.00 *net.*

Mr. Beach's work on Contributory Negligence is so well and favorably known by the profession that any further words of commendation seem almost superfluous. It is the only separate treatise on this important branch of the law of negligence, and has proved itself invaluable to both bench and bar. In this new edition, Mr. Crawford has rewritten the text wherever necessary, and has added many new sections. The citations of cases from the State, Federal and English Reports are more than double in number those contained in the original edition of the work, and number many thousands. The cases are cited not only from the Official Reports, but also from the several series of "Reporters" of the "National Reporter System," and from the "American Decisions," "American Reports," and "American State Reports." The work is in every respect up to date.



J. C. Calhoun

The Green Bag.

VOL. XI. No. 5. BOSTON. MAY, 1899.

CALHOUN AS A LAWYER AND STATESMAN.

I.

BY WALTER L. MILLER OF THE SOUTH CAROLINA BAR.

JOHN C. CALHOUN was born and bred in what was then known as Abbeville District, South Carolina, but the divisions formerly denominated districts are now called counties. He was born in March, 1782. His father was a farmer and was, comparatively speaking, a poor man, and was not able to give his children many educational advantages. It seems, too, that he was opposed to his son John entering one of the learned professions. The consequence was that the boy determined to become a planter. His father having died when John was thirteen years old, the latter spent the following four years on his mother's farm, looking after it in the absence of his elder brothers. In this way he became quite fond of agriculture, and this fondness continued throughout his life. After he entered politics, he owned a farm at Fort Hill, that being the name of his residence. It was located near Pendleton in the upper part of the State. When his public duties permitted him to be at home, he devoted a good deal of attention to his farm. The first thing he did every morning after rising at daybreak was to walk over his place. Nor was he a theoretical, impractical sort of a farmer, like George McDuffie, but he was a good manager and knew how to make fine crops without spending too much money on them. He was a member of an agricultural society at Pendleton. He introduced into his section Bermuda grass for grazing purposes, and he was the first to import blooded cattle, especially the English red Devon cows. He was the first, too, to introduce hill-side ditches in his part of the country, himself superintending the surveying and laying them out. He had the experiences common to most farmers. On one occasion, a gentleman passing Fort Hill saw Mr. Calhoun and his negroes out in the woods fighting fire. He was fond of meeting the farmers of the neighborhood and of discussing with them agricultural matters.

But I started out to write of Mr. Calhoun as a lawyer and as a statesman, and not as a farmer; so I must get back to my subject. As we have already seen, he had made up his mind to adopt agriculture as his pursuit. The change which was made in his plans and life-work was due principally to the suggestion and influence of his brother James. The latter had been in business in Charleston, and, while there, no doubt had become impressed with the advantage which a young man who has studied a profession, usually has over his fellows. At any rate, we find him returning to his home in Abbeville and advising his brother John to study a profession. The latter took to the suggestion kindly, provided certain obstacles in the way could be removed. Four years before, while a pupil of his brother-in-law, Dr. Waddell, he had availed himself of a small circulating library and read extensively for a mere boy. He discarded novels and devoted himself principally to historical reading, such as Rollin's "Ancient History," Voltaire's "Charles XII," and Robertson's "Life of Charles V" and "History of America." In this way he

acquired a taste for reading. No doubt such books as these, together with association with such a man as Dr. Waddell, broadened his views and inclined him favorably towards a professional life. He accordingly informed his brother that he was willing to adopt his suggestion, provided he could obtain his mother's consent and the requisite means. He said that it would require seven years of study to prepare himself for a profession, and that in the meantime he would have to be supported. He also expressed himself as decidedly preferring to remain a farmer to becoming a half-educated lawyer or doctor. When we remember that he was then nineteen years old, we readily see that he had a good deal of pluck and determination. Fortunately his mother at once consented, and James told him that he could so manage the farm as to give him a support, while he was preparing for his profession. The very next week, he went to work under Dr. Waddell, and in two years' time we find him entering the junior class at Yale. He graduated with distinction in 1804. While at college, he made a very favorable impression upon President Dwight, who predicted that he would one day become President of the United States. How he happened to select the law as his profession, we are not informed. It is probable that he did so because he expected to enter politics, and, in fact, we are informed by Mr. Jenkins that Calhoun regarded the law as the stepping-stone to a higher position. At that time, young men who were ambitious and desirous of political preferment generally applied for admission to the bar as the first step in that direction. It was a capital course to adopt. The study of the law is an admirable training for the profession of politics. It cultivates the mind, enlarges the vision, and teaches one to think definitely and to a purpose. Besides it calls for the discriminating study of the laws of the country, and, especially for this reason, it is well fitted for the politician and statesman. In fact, Mr. Blackstone recommended the study of law to professional men generally as admirably well suited for training the mind and expanding the ideas.

Mr. Calhoun fortunately adopted the wiser plan of attending a law school rather than first entering a lawyer's office. The school which he selected was the famous one at Litchfield, Connecticut, where he would have the benefit of instruction from the eminent law teachers, Judge Reeve and Mr. Gould. This school was largely patronized by young men from the South. After remaining there for a while, he spent a while in the law offices of Mr. De Saussure of Charleston and Mr. George Bowie of Abbeville, where he familiarized himself with the more practical parts of his profession. And then in 1807, having completed his seven years of study preparatory for entering his profession, he was admitted to the bar. He commenced the practice of his profession at Abbeville, his county-seat. He practiced law only for two or three years; but it was long enough for him to make an exceedingly auspicious start. I do not think that he has usually been credited with the success which he really achieved. His reputation as a logician and a statesman overshadowed everything else. He figured so long and so prominently in the discussions on the momentous political questions of the day that his few years at the bar were lost sight of. Calhoun, the young lawyer, was effaced from the public eye by Calhoun, the great statesman.

And then there is another reason why we are likely to underrate him as a lawyer. The human mind is so constituted that, if a man has preëminent talent in one direction, it is slow to accord him even his deserts in another.

Dr. Von Holst says that, if he had continued at the bar, though he might have attained prominence, yet he never could have become a great lawyer. Suppose we investigate a little and see what he really did

do at the bar. What are the facts in the case? O'Neall, in his "Bench and Bar of South Carolina," says: "My recollection of Mr. Calhoun as a lawyer is from hearing him, when I was a schoolboy at Newberry, and of course my judgment was then very imperfect. His reputation was extraordinary for so young a man. He was conceded, as early as 1809, to be the most promising young lawyer in the upper country. Chancellor Bowie of Alabama, who lived at Abbeville, and had a fine opportunity of knowing Mr. Calhoun's early reputation as a lawyer, says: 'With the members of the bar, as well as with the people, he stood high in his profession. Perhaps no lawyer in the State ever acquired so high a reputation from his first appearance at the bar, as he did. With a towering intellect and untiring energy, he could not long remain second to any man in any station. With a mind like his, so logical, so profoundly metaphysical, so powerful to analyze, and so clear in its conceptions, he could not be less than a thorough and successful lawyer. When at the Bar, the business of the Court was nearly equally divided between himself, Mr. Yancey, and my brother George.' At Newberry, he had also a large practice. Newberry District was the home of his mother's relations, and by their influence he would have received practice under any circumstances, but his acknowledged legal abilities were enough to make him, in that district, a leading lawyer, where the resident lawyers, until 1810, presented no claim to learning or eloquence." John S. Jenkins, in his life of Calhoun, one of the best that has ever been written of him, says: "He immediately took a place in the front rank of his profession, among the ablest and most experienced of its members. Clients flocked around him, and a lucrative practice was the reward of his long and severe course of study. Had he remained at the bar, his great talents must have enabled him to attain a high standing, but he left it so soon, that this can be only a matter of speculation." Says Mr. Rhett: "His preparation for the bar was so thorough and ample, that, with his commanding abilities, on entering it, he stepped at once to the head of his profession." These extracts show that Mr. Calhoun started out remarkably well in his profession, and it omened well for the future.

Had Mr. Calhoun continued the practice of his profession, would he have become a great lawyer? This is an interesting question, but a purely speculative one. Into this domain of speculation, however, as we have already seen, Mr. Von Holst has gone. In his judgment, Mr. Calhoun never could have become a great lawyer. I will quote what he says: "Yet he would undoubtedly never have become a great lawyer, because he was not objective enough to examine his premises with sufficient care, while he built his argument upon them with undeviating and most incisive logic, thereby frequently arriving at most shocking conclusions with nothing to stand upon except a basis of false postulates. Moreover, such natures never attain greatness, unless they pursue an aim which fills the whole head and heart with the force of a burning passion, a frame of mind into which but few men can be put by the common law; and of these few Calhoun certainly was not one."

I doubt very much if Mr. Calhoun would ever have done much on the criminal side of the court. It is not likely that criminal practice would have been congenial to his taste and feelings. Then, besides, it requires very little study. In exceptional cases, however, even on this side of the court, he would in all probability have distinguished himself. These would have been cases which appealed deeply to his sense of justice and right. On the civil side of the court, I do not see why he would not have attained to great eminence. In the first place, he was a man of fine natural endowments. His intellect far surpassed that of most men. In the second place, he had a splendid education, both collegiate and professional. In

the third place, he was a man of vaulting ambition and untiring industry. Then besides he knew how to grasp great principles. He was in the habit of going to the bottom of questions. He was never content with a mere surface view. The nice distinctions of the law, — discriminating one case from another — would have been to him a delight, nor would the investigation of authorities have been distasteful to him. Now these are the very qualities that go to make up a great lawyer. And then, too, he had another and higher quality still that would have helped to command for him success at the bar. He was a man of unusually high character. Clients would not have been afraid to trust him. Sometimes, however, a young lawyer may have all these qualities and yet not succeed, because he never has an opportunity to show what is in him. But this was not the case with Mr. Calhoun. He had already come before the public and made a good impression. In his case everything pointed to high success at the bar.

Did Mr. Calhoun act wisely in leaving the bar and branching out into the wider field of politics? It seems to me that he did. It is hardly probable that he could have won a more splendid reputation as a lawyer than he did as a statesman. All of his tastes and inclinations ran in the direction of politics and statesmanship. From his boyhood he had been fond of history. He delighted in investigating the principles of government and in making nice discriminations therein. He had in an eminent degree a logical cast of mind. And then, too, he excelled as an orator and as a writer. Besides he was an indefatigable student. Says Mr. Von Holst: "He was a born leader of men, and nature had destined him for a political career. While at college the exciting questions of the day had engrossed his attention, and the intelligence and earnestness with which he discussed them proved that he would try to have a hand in shaping the events of the future." The bent of his mind, the character of his gifts, the trend of his thoughts, and the inclination of his tastes, all carried him, where he properly belonged, into the field of politics and statesmanship.

Might he not, however, have united the law and politics? I doubt very much if such a course would have been wise. The law is proverbially a jealous mistress. Except in rare instances, she requires of her votaries their undivided attention. It is true some men have succeeded in both departments. Mr. Webster was not only a great lawyer but a splendid statesman. The Dartmouth College case alone attested his high rank as a lawyer. He was, however, a man of varied attainments and diversified gifts. It is true also that Henry Clay attempted to combine law and politics; but, though he attained some prominence at the bar, still we are told by Mr. Schurz, his biographer, that he never rose to the dignity of being regarded one of the great lawyers of the country. And even if he had been so regarded, still his case would have been an exceptional one, for he was a magnificent orator and a man of magnetic power. Mr. Calhoun's case differed from both of these. He was so constituted that whatever he engaged in received his entire attention. He was a man of concentration of thought and attention. He did not attempt to do two things at once. Thoroughness was one of his leading characteristics, and this, in the absence of varied gifts, necessitated a specialty.

In studying his life, we find that, when he entered politics, though he was elected to the legislature at the head of the ticket, still there was a prejudice against lawyers at the time. This prejudice existed away back in colonial times, and even yet it has not all been dissipated. We find it true also in other States. In reading the history of Virginia, we learn that there was at one time in that State also a strong prejudice against the legal profession. After all, I suppose it is nothing more than we can reasonably

expect. Lawyers have to prosecute men for crimes, — they have to expose rascality among the high and low and rich and poor. As long as this is the case, there will always be some persons prejudiced against them. In spite of all this, however, their talents command recognition. It was true in the time of Mr. Calhoun. He was not only elected, but his name was at the head of the ticket. And it is true now. We find that lawyers abound not only in the State legislatures, but also in the national halls of legislation.

Although Mr. Calhoun had made an unusually brilliant start as a lawyer, still after all it is largely a speculative question to what degree of eminence he would have attained in the legal profession, had he continued actively in this pursuit. His reputation is founded not upon what he accomplished as a lawyer during the few years he was at the bar, but upon what he did as an orator, writer, and statesman.

It has been said by another that it takes three generations to make a gentleman. However this may be, certainly hereditary endowments and ancestral influences as a rule have a great deal to do in the development of the highest form of statesmanship. While, of course, there are brilliant exceptions, as in the case of Mr. Clay, and more notably still perhaps in that of Mr. McDuffie, still as a rule hereditary environments have much to do with one's success in the calling of a politician and statesman. In this respect Mr. Calhoun was particularly fortunate. In the first place, he was born of a family noted, both on the paternal and maternal sides, for their patriotic ardor, and he was brought up among a liberty-loving people. His father, Patrick Calhoun, was born in Donegal, Ireland, and his mother, Martha Caldwell, was the daughter of a Scotch-Irish Presbyterian, and this was a good cross, — the fiery zeal, nervous impetuosity, and hopeful enthusiasm of the Irish tempered by the firmness, hardihood, good practical judgment, and conservatism characteristic of the Scotch. Thus we see that Irish blood flowed freely through the veins of the subject of this sketch, and we all know that the sons of Erin have always had a world-wide reputation for their love of liberty and their antipathy for tyranny and oppression in every form. In the second place, he was brought up at a time and in a place favorable for the development of these same sturdy virtues. America was then comparatively an unsettled country and privation and hardship were the rule rather than the exception. At his father's knee and with his mother's milk, he imbibed a love of freedom and a spirit of independence. His father was a man of bold and independent spirit. In the frequent contests between the white settlers of South Carolina and the Cherokee Indians, he took a prominent part, and, at the head of a company of rangers, he did good service in protecting the infant colony. In the Revolutionary struggle, he was a zealous Whig and won for himself distinction both as a patriot and a soldier. The Caldwells, too, were zealous Whigs and they proved their faith by their valor on the field of battle. Again, not only was Patrick Calhoun a brave soldier, but he won for himself also prominence in the political walks of life. For thirty years he was a member of the legislature. In this way he became conversant with public affairs and was thrown in contact with the prominent men of the country. I have no doubt this had a good deal to do with shaping the life and moulding the conduct of his son. Family talk at the fireside is a potential factor in stimulating the thought, directing the course, and moulding the destiny of children. No doubt young Calhoun, when a boy, had often heard his father give an account of his deeds of daring, relate anecdotes, and tell what he knew of the public men of the country. Oftener still, perhaps, after his father's death, he had heard these same stories from the lips of his mother. The seed thus sown was

not unlikely to bear fruit in after years. Though John had determined to become a farmer and to steer clear of politics, it would not be surprising, if, deep down in his heart even then, there were a hankering for a political life and a secret longing to follow in the footsteps of his father and become a public man. At any rate there is not the slightest doubt that, after he entered politics, his father's course and example had much to do with shaping his own. We find this fact strikingly exemplified and illustrated by an incident which happened in his father's political life taken in connection with the general course which the son pursued throughout his long political career. When the Federal constitution was submitted to the people of South Carolina for their adoption, we learn that Patrick Calhoun opposed it on the ground that it allowed other people than those of Carolina to tax the people of the State, thus violating the principle of taxation without representation. Is it at all surprising that his distinguished son should afterwards have become the great exponent of States rights and a strict observance of the Constitution?

Like father like son, as a general thing is a pretty safe rule to go by. The hereditary instinct, the bent of his mind, and the trend of his thought were all illustrated not only by the subject which he selected for his graduating essay, namely, "The qualifications necessary to become a perfect statesman," but also by a circumstance which happened while he was a student of Yale College, and which is almost invariably mentioned by those who write about him. It seems that on one occasion during his senior year he got into an argument in the classroom with his distinguished preceptor, the president of the college, Dr. Dwight, as to what is the legitimate source of power. The learned doctor was an ardent Federalist, and young Calhoun was one of a few in a class of more than seventy members, who were avowed Republicans in their political principles. Party feeling was bitter at the time, and this discussion was an animated one, though entirely friendly. The class was reciting on the chapter on Politics in Paley's "Moral Philosophy." Mr. Calhoun did not hesitate to avow and maintain in a vigorous way his Republican principles, — that the people were the legitimate source of power. The debate exhausted the time allotted to the recitation. So ably did Mr. Calhoun maintain his side of the question and so favorably did he impress his preceptor that the latter remarked afterwards to a friend that "the young man had talent enough to be President of the United States." Indeed he went even further and made the prediction already referred to on an earlier page. The two terms in which Mr. Calhoun graced the vice-presidency were a sufficient verification of his distinguished preceptor's prophecy.

While Mr. Calhoun was in the law school at Litchfield, Connecticut, he joined a debating society and took an active part in it, in this way improving his talents for extemporary speaking. In reading Mr. Clay's life we learn that he also was a member of a debating society while receiving his professional education. And in taking this step, both of them acted wisely. The training received in a literary society is an invaluable part of a collegiate education. It develops what there is in a boy, gives him self-confidence, improves his style as a debater and a writer, and adds to his grace as a speaker. It also strengthens the attachment which a man feels in after years for the institution in which he was educated. It is indeed surprising how strong is the attachment which some men feel for the literary society to which they once belonged. Not long ago I heard of a distinguished judge in a western State writing back for a badge of the society of which he was a member some twenty-five years ago. I know a distinguished member of the bar of Washington City, who is as loyal and true now to

the college society of which he was a member years ago as he was the day he graduated. And these are by no means exceptional cases. The college literary society should be fostered in every possible way. I have sometimes thought that the secret fraternities, which are so much in vogue in these latter days, tend to impair the usefulness and value of the college literary society. The student body of every educational institution should be encouraged in their effort to build up their college society. Where it is possible, they should have a hall and library of their own. These will not only contribute to their comfort, pleasure, and improvement, but in addition they will awaken in them a spirit of pride and self-respect, which will benefit them not only while they are in college but ever afterwards.

CITIZENSHIP IN CEDED TERRITORY.

By James W. Stillman.

AMONG recent events in our national history perhaps there is none of greater importance than the ratification by the Senate of the United States of the treaty of peace between the United States and Her Majesty the Queen Regent of Spain, on Monday, February 6, 1899, by which Spain relinquished all claim of sovereignty over, and title to, Cuba, and by which the Philippine Islands, the island of Porto Rico and other islands, then under Spanish sovereignty in the West Indies, and the island of Guam, in the Marianas or Ladrones, were ceded to the United States as a part of its territory. Concerning the justice of the terms of settlement of the war between the two nations therein specified, the writer will express no opinion, but will confine his observations to the question whether or not the treaty in any of its provisions is repugnant to the Constitution of the United States.

The first provision of the Constitution relating to treaties is the following:—

> He (the President) shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur. (Clause 2, Section 2, of Article II.)

A treaty is an agreement or a compact between two or more sovereign States, negotiated by authorized agents thereof and duly ratified by the sovereign power of each of the respective parties thereto. By means of treaties only, foreign territory always has been acquired by our Government, except in the cases of Oregon, the Guano Islands, the Midway Islands, and a few others which were acquired by discovery, exploration, and occupation, — a right recognized by the law of nations (Vattel, Book I., Chapter XVIII, Section 207, p. 99.), and in that of the Hawaiian Islands, which were annexed by a joint resolution of Congress, in violation of the Constitution, as the writer contends; for although the possession of such territory has been and may be, one of the results of wars with other nations, it never has enlarged nor can enlarge the limits of the United States by becoming a part thereof, except by means of the treaty-making power. (Fleming *v.* Page, 9 Howard, 614.) So that while it is true that Congress is not prohibited by the Constitution from declaring or from waging wars of conquest against other nations, such wars have always been contrary to the policy of our Government; and whenever we have come into the possession of territory as a result of a war, such territory has never been made a part of our domain except by means of a trea-

ty of peace between the two countries. Therefore it has become a well-established rule that a treaty is practically the only constitutional method by which territory can be acquired; although that can also be done and has been done by discovery, exploration, and occupation as above stated.

Conceding, then, that territory may be rightfully and constitutionally acquired by the United States in the manner above indicated, the next statement to be made is that all treaties of whatever nature in order to be valid must be in accordance with, and not repugnant to, the Constitution. A treaty which would violate any of the provisions of that instrument or would destroy our form of government would be absolutely null and void. Although, according to Article VI. of the Constitution, all treaties made under the authority of the United States, like the laws enacted by Congress in pursuance thereof, are a part of "the supreme law of the land," no treaty can supersede the Constitution either by increasing or by diminishing the powers possessed by the different departments of the Government; nor can it do so either by adding to or by subtracting from the rights, privileges, or immunities enjoyed by the citizens of the United States. And as the Supreme Court has full power to declare an act of Congress unconstitutional, so it has the same power to make that declaration concerning a treaty; for it would be absurd to hold that the latter question is without the jurisdiction of that tribunal while the former is within it.

In the light of these general principles concerning the validity of which there can be no reasonable doubt in the minds of intelligent persons, let us examine one of the provisions of the treaty under consideration. This is Article IX., which reads as follows:

Art. 9.— Spanish subjects, natives of the peninsula, dwelling in the territory whose sovereignty Spain renounces or cedes in the present treaty, may remain in said territory or leave it, maintaining in one or the other case all their rights of property, including the right to sell and dispose of said property or its products; and, moreover, they shall retain the right to exercise their industry, business or profession, submitting themselves in all respects to the laws which are applicable to other foreigners.

In case they remain in the territory, they may preserve their Spanish nationality by making in a registry office, within a year after the interchange of the ratifications of this treaty, a declaration of their intention to preserve said nationality. Failing this declaration, they will be considered as having renounced said nationality and as having adopted that of the territory in which they may reside.

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress.

It will be perceived that this article of the treaty assumes to confer upon Congress the power to determine the civil rights and the political status of the native inhabitants of the Territories ceded thereby to the United States. This provision raises the question whether or not the civil rights and the political status of these people are determined by the Constitution; and if they are, whether or not the treaty can confer upon Congress a power which is not conferred upon it by that instrument? In other words, can a treaty enlarge the limited power which Congress now has over the subject of citizenship? Previous to the adoption of Article XIV. of the Amendments of the Constitution, the subject of citizenship was under the complete control of the several States; and no person could be a citizen of the United States who was not a citizen of some particular State. At that time the only power which Congress possessed over this subject was "to establish an uniform rule of naturalization." (Clause 4, Section 8, Article I.) The first sentence of the first article just cited reads as follows: —

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

The last sentence thereof is the following:

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

According to this provision of the Constitution a person who is a citizen of the United States is so without regard to his citizenship of a particular State, thereby reversing the rule on this subject existing previous to the adoption of this amendment; and the only additional power which Congress now possesses in regard to it is to pass such laws as may be necessary to insure to each citizen the full enjoyment of the rights, privileges and immunities of citizenship, but not to increase or to diminish those rights, privileges and immunities. The question of citizenship being determined by the Constitution, therefore, Congress has no other control over it than that which is conferred upon that body thereby; and consequently no further authority can be granted to it by the treaty-making power.

It will be noticed that according to this article, "all persons subject to the jurisdiction of the United States are citizens of the United States." These words suggest the question whether or not the inhabitants of the islands ceded to this nation by the treaty under consideration are now subject to its jurisdiction? It is a well-established rule of public law that a nation by annexing territory becomes entitled to the allegiance of its people; and therefore the latter must become subject to the jurisdiction of the former; for, according to the American theory of civil government, there can be no allegiance where there is no citizenship. To use the language of Chief Justice Marshall, who delivered the opinion of the Supreme Court in the case of American Insurance Co. *v.* Canter, 1 Peters, 542, "The relations of the inhabitants with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory. The same act which transfers their territory transfers the allegiance of those who remain in it." According to this decision, the treaty having been ratified by the sovereign power of each of the respective parties thereto, the inhabitants of the ceded territory now owe allegiance to this country, and are completely subject to its jurisdiction. Their allegiance having thus been transferred from Spain to the United States, they have become citizens thereof according to the general principle just enunciated; for although they were not born in this country they have been as effectually naturalized therein by the annexation of their territory to it as though that had been done according to the existing statute on the subject of naturalization. In support of this contention the writer cites the following sentence from the opinion of the Supreme Court which was delivered by Chief Justice Fuller in the case of Boyd *v.* Thayer, 143 U. S., 162: —

"Manifestly the nationality of the inhabitants of territory acquired by conquest or cession becomes that of the government under whose dominion they pass, subject to the right of election on their part to retain their former nationality by removal or otherwise, as may be provided."

This being the law, the clause in the treaty assuming to vest in Congress the power to determine the civil rights and the political status of these people can have no force, they having already become American citizens by virtue of the above-mentioned provision of the Federal Constitution.

All of the previous treaties annexing territory to the United States were made and ratified before the adoption of Article XIV. of the Amendments of the Constitution; and as at that time there was no constitutional provision defining citizenship, there was less reason to deny to the treaty-making power the right to determine the civil rights and the political status of the inhabitants of the Territories then acquired, than there is to deny to that power the same right in the present instance; but in none of those

treaties was there any provision relegating that subject to the control of Congress; which fact clearly shows that the present treaty is in this respect entirely without precedent in the history of the United States.

These people being now citizens of the United States are justly entitled to the same rights, privileges and immunities which are enjoyed by the citizens residing in the other Territories which are under the jurisdiction of the Federal Government; and as Article XV. of the Amendments of the Constitution provides that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude," there can be no denial of the right of suffrage to any of these newly-made citizens on either of the grounds above stated; although it may be denied to them for the same reasons for which that is now done to other citizens. In other words, the women and the minors among these people may suffer the same political disabilities which are now suffered by our native women and minors. But any law which Congress may enact which shall discriminate in favor of our native citizens and against those who are made citizens by this treaty, so far as the right to vote is concerned, will be in contravention of this provision of the Constitution. The writer is of the opinion, therefore, that in so far as the treaty attempts to authorize Congress to determine the civil rights and the political status of the inhabitants of our newly-acquired Territories, it is manifestly unconstitutional and consequently null and void.

As the views above expressed by the writer may appear to be inconsistent with those stated by him in his article entitled "Territorial Sovereignty," which was published in the issue of THE GREEN BAG for January, 1899, he will say that he has treated this subject according to what he understands to be the law bearing upon it, as expounded by the Supreme Court, although he dissents from the decisions of that tribunal affirming the complete power of Congress over the Territories; and he has endeavored to indicate some of the consequences of that construction of the property clause of the Constitution. In his opinion, the Territories are *not* a part of the United States; nor are their inhabitants citizens of the United States; and as the Constitution was made by and for the States only, it does not extend and cannot be made to extend to the Territories, except by the consent of the people residing therein; and as Congress has no power to legislate for any other persons than those over whom the Constitution does extend, it necessarily cannot do so for the people who reside outside of the boundaries of the United States unless they also consent to such legislation. The Constitution is binding on the States only, because the thirteen original ones gave their consent to it when they ratified it; and the others did so when they voluntarily entered the Union in pursuance of acts of Congress passed for that purpose, — the Government having only such powers as the people have conferred upon it; and while they had the right to delegate to it unlimited power to legislate for themselves, they had no right to, and did not, delegate to it the power to legislate for others; and as the people of the Territories had no part in the formation of the Constitution, and as they have never ratified it, they are not and cannot be bound by it, although they may acquiesce in such laws as Congress may enact for them, if they choose to do so. It is true that legislation is necessary to enforce the provisions of the Constitution in the States; but no such legislation can properly accomplish the same result in the Territories, as the laws of the United States do not extend and cannot be made to extend where the Constitution does not, except by the consent of the people who are therein sought to be brought under them; and the same principle applies with equal force to treaties. It follows, therefore,

according to the view which the writer holds, that the Territories, not being a part of the United States, their inhabitants are not citizens of the United States, and for that reason Congress has no rightful authority to legislate for them. If this be true, our Government has no right to take jurisdiction over any foreign territory without the consent of its inhabitants; nor does any other nation possess the power either by treaty or otherwise to transfer to us its jurisdiction over any of its colonies or dependencies without their consent also; nor can we accept such jurisdiction under the same circumstances.

The most common ground on which the power to govern the inhabitants of territory lying outside of the boundaries of the United States, is sought to be justified, is the right to acquire it, this having been asserted in nearly all of the decisions of the Supreme Court relating to this question. But it is difficult to perceive how one nation, by ceding to another any part of the soil which it owns, can also cede to that other political jurisdiction over the people who reside upon it, unless they consent to the latter cession. Territory is property; and as such it can be transferred from one owner to another; but dominion over persons, according to our theory of government, is not property in any sense of that word; and therefore it can neither be given nor sold by one nation to another. Our Government has an undoubted right to purchase, or to receive as a gift, any species of property from any other government or from any person or persons; but it cannot buy or take from either of them that which, according to our Constitution, is not property; and as that instrument now reads, no human being can be owned by another or by others within our domain; and so it is impossible for us either to purchase or to accept as a present the inhabitants of the ceded islands, even if Spain had the right either to sell or to give them to us, which she has not. The right to acquire territory therefore, does not include the right either to own or to govern the people who occupy it; and so we can have no rightful jurisdiction over them without their consent thereto.

Although one nation has the power to transfer to another any portion of its own property, it has no such power over that of its citizens or of its subjects; and therefore, if any part of the soil of either of the islands above mentioned is the private property of any of its inhabitants, it cannot be ceded by Spain to the United States. This assertion is in accordance with the unanimous decision of the Supreme Court, which was delivered by Chief Justice Marshall, in the case of United States *v.* Percheman, 7 Peters, 87. On this point the court said: —

"A cession of territory is never understood to be a cession of the property belonging to its inhabitants. The king cedes that only which belonged to him. Lands he had previously granted were not his to cede. Neither party could so understand the cession. Neither party could consider itself as attempting a wrong to individuals, condemned by the practice of the whole civilized world."

Consequently, if the treaty under consideration attempts to convey to this country, land or other property owned by the people of the ceded Territories, it is contrary to the above quoted opinion of the Supreme Court.

In support of the writer's contention that the mere acquisition of territory does not necessarily include the power to govern its inhabitants, he will quote the following remarks made by the Hon. Lewis Cass of Michigan, in a speech in the Senate of the United States, on January 21, 1850. Discussing this point, Mr. Cass said: —

"The treaty-making power is clearly competent to acquire territory; though the proposition that acquisition necessarily brings with it the authority of legislation is another and quite a different question.

. . . . . .

"The treaty-making authority acquires territory by treaty. The power to dispose of it, and the power to admit it into the Union, when formed into States, are both expressly given, and of course if not given could not be exercised. The power to legislate for it is not given; and how, then, can it be exercised? It is clear that the idea of legislation is not included in the idea of acquisition, nor so closely connected with it that the one power cannot be exercised without the other." (Appendix to the Congressional Globe, First Session of the Thirty-first Congress, page 63.)

As this is the opinion of one of the most distinguished statesmen and eminent constitutional lawyers whom this country has produced, it ought to remove any possible doubt which may exist in the mind of the reader concerning the truth of the proposition that the right to acquire territory does not necessarily imply the power either to institute governments over, or to legislate for, the people who reside upon it.

To subject either the Filipinos or the Porto Ricans to a government to which they are opposed, is to create a system of slavery over them which is prohibited by our Constitution. For although we do not and shall not assume to own them as chattels, any government which we may establish over them, against their protests, will be but a modified form of slavery; for that word does not necessarily imply property in human beings, as any person who is entirely subject to the will of another is the slave of that other, although not necessarily his property. The word "slavery" is thus defined by Webster: "Bondage; the state of entire subjection of one person to the will of another." If, therefore, the people of either of these provinces are to become entirely subject to the will of the citizens of the United States, the former will become the slaves of the latter; and if this clause of the treaty is designed to produce this result, it is manifestly unconstitutional and therefore an absolute nullity, although the treaty may be valid in other respects.

But, conceding for the purpose of the argument, that Congress can rightfully legislate for the people of Territories which are not a part of the United States, such legislation must be of the same character as that to which our own citizens are subjected; and, therefore, the people of the Spanish islands above mentioned must be governed according to our own Constitution and laws, and not according to those of Spain. To use the language of the Supreme Court, "It cannot be admitted that the king of Spain could, by treaty or otherwise, impart to the United States any of his royal prerogatives; and much less can it be admitted that they have capacity to receive, or power to exercise them. Every nation acquiring territory, by treaty or otherwise, must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it." (Pollard's Lessee *v.* Hagan, 3 Howard, 225.) Consequently, in so far as the treaty assumes to authorize the United States to establish a government in the Philippine Islands or in Porto Rico which is not republican in form, it is contrary to the fundamental principles upon which this Government was founded; and for us to govern the people of these islands in the same manner in which Spain has heretofore governed them, is to be guilty of gross inconsistency, to say the least. The only proper and consistent course for the United States to pursue in the present instance, is to obtain the consent of these people to be governed by it, before attempting to establish a government over them; and in case they refuse to consent to such a government, it ought to withdraw its officers from these islands, allowing them to form their own governments and to become independent nations, which they have a perfect right to do.

LEGAL POSITION OF WOMEN IN ANCIENT GREECE.

By R. Vashon Rogers.

"And when a lady's in the case
You know all other things give place."

THE comedians of Athens thought no abuse of woman too bitter or too coarse; and even in the solemn tragedies we are told such things as that "one man is better than ten thousand women." Aristotle, the philosopher *par excellence*, speaks of the female sex as by nature worse than the male, and Plato says it is far harder for women than for men to attain to virtue. A satiric poet gives it as his opinion that a man has only two very pleasant days with his wife, the one when he marries her, the other when he buries her. A comic poet remarks pithily, "woman is the immortal, necessary evil." Euripides says, "Terrible is the force of the waves of the sea; terrible is the rush of a river and blast of hot fire; terrible is poverty, and terrible are a thousand other things; but none is such a terrible evil as is woman."

Yet strange to say all these *obiter dicta* can be matched by others from the same authors praising woman to the skies. Hence we close a study of women, doubting. The trouble is that almost all we know of women is told by men, and men rarely write dispassionately of women; not only is it told by men, but it is told by men for men.

In Athens the power of a father over a newly-born child was little limited by law. An infant that he did not wish to bring up might be exposed, or even killed. Daughters were often exposed, but fortunately, the exposure was generally so arranged that the sorrowing parent might be consoled with the idea that the infant would not perish, but be found by some tender-hearted being who would adopt it and bring it up. Before the days of Solon a father could pawn or sell his children, but the laws of that legislator forbade such things, except in the case of unmarried daughters who had been led astray from the paths of virtue and seduced. If a father hired out his child for immoral purposes he not only lost all claim upon her for assistance in his old age, but was also liable to punishment.

The law compelled every father to see that his sons were educated in music and gymnastics (music included everything that pertained to the culture of the intellect and the emotions; gymnastics all belonging to the training of the body). The education and culture of girls, however, was left merely to custom and tradition, and was solely a matter of the household and family, and was in no wise regulated by legal provisions. A girls' school did not exist; they were taught at home by their mothers and women servants. The life of the daughters was confined almost entirely to their homes and to domestic intercourse with their friends and relatives.

Some writers have spoken of the unfortunate class called Hetairae as if they, with education and accomplishments, occupied the place held in modern days by the leaders of feminine society. This was not so, for with the exception of one or two remarkable women, the accomplishments of the Hetairae very seldom went beyond flute-playing and witty, though too often coarse, repartee. Their houses were constant scenes of debauchery; when they appeared abroad they were treated with contumely and were the objects of coarse jests and jokes, and usually, with them, life ended in misery and squalor. Sometimes they were slaves.

In the historic days of Greece the women of Athens were the most secluded, those of Sparta the least. In Athens unmarried girls were scarcely allowed to leave the gynaeceum except when a religious festival occurred. If

a wedding or a funeral was passing by they might perchance be permitted to go as far as the front door of the house and, in the absence of strangers, might even enter the men's court, but such an event was unusual. The door of the woman's apartment was tightly closed against all men save the master of the house, and a few highly privileged and near relatives. The only breaks in the monotony of their lives were afforded by the great religious festivals, and then even high-born maidens walked through the streets in procession, sometimes dancing as they went. Occasionally, too, they were allowed to attend dramatic performances.

No woman could legally be a party to any contract involving an amount of greater value than a bushel and a half of barley. In all legal proceedings she had to be represented by a lawfully qualified agent or guardian. As long as she remained in her father's house he was her guardian (or *kurios*) when he went to Hades her next male relative (according to the Athenian law of succession), became such. If she married, her husband filled that office while they lived together; if he died and she remained in his house her sons, or their guardian, took his place. If she returned to her original family home, owing to her husband crossing the Styx, or to her being divorced, she again came under the guardianship of her next of kin.

At funerals, in Athens, the male relatives walked before the bier, the women followed after it. No woman under the age of sixty was allowed to enter the place where a corpse lay, nor to follow the bier unless she was a relative not more distant from the late departed than a first cousin once removed, nor unless she was thus related could she enter the room until some time after the dead had been removed. The Greek had a fear that the soul of the deceased might pass into the body of the woman, and thus be born again of her, and if he had to revisit glimpses of the moon he wished to still be in his own family.

In Sparta the law ordained that the girls should have a musical and gymnastic education similar to the boys. They were trained in running, leaping, wrestling and throwing the spear and discus, in dancing of various kinds, and in the singing of choruses. These exercises were shared in by the Spartan youths, who were all clad almost in the fig-leaf style of garment, and these joint performances were intended to lead on to matrimony, and Plato says they "drew the young men and maidens to marriage as necessarily by the attraction of love, as a geometrical conclusion is drawn from the premises."

In the days of myths and legends, when suitors were numerous, the father of the popular girl put the young men to a physical test: Antaeus had a race, and such a course was suggested as a means of settling the claims of Penelope's suitors. Danaus, also, who was blessed with half a hundred daughters, had a trial of speed: the winner had first choice of the girls; the second in second pick; and so on to the last. Those who had no claimants had to wait until a second race was prepared.

In Athens monogamy alone was recognized by law; no one could be married to two persons at the same time. Limitations as to choice were few; a man might not marry his mother, grandmother or great-grandmother, nor a lineal descendant, nor his uterine sister: but he might marry his niece or his aunt (if he chose), or his half sister who had the same father as himself. Near relatives often married to keep property in the family. The law provided that the nearest relative whether married or not should be entitled to marry an heiress when her father died, and receive the inheritance with her. In return for this privilege he was obliged, if not by law, yet by custom and tradition, so soon as he had several sons, to appoint one of them to inherit the wife's property, that the

house of the maternal grandfather might thus be restored and perpetuated, and that the gods should not be deprived of the worship of any family.

Marriages in Greece were entered into, by men, more from motives of prudence than of sentiment. The population of the state had to be maintained, and each man wished to leave behind him sons who would continue his religious duties to the deities, attend to his own funeral rites and perform all the legal ceremonies at his tomb. The selection of a future partner, except in Sparta, was a matter in which only in rarest cases had the bridegroom a voice; still less were the bride's views consulted. The parents settled the whole matter, assisted sometimes by a match-maker, who was usually an old woman of a class not very highly respected. Modesty was the chief quality sought for in a bride.

The young people had little opportunity, at least in Athens, of making the acquaintance of one another before the marriage day.

Plato thought that a woman should marry between eighteen and twenty, a man between thirty and thirty-five. Aristotle says eighteen for the woman, and thirty-seven for the man. The Greeks were generally much older than their wives. Solon would not allow a young man to marry a rich old woman; if he found such a fellow he would carry him off and give him to a poor girl who wanted a husband.

In Athens, without a betrothal and formal nuptial contract the marriage was illegal and the children born in it were illegitimate. A maid could only be legally betrothed, or disposed of to a man, by her guardian — her father, or, if he were dead or absent, then, her brother (if she had several brothers, they had to act together), or her paternal grandfather. If none of these persons were alive, and her father had not betrothed her by will, it was essential to her lawful marriage that the archon should adjudge her to the nearest male relative who wished to take her to wife. Should the girl be so poor that none of her relations wanted to have her, then the nearest relative was compelled to dower her (in which case he probably had the right to betroth her), or marry her; if he married her a formal betrothal to himself was not necessary, the introduction of the bride at the wedding-feast to the husband's kinsfolk and acquaintances sufficing to constitute a legal marriage. (Marriage by the guardian was called "*enguesis*," — by the archon "*epidikasia*.") We know not what period usually elapsed between the engagement, or betrothal, and the actual marriage; nor whether the young people were allowed to see one another in case of a lengthy time elapsing.

When the State had been satisfied by these formalities, the gods of the city, especially those interested in marriages, had to be conciliated by religious ceremonies, sacrifices and prayers; these were chiefly performed by the bride and her parents. In many places she sacrificed her hair, or her toys, to some local nymph. On the wedding day both bride and groom washed in water specially brought by young boys or maidens, from the fountain Callirrhoe. A feast took place, after due sacrifices, at the residence of the bride's father, and this was one of the few occasions when men and women eat together. These wedding banquets became so luxurious that at last the State had to legislate on the subject. Plato would not have allowed husband and wife to ask more than five friends and five relatives each — that is twenty in all, on any occasion; and in the fourth century before Christ, a law was passed limiting the number to thirty for weddings, and instructing the officials who had charge of the women to enforce the law; and so particular were these men that they often entered the house where a wedding feast was in progress, counted the guests and turned out all beyond the legal number. Coleridge's ancient man, the bright-eyed mariner, who held with his glittering eye the wedding guest who

could not choose but hear, could not have been more objectionable than these intrusive "*gynaikonomoi.*"

When the feast was over, and the libation and prayers to the gods concluded, the bride was taken to her new house in a chariot, enveloped in a veil and carrying a vessel for roasting barley; her mother bore two torches lighted at the paternal hearth. The groom's mother, also carrying torches, met her at the door; a shower of fruit and sweetmeats greeted her as she entered her new home, and at her chamber door she ate a quince (according to Solonic law) to give sweetness to her breath, or because it was symbolic of fruitfulness. The hymeneal songs of her companions were her lullaby and her reveille. In some places on the morrow after the wedding the husband went and remained with his mother-in-law until his bride sent him an article of clothing, as a present, to induce him to return to her. Then came a feast given by the groom, or his father, at which the bride was presented to the members of her husband's clan.

Marriage was compulsory under Solon, but this law fell into disuse and in later days bachelors were subject to no disadvantage in Athenian territories.

In the days of Pericles a law was passed to the effect that no one could be a citizen unless both his parents were citizens; but at various times the right of intermarriage with citizens of other places was permitted. This law of Pericles was probably an old law of Solon's, revived.

In Sparta women were brought up solely for the good of the State. There a woman had but two duties to perform: to sustain and incite the valor of the men, and to bring forth strong and healthy children. From early youth her frame was strengthened by athletic exercises, and, as the result, the Laconian women were universally acknowledged to be the most healthy and beautiful women in Greece. Here the women were more respected than elsewhere. The domestic relations between husband and wife more closely resembled our own in Sparta, than elsewhere in Greece. A Spartan addressed his wife as "Mistress," she was his partner, not a mere housekeeper. The other Grecians thought the Spartans henpecked, but it was not so. Plutarch says, "The Lacedemonians always hearken to their wives, and the women are permitted to interfere more with public business, than the men are with domestic concerns." In fact women have rarely in modern days enjoyed an authority and distinction as great as they did in Sparta from its earliest history to the death of Cleomenes, B. C. 220. In Crete and Cryene they were almost equally well treated.

The Greek paid little attention to individual wishes or individual freedom, the individual was for the State, not the State for the individual. It was necessary for the Spartans to be a race of soldiers; and as women were an integral part of the State they had to contribute towards that result. The regulations for this purpose are ascribed to Lycurgus, and the one object of all legislation concerning women in the best days of Sparta was to procure a first-rate breed of men. The one function which woman had to discharge was that of motherhood. The Spartans wanted strong men, brave men, resolute men: the mothers must therefore be strong, brave and resolute. All the care and attention possible was devoted to the physical training of their women. From their earliest days the girls engaged in gymnastic exercises, and when beyond childhood, they entered into contest with each other in wrestling, racing and throwing the quoit and javelin; they engaged in similar contests with young men, stripping like them before the assembled multitudes. Thus no sickly maiden could pass herself off as healthy. These athletics gave mental tone as well as physical strength. The girls mingled freely with the young men, knew them well, and attachments were formed long before the time of marriage. All this

training was deliberately contrived to fit them to become mothers. All the Spartan women had to marry, except the sickly ones who were not permitted to do so. No sound and healthy girl ever thought of not marrying. The law-giver was successful in his object; for four or five hundred years, there was in Sparta generation after generation of the strongest men that possibly ever existed upon the face of the earth and these men were among the bravest of the brave. The State claimed authority over all the children. Soon after birth they were brought before government inspectors, each was examined as to his form and probable healthiness; if the infant was deformed or a weakling the sentence of death was passed upon it.

The maidens were not allowed to marry too young. The law looked upon woman only as a mother, and had no rules or regulations for her when she ceased to be such. Aristotle tells us that in his day they had become incorrigible and luxurious, and ruled their hubands.

Whoever in Sparta desired a maiden in marriage had to get the consent of her father, or of the kinsmen under whose authority she was. When there were rival claimants for the hand of an heiress the king decided the matter. Permission being gained, the happy suitor proceeded to take possession of his bride by a kind of forcible abduction; this mock capture (a reminiscence of early days), was the form of marriage. The husband took his bride to the house of a female relative; this woman cut off the bride's hair close to the scalp, dressed her in male attire laid her on a mattress and left her in the dark, bidding her abide events. The bridegroom on returning from his customary meal, stealthily crept in and carried her to another couch. Even after this she was not taken to his house, but left either with this relation or at her own home, lest the pair should too soon tire of each other. He visited her clandestinely, and kept up the rôle of bachelor life until the first child was born. Sometimes several children were born without the young people seeing each other by daylight. When at last the husband carried her home he often took her mother with her. Similar marriage practices prevailed in Crete.

Marriage was demanded by the law of every citizen who was in possession of an allotment of land — it was the fulfilment of an obligation to the State. Younger sons who had no estate of their own, but lived with their elder brother were not obliged to marry; but they sometimes shared their elder's wife, until a provision was made for them, either by adoption into a childless house, or by marriage with an heiress. The youths who did not marry when in a position to do so were liable to severe penalties, and according to the laws of Lycurgus hardened celibates were placed under the ban of society. They were not permitted to see the exercises of the maidens, and on certain days in winter had to march round the market-place, naked and singing a song most uncomplimentary to themselves; and when they were old the young paid them neither honor nor respect. The women also, at a certain festival dragged these misguided men round and round an altar, inflicting blows upon them all the time. Men were punished even for marrying too late, or for marrying women disproportionately young or old, or for forming an otherwise unsuitable connection. Marriage by citizens with foreign women was not only forbidden and deemed invalid, but it was even punished.

In Sparta no one would marry the daughter of a coward; and no one would give his daughter in marriage to such an one; and yet if he had no wife he was punished like other bachelors. King Archidamus was censured because he married a wife of small stature, who, in the opinion of the ephors, would bear not kings, but kinglets.

One of Solon's laws enacted that connubial duties should be performed by each married person at least thrice a month. Another

Athenian law enacted that if a citizen married a foreign woman he was liable to be fined a thousand drachmae, and she to be sold as a slave. Such marriages were unlawful in Sparta, also.

In the Homeric age women had almost no rights: they were entirely under the power of men, and they lived in continual uncertainty as to what their fate might be. One might be a princess, living in a wealthy, happy home to-day; carried away and a slave in a stranger's house to-morrow. So they were of all women most meek. In the Homeric poems we have glimpses of feminine loveliness and conjugal tenderness and fidelity as beautiful and as touching as any presented to us in the most polished ages. We find her not the mere plaything of man, desired as adding to his wealth, splendor or luxury, or as subject to his fierce passions, but we see her as his companion in effort, his solace in misfortune, and his inspirer to noble achievements. She was subjected to a sway as gentle and as respectful as any we meet in the whole range of literature. Physical force was kept in the background, and we see nothing but affection, regard and even deference. The men appear never to have found fault with the women. It was natural for a woman to love; if a wife loved a man not her husband, it was not she, but a man or a god who was to blame. Helen was not blamed: how could she help falling in love with Paris, or Paris falling in love with her? In Homer there is no love-making, flirtation is unknown. If there was either, it was kept from Mrs. Grundy, the blind poet. The man who wished to marry gave the father a handsome gift for his daughter, or undertook a heavy task to win her. And when she went to him she strove her utmost to please him, and generally succeeded. The Greeks of Homer are monogamists, and peace and happiness reigned in their homes; only in the halls of Olympus did wife quarrel with husband. Yet husband and wife did not swear eternal devotion to one another. With them widowhood and death were not synonymous. If either died it was incumbent on the other to look out for a new mate; even when the husband was on his travels and absent long from his wife, it was not expected that he should endure the troubles of life without the comforts and assistance of woman's society.

The freedom of women was great, they might do what they liked and go where they liked; the only danger was their being carried off into slavery. There was a free and easy intercourse between the sexes, and yet there is no vicious woman either in the Iliad or the Odyssey. An Homeric woman remained beautiful for a generation or two. Helen, at forty or fifty was deemed as beautiful as at twenty, and probably as attractive, if not more so.

Unfortunately this sweet and conjugal life was not so bright and pure in subsequent historic ages in Greece. Either from a retrograde movement in society, or because of closer contact with Oriental manners, the moral condition of women markedly deteriorated, though her legal state was somewhat improved.

In Athens, when a woman married the limits of her prison widened. The street door was now the terminus of her wanderings, not the door of the gynaeconitis, though on the arrival of strangers she doubtless retired to her own apartments. Her life, if secluded, was not idle, for she was both housekeeper and nursemaid. It was not an improper thing, though it was rare, for women to go abroad (if accompanied by slaves), to visit friends, to worship in a temple, or to attend the performance of some tragic plays (she was forbidden to go to a comedy). Any underhand or suspicious absences from home gave opportunities and excuses for a divorce. Hyperides says, "The woman who goes out of her own house ought to be at that time of life when the men who meet her will ask, not, 'Whose wife is she? but 'Whose mother

is she?'" By the way, Hyperides was the gentleman who so successfully defended Phryne.

The Hetairae had more liberty, but in Athens liberty for women was quite incompatible with delicacy, modesty or refinement.

Solon made sumptuary laws for the guidance of women, forbidding them, for instance, to tear their garments at a funeral, or to travel at night except in a carriage with a torchbearer and a light in front, or to walk abroad attended by more than one servant unless drunk (drunkenness was among their peculiar besetting sins), or any woman to go out at night, unless she intended to act the part of a courtesan. Nor could she leave the city with more than an obolus' worth of provisions, nor with a basket higher than a cubit. In Plutarch's time there were certain officers whose special duty it was to punish women who transgressed in these particulars. In Syracuse these officials had such authority that, it is said, a woman could not go out on the street, even by day, and attended by a servant, without their permission. In Thebes it was a breach of etiquette for women to walk freely about the streets.

Some authorities held that marriage did not make the husband the guardian of his wife, and that that office remained in the father or whoever had it before the nuptials. If the husband had been adopted by the father, or the wife had been left to him by her father's will then, indeed, on the latter's death, the husband became guardian. Whenever he did become guardian he could give his wife away in marriage to another man, or direct by his will to whom she should be married.

Married women in Sparta were forbidden to attend gymnastic contests, although the unmarried ones might do so; and when they appeared on the streets they had to wear veils. A man in Sparta was permitted to have but one wife at a time, as a rule, but it is possible that a species of dyandry, or even polyandry, was tolerated by custom among the women. Not only did it sometimes happen that several brothers lived together with one wife in common, but it was also not considered objectionable for an older man, who no longer felt himself capable of his marital duties, to make over his privileges to a young and more vigorous friend whose child would be brought up as his own; and sometimes, a man who was attracted more by his friend's wife than his own, was allowed by his friend to participate in his marital duties. The laws of Lycurgus permitted this; and so did those of Solon, provided the chosen lover was very near of kin to the old man. A wife to whom overtures of this kind were made by some well-favored young man probably did not consider herself insulted, but referred her lover to her husband whose will she was bound to follow. When public opinion allowed all this, we can readily believe the assertion that adultery on the part of women was rare, or unheard of, in Sparta. It was not necessary. Students of Roman history will remember in this connection the story of Hortensius, Cato and Marcia.

King Anaxandrides was compelled to take a second wife, because his own bore him no children. The ephors exercised a specially careful attention over the conduct of the queens, so that no scion of other blood should be clandestinely admitted into the gens of the Heraclidae.

According to Pausanius, the ancient Greeks considered the remarriage of a widow an insult to her former consort. The woman who remarried was considered as having offended against public decency. Nor was the second marriage of men viewed more favorably. Alexander in his "History of Women" tells us, that "Charonides excluded all those from the councils of the State who had children and married a second time. It is impossible (said he) that a man can advise well for his country, who does not consult the good of his own family; he whose first marriage has been happy,

ought to rest satisfied with that happiness; if it was unhappy he must be out of his senses to risk being so again."

In the absence, or on the death, of the husband the son seems to have directed the actions of his mother. Telemachus thus speaks to the virtuous Penelope, "Go to thy chamber; attend to thy work; turn thy spinning-wheel, weave the linen; see that thy servants do their tasks. Speech belongs to men; and especially to me, who am the master here." Penelope, like a well-trained woman, meekly allows herself to be silenced, and obeys "bearing in mind the sage discourse of her son."

In Athens all that a husband had to do to divorce his wife, was to bid her (probably in the presence of a witness) to go back to the home of her guardian and take her dowry with her. On the other hand, if a wife wished to divorce her husband against his will, she had to go herself to the archon's office and present him with a written statement as to why she dismissed her husband; ill-treatment was a sufficient reason. The laws relating to the wife's dowry were some protection against capricious divorce; and her rights of inheritance, also, much involved the question. "The riches that a wife brings only serve to make her divorce more difficult," sadly complains a character in Euripides. If a man repudiated his wife he had to return her dowry, or pay heavy interest on it. Moreover her guardian could claim a pension from him for her maintenance. If, however, she had by her behavior given a legal ground for the separation, her dowry was forfeited.

Doubtless the law limited the freedom of divorce; not every reason was accepted as sufficient legal ground for repudiating either husband or wife. In certain cases divorce was compulsory; the husband had to put away the wife if she was taken in adultery; and the wife had to divorce her husband if he lost his freedom. Adultery on his part was not sufficient reason for his being divorced; her only remedy was an action for separation; and apparently she could only succeed in this in cases of special gravity, and where her rights as mistress of the house had been grossly infringed.

A father could divorce his married daughter from her husband; the husband could give his wife in marriage to another man; and the next of kin having a legal claim to an heiress and her property could, if she was already married, divorce her from her husband, and marry her himself.

In Sparta marriage was regarded chiefly, if not exclusively, as the means by which families might be kept up and the necessary number of citizens maintained; hence the dissolution of a marriage, if through the failure of issue its object had not been attained, was not only easily effected, but was even ordered by law. According to Herodotus two kings of Sparta were compelled to repudiate their wives on account of sterility. Our Henry VIII had to part with some of his wives for the same reason.

It is probable that divorce was not very common among the Greeks. The fact that although polygamy was forbidden, concubinage was permitted may partly account for this.

Utility, appropriateness and the sense of the beautiful, were the only guides the Greeks could find to regulate them in the relation of the sexes to each other. The influence which the one sex exercised on the other was, they thought, caused by "a divine power," the most irresistible of all. It swayed the gods themselves. Hence their religion taught them forbearance and compassion towards the wanderings of love. As Dejanira says, in Sophocles, "Whoever resists love in a hand-to-hand combat, like a boxer, is not wise. He sways even the gods as he wishes, and me myself also; and how should he not sway another woman who is even such as I am? So that if I find fault with my husband caught with this desire, or with this woman, the cause along with him of

nothing that is evil or disgraceful to me, I am unquestionably mad." And Peristione, a lady Pythagorean philosopher, in sober prose, inculcated such forbearance on her sisters as a duty. Mr. Gladstone admits that the indignation of the Greeks against Paris was as the effeminate coward rather than as the ravisher, and the shame of the abduction lay in the fact that he was the guest of Menelaus.

In Athens the man, whether he was married or not, who committed adultery might be killed on the spot by the woman's husband, son or brother, or father; or he might be held in chains for ransom; or he might be prosecuted for his misconduct (but with what result we know not). The woman, on the other hand, could not be killed or maimed; but she was, *ipso facto*, divorced, and henceforward was excluded from the public temples and sacrifices, and forbidden to wear certain ornaments. If she did not observe these prohibitions her adornment might be snatched away, her garments torn, and she herself struck, but not to wounding. She could not be sued for her offence. If her husband was good-natured enough to condone her lapse, he too was excluded from the temple services.

Such were the laws of Draco and Solon. But marriage was a civic duty and everything had to give way to the good of the State, and it looked at matrimony from the single point of view of population. So it came to pass from political and religious reasons the heiress whose husband was incapable of performing his connubial duties was allowed, by law, to fill his place by a substitute, without her being liable to punishment for adultery; her choice, however, was limited to the circle of her relations.

It might have been supposed that the peculiar training to which the Spartan women were subjected would have made them licentious and forward, but the contrary was the effect. Adultery was almost entirely unknown there. There is only one case on record of a Spartan having two wives; as we have seen a greater latitude was, in exceptional cases, allowed to women. Spartan wives were true to their husbands, and the husbands fond and proud of their wives.

In Gortyna whoever induced a woman to commit adultery was not only punished by a fine of not more than fifty staters (a stater was equal to about seventy-five cents), but he also was deprived of all his privileges as a citizen.

In Athens a father might sell as a slave a daughter who (against his will), led an immoral life; if, however, he gave over his daughter to immorality, he was punishable with death.

Forcible abduction of women, whether bond or free, was punished by fine or death.

The State, in Athens, considered itself the special protector of heiresses, as they were often married by their husbands as appendages, and sometimes as very unwelcome appendages, to the property they brought with them. Hence in the event of the ill-treatment of an heiress by her husband any one could institute a public prosecution against him, and have him punished.

In Syracuse women were forbidden wearing golden ornaments, or variegated, or purple raiment, unless, indeed, they claimed to be members of the courtesan class.

According to Menander religion often served the women as an excuse for enormous expenses; under the pretext of piety they sometimes ruined their husbands by lavish sacrifices of perfumes and gold, groups of slaves attending the performances.

In Athens, of the various things which a wife brought to her husband at marriage, those which were specified in a formal agreement, made before witnesses, became her dowry; anything not so specified became the husband's, and could not be afterwards recovered from him. Under Solon's laws the dowry consisted of three garments and a few household utensils. But this limit was soon overpassed. Even in later times, how-

ever, a dowry was not an absolute necessity, although the want of it might entail difficulty and discredit. In time the combined action of the affection of the girl's parents, her own desire of independence, and the cupidity of the husband made the dowry very general. In fact it came to be thought almost necessary, to make the distinction between the wife and the concubine. Isaeus says that no decent man would give his legitimate daughter less than one tenth of his property. It was a protection to her and sometimes gave her the advantage in the conjugal battlefield. Sheltered behind her property she ceased to be a mere dependent, became more self-reliant, more respected, and in turn played the domestic tyrant, at times. One poor, henpecked husband exclaims, "I have married a witch with a dowry. I took her to have fields and houses, and that, O Apollo, is the worst of evils." Another cries woefully, "Cursed be the man who invented marriage, and the second who married, and the third, and the fourth, and all those who imitated them." In Aristotle's time, so great had been the dowers that nearly two-fifths of Spartan territory belonged to women.

The wife's dowry never became the property of the husband, and consequently if she was divorced it reverted with her to her guardian, and with it he either supported her or found her another spouse. If the dowry was not landed property the husband had to give security for its due return in case of her death or divorce (this security was generally real estate). The husband enjoyed the use of it, its revenues and profits, and paid the taxes upon it, but it could not be seized for his debts. If, having got possession of her dowry he jilted the girl, he could be compelled to refund it. Nor was the wife the absolute owner of the dowry; any transfer of it to a greater extent than the value of a bushel and a half of barley was void.

In case of divorce the husband had to pay eighteen per cent interest on the wife's dowry until it was returned to her guardian. On the husband's death the wife, if she had sons, might, if she chose, remain in her late husband's house. If she stayed her dowry became the absolute property of her sons (or their guardians), subject, of course, to her support. If she, wishing to try the matrimonial lottery again, decided to leave her sons and their father's house, her property reverted to her guardian. If she had no sons she necessarily returned to her guardian, and her dowry went with her. The dower also went back to the guardian if she died childless during her husband's life.

If a man had sons of age, he could not make a will; his property descended to them and to their issue, and they had to take it with any incumbrances attached to it. If there were daughters as well as sons, the daughters were morally, but not legally, entitled each to a dowry from their father, if they married in his lifetime, or from their brothers if the father was dead. If the dead man left only daughters, they were in a sense, heiresses of the estate, or as the Greeks put it, they were "on the estate." The nearest kinsman, however, was the real heir (unless the deceased had otherwise arranged by his will); but, as he could not take the property without marrying a daughter that was "on the estate," she did in a kind of way inherit. Each daughter took an equal share, and if one died before the father her children claimed her share. A man with only daughters could not deprive them of their rights by any will. He might it is true, devise the estate to whom he would, but then the devisee had to take the daughter as well as the property and marry her.

Under the Athenian law of succession males excluded females if born of the same parents, that is, brothers excluded sisters; sons, daughters, and uncles, aunts.

The Athenian dreaded the mere possibility of the cessation of that family worship which was so necessary for the spiritual welfare of his dead ancestors and of himself after

he had crossed the Stygian flood, and which could only be continued by his male descendants. So if he had no son of his own he got over the difficulty by adopting somebody else's, who became his heir; as he could not will away his property from his daughter, and as she could not perform the religious duties which were attached to the estate, and a condition of the tenure, he betrothed the heiress to his adopted son. If, however, the daughter was already married and he did not wish to interfere with her husband, he adopted her son. He could not adopt the husband of his daughter, because a man could not have two fathers; when a man was "adopted into" a family he was "adopted out" of his old family, he forfeited all connection with it; as he assumed all the privileges, duties and encumbrances of the new family, so he renounced all claim to inherit from his original family and was released from the duty of continuing its worship.

In Athens a wife was considered a stranger to her husband's family; she had no claim upon his property, she could not inherit from him, and if without sons she could not, after his death remain in his house unless she pleaded pregnancy; then under the protection of the archon she could stay until the child was born. Nor could a mother inherit from her children.

The Gortyna code, in force in Crete in the sixth or fifth century before Christ, was in many ways more favorable to women than the Attic laws. By it, although the sons had the sole right to the town house, its furniture and the cattle of their father, the daughters shared in the rest of the patrimony, a daughter getting half as much as a son. In Gortyna a mother's dowry did not, as in Athens, become the property of her sons as soon as they became of age, but she enjoyed it while she lived, possessing the same rights over it as a father had over his, and at her death it went as a man's estate went. In Gortyna a man had not to give up his wife if she became an heiress and the next of kin claimed her when she did not wish to go, nor was a man compelled to put away his wife because he had become entitled to an heiress whom he was expected to marry. He might resign his claim on the estate and on the girl. And the heiress (if single) might be content with the town house and half of the remainder of the estate, and then might marry whom she would within the limits of the tribe. If a married woman became an heiress she was not compelled to divorce her husband and take the next of kin, though she might do so if she chose. If she did divorce him she had (if she was childless) to take the next of kin, or indemnify him for his loss; if she had children she might take any tribesman she preferred. The same principle applied in the case of a widow, the next of kin lost his claim to both the estate and the heiress, if she had children.

In Gortyna the next of kin was not bound to provide a girl with a dowry if she was poor and he did not want to marry her.

In Athens, citizen women were often engaged in retail business, and a special place in the market was allotted to them. The mother of Euripides was a retail dealer in vegetables. Such employment was, however, deemed low and disreputable, yet the law regarded it as libellous to reproach or insult any male or female citizen for following such a calling.

GLANCES AT OUR COLONIAL BAR.

I.

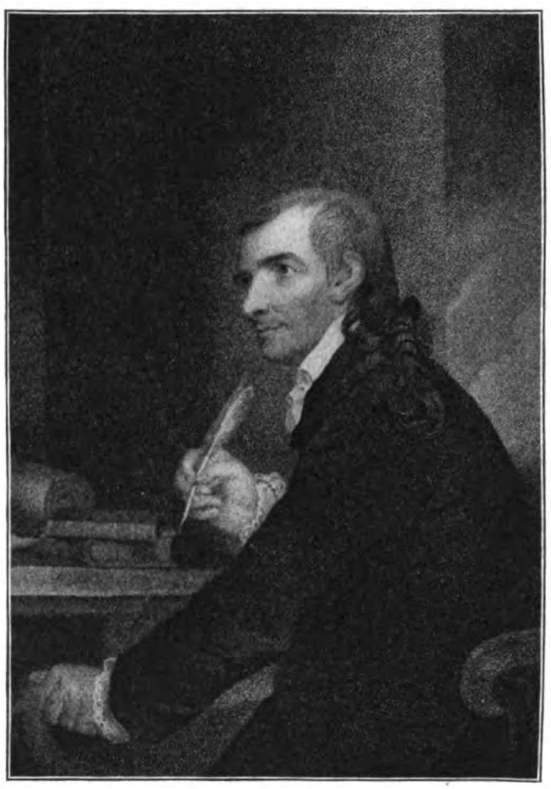
THE colonial lawyers who are entirely unknown to the present, and perhaps to the last generation, are many, and number some who are well worth recalling to the legal readers of the present. In considering them, it must be remembered that the study and pursuit of the legal profession during, for instance, the lifetime of Colonel or General or President Washington, was one calculated, to bring forth natural mental qualities in a high degree of development. Human nature and its pursuits were then precisely as now, and, in its way, litigation was then as characteristic of the times as it may be termed peculiarly so in the present. But then, colonial students were dependent for books upon England. To-day the law student may find himself embarrassed with the number of legal treatises at his beck and call, and the practitioner has a wealth of digests and encyclopædias at his command. Comparatively, there is now a royal road to the bar and not over-anxious hours to the judge; but in colonial times the law-student and lawyer were thrown upon natural law and the resources of thought and introspection. The tendency of legal pursuit then was to make his intellectual faculties very alert; and to necessarily inspire him with ponderings upon the maxim, *eadem ratio ibidem lex*. This legal generation should entertain the deepest respect for colonial lawyers, for in the main they were the colonial fathers of the Republic and foremost in war and in civil councils.

EDMUND RANDOLPH.

Roger Sherman was a colonial lawyer who contradicted and defied the maxim, *ne sutor ultra crepidam:* for in early life he was a shoemaker, and hammered soles with the object of buying books — as he once punningly remarked — with which to hammer his own soul. He even studied law-books in Connecticut while at his bench; and after five years of distinguished practice became county judge. He was chosen continental congressman, aired his legal talents with the greater learning of associates, signed the Declaration of Independence and died, as United States senator, the chairman of the judiciary committee. One of his descendants and namesakes is now a leader of the New York bar and an approved juridical author.

First Federal Attorney-General Edmund Randolph was the colonial son of an attorney

general of Virginia, and a relation of Peyton Randolph. His term was short but brilliant; and his opinions fill a large volume for — as may well be imagined — the expositions in the first years of the Republic regarding the Constitution which he had helped to frame were necessarily numerous. He exchanged the post for secretary of state, succeeding Jefferson. His quaint biographer described him as cradled in law, because his father missed some old year-books from his library that were afterwards found under the mattress of his son's cradle, which a servant had placed there in order to raise it to an altitude desired. For several years antecedent to his death in 1813, Edmund Randolph resumed his profession as jurisconsult in Frederic county, Virginia.



FRANCIS HOPKINSON.

Upon the brilliant roll of Pennsylvania lawyers no name deserves more to have affixed against it the star-mark of legal excellence than Thomas M'Kean, who, admitted by favor to practice before he was of age, afterwards held the office of chief justice of his native State from 1777 to 1799, when he became its governor. In that time his partisanship was excessive and his opponents endeavored to impeach him, but his legal learning showed them that the attempt was baseless. In his eightieth year — then many years retired from public life — he presided in Independence Hall at the opening of the naval war with England, where he made the memorable expression. "In this crisis there can be only two parties, our countrymen and their invaders."

Chancellor George Wythe of Virginia, another of the half-forgotten legal worthies of early times, was up to thirty years of age enjoying a large fortune left him by his colonial parents and embarking upon the dangerous seas of unlawful pleasures and personal gratification; but suddenly he reformed and began the study of the law, in the practice of which he soon rose to eminence. He was successively the legal preceptor of Marshall, Madison and Monroe, and shortly before he died — eighty-one years old when the century was only five months old — he was heard to punningly remark, "Those three M's will all become M-inent," and how true was his prediction all know. Chancellor Wythe was also the legal preceptor of Thomas Jefferson.

Francis Hopkinson — father of him who composed the words of "Hail Columbia" to the widely popular tune of Washington's March in order to aid a friendless ballad singer of Philadelphia — is best remembered as a signer of the Declaration of Independence; as colonial judge of admiralty and subsequently Federal district judge under the Washington administration, he is seldom

recalled. He was a man of ready wit, and when in 1778 some kegs of powder fitted with explosives were set afloat in the Delaware river to be borne by the tide against British war-vessels he was asked, as judge of admiralty, under what branch of the laws of navigation they would be anchored; and answered "Flotsam until they strike the ship, and jetsam immediately afterwards."

James Otis was another colonial lawyer whose legal fame is merged to posterity in his patriotic renown. Harvard college had him for a son, and Jeremy Gridley, a Massachusetts lawyer of the Erskine School, had him for a pupil. When only twenty-three years old Otis opened a law office in Boston, and at once attained distinction. There were then in vogue general search-warrants on writs of assistance, as the cabinet of George III euphemistically called the process which allowed the officers of the king to break open any citizen's store or dwelling in order to search for contraband merchandise. A client damaged by such summary proceeding employed Otis to attack it before the general court. He was, however, judge advocate under the Crown party, and yet he launched his attack against the process — opposed by his late law preceptor who was Crown attorney-general. Of that speech John Adams has said, "At its utterance American independence was then and there born. Otis was a flame of fire. With promptitude of classical allusion, depth of research, rapid summaries of historical events, prophetic glances into futurity and torrents of impetuous eloquence he carried away all before him. Every man of the crowded court room appeared to go away, as I confess I did, ready to take up arms against writs of assistance." Could there be a finer tribute to the power of advocacy? All of his legal career, stamped with only incipient patriotism, occurred many years before the battle of Lexington. In the summer of 1769 a British customs commissioner named Robinson, angered at some legal stricture from Otis, preceded the bludgeon business of Brooks with Sumner by inflicting on the head of Otis a blow which injured his brain and for a time dethroned reason. A jury gave him $10,000 damages for which in one of his lucid intervals when impressed with the sight of his assailant on his knees begging against pecuniary ruin he gave him a release without any payment. For many years Otis lived on with his great intellect in ruins, a comparatively useless man, and a deep grief to his relatives; although his sister — famous Mary Warren — cared for him devotedly, and under the influence of the quality borne in her Christian name his occasionally turbulent spiritlent willing

JAMES OTIS

obedience. Unfortunately, all the great events of the Revolution passed while he was in more or less mental darkness. All through the great struggle to which his legal eloquence had led, James Otis was like a blasted pine on the mountains or a stranded wreck in the midst of billows. His spirit finally departed for the realm of unclouded intelligence just as the sunlight of peace burst upon his disenthralled country. This was in May, 1783; when leaning on his cane at a doorway surveying a brilliant thundercloud, suddenly a bolt leaped from it — as was said in the funeral sermon over his remains — "like a swift messenger from God summoning him." Curiously enough in lucid moments he had previously expressed a wish to die from lightning.

RUFUS KING.

These lucid moments would often occur. At Harvard he had been a notable Latinist, and the fact became impressed by a Boston incident. Some college students seeing him pass through a Cambridge street gesticulating as was his wont, poured from a second-story window some water on his head, one of them merrily exclaiming, "*Pluit tantum, nescio quantum, scis ne tu?*" Looking upward, Otis flung his cane through the window above, and "capped" with "*Fregi tantum, nescio quantum: scis ne tu?*" That bore abundant testimony to a lucid interval. It is pleasant for the legal profession in contemplating Otis to recall that a lawyer's speech in court was one of the matches that lighted revolutionary flames.

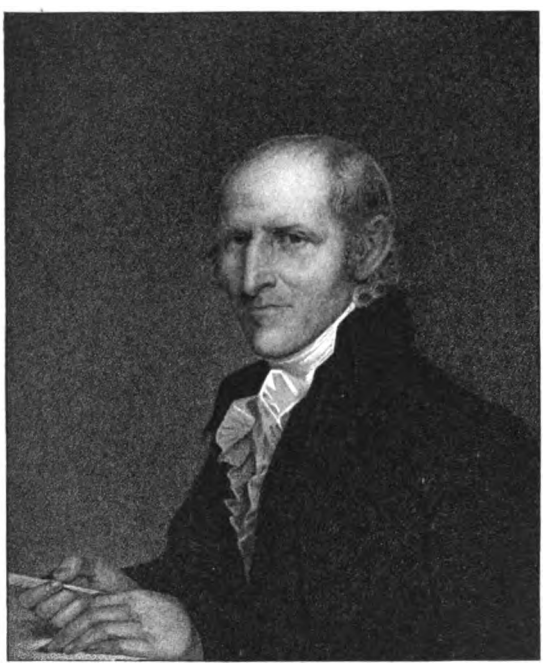
Rufus King, after participating in the Revolutionary struggles as a youngster, studied law with Judge Parsons of Newburyport and in 1780 received a diploma of practice. His very first case was against his preceptor whom he non-suited: thus practically paraphrasing the old couplet,

> To teach his grandson draughts his leisure he'd employ
> Until at last the old man was beaten by the boy.

He achieved distinction in Massachusetts as a lawyer, and also in New York city to which he had removed; and his name appears in Johnson's Reports as a contemporary of Kent. His political fame, however, has obscured his legal fame in the eyes of posterity.

John Rutledge, who died chief justice of the United States in the year that began this century and after only four years of judicial service therein, was a native of Ireland; but with his father came to Charleston while a youth. He studied law afterwards in the Temple at London, and began practice in his adopted city, which he pursued with marked success for fifteen years, when the colonial troubles brought into play for him the maxim, *inter arma silent leges*, and for a decade he played prominent military and political rôles. At

the peace of 1783 he was made a judge of South Carolina's chancery; became a maker of the Federal constitution; and one of the first associate justices of the supreme court at Washington. He resigned the Federal judgeship to become South Carolina's chief justice and in five years more again resigned that trust in order to hold the same post in the Federal supreme court where he succeeded John Jay, and after brief service was at his death succeeded by Oliver Ellsworth. His few opinions in the early reports show that he modelled them upon the best style — remarkably clear and cogent — of Great Britain's scholarly Lord Stowell.



TIMOTHY PICKERING.

Timothy Pickering was another colonial lawyer whose professional fame is obscured by his military and political renown. He was a Massachusetts Salemite, a Harvard graduate, and an active practitioner when his country became his principal client. When Salem was made a port of entry for Boston, and the latter in punishment for the tea outrage was closed to shipping, Pickering gave opinion that Salem should not receive favors at the expense of their Boston neighbors, and went to that city as counsel for Salem, to make argument before Governor-General Gage against the Boston port bill. Soon afterwards he figured as the very first provincial — before Concord and Lexington men rallied — to resist King George's troops. A body of red-coats on a Sunday had landed at Marblehead to march on Salem so as to seize there some contraband stores. Pickering ran to the three churches where sermons were being delivered, roused the minutemen of the congregations, who soon confronted the red-coats at the Salem drawbridge and frightened them back. This was as early as February 25, 1775. Two months afterwards town meeting elected him judge of the court of Common Pleas in which he held two terms, at the end of which *inter arma silent leges;* and he adjourned the court to intercept Lexington's invaders. But he exercised the duties of the judgeship for one year after Lexington and then he led 700 Revolutionary soldierly litigants to join Washington's army in New York. He became afterwards adjutant, and then quartermaster-general. In later years he successively filled in the Washington administration three cabinet posts — postmaster-general, secretary of war and secretary of state; and in all of these his legal acquirements shone preëminent. He finally died at Salem during John Quincy Adams' administration in his eighty-fourth year.

Joseph Reed, sometime private secretary to General Washington, after having studied law with Richard Stockton upon his graduation from Princeton at the unexampled age of sixteen, was the utterer of the historical words, "I am not worth purchasing: but such as I am, the king of Great Britain is not rich enough to do it." He was then (1778)

an influential continental congressman, and supposed to have immense influence with Washington. The English Tory government had sent commissioners to negotiate peace on the basis of some colonial submission; and they employed a Mrs. Ferguson to approach Reed with a bribe that he himself might name for his influence in behalf of their end. His words immediately reported to Congress sent the commissioners home with the traditional flea in their ears. When peace was declared he had returned to practice in Philadelphia and became a notable advocate. He died at the early age of forty-four. The colonial poet Trumbull wrote of the bribery incident, thus:

"Behold at Britain's utmost shifts
Dame Ferguson with promised gifts!
She ventures through the Whiggish tribe
To cuddle, wheedle, coax, and bribe.
George called, to aid a desperate mission,
A petticoated politician;
While Venus, joined to aid the farce,
Strolls forth embassadress of Mars."

FISHER AMES.

In the old churchyard at Dedham, Mass., stands a plain white monument bearing only this name, Fisher Ames. Now, as then, no other words are needed. Although in practice of the law at that town in 1781, his oratorical successes at the bar have been also overshadowed by his glories as statesman. While member of the first Federal Congress he spoke in favor of Jay's treaty so powerfully that an opponent moved adjournment of debate for the members to take calm thought and not to be led away by Ames' eloquence. "Why," exclaimed the mover, "there is not a dry eye on the floor." Ames added to his next neighbor, "except between the ears of the jackasses who made my speech necessary by their brays and floppings."

Legal tradition is rich with his epigrams and repartees when only young at the bar. William Tudor, a famous colonial lawyer of Boston, was his legal instructor and was quoted as pleasantly saying of his pupil, "Fisher has lofty aims." He inherited wit from his father, a physician who also kept an inn in Dedham. Some Tory colonial judges having decided a case against the parent, he stretched their Honors upon his tavern signboard in full-bottomed wigs tippling and smoking pipes, with their backs turned from a huge volume labelled "Province Law." The Boston authorities despatched officers to remove the signboard; but when they arrived only this — a fresh — inscription was found thereon taken from Holy Writ: "A wicked and adulterous generation seeketh for a sign, but no sign shall be given them."

A GLANCE AT LEGISLATIVE CONTEMPT.

By Frank W. Hackett.

THE dignity of a court presided over by a single judge is seldom in danger of being lowered. The judge has only himself to blame if he permit any occurrence involving a contempt of his judicial authority to pass without prompt rebuke. Several judges sitting in a row are more or less awe-inspiring, and the chances of a show of contemptuous behavior in their presence come to be very remote.

When we pass, however, from the region of the bench, and look at the legislative branch of the government we are likely to discover that the occasion for displaying disregard of the law, thus personified, grows somewhat more frequent. There have been people who actually have had the temerity to treat with contempt an entire legislature. They have not been able to do this, however, with impunity. It has always been a dangerous business. Possibly the danger has been to some extent the incitement.

At all events, daring individuals of this species appeared from time to time on the face of our globe, and left footprints in parliamentary history as well as cash by way of fine in the public treasury. Not having the volume of Blackstone at hand, I cannot quote; but the student, I think, never forgets with what ardor Sir William throws a halo of awe and reverence around the High Parliament of Great Britain. Men now old will easily recall the impression made years ago by his glowing periods. It would seem as if this elegant writer had provided that the youth of England, against all coming time, shall view the two Houses sitting at Westminster, without so much as daring to harbor a suspicion that the august spectacle is not the perennial embodiment of the perfection of human wisdom.

By the way, it has been said that to Edward Everett is due the credit of inventing the term "in this connection." I would like to borrow it, and remark in this connection that an amusing instance has been handed down of the profundity of the belief entertained by the average Englishman of Blackstone's day, in the omnipotence of Parliament. The session of 1751 had provided that the year should begin in future on January 1, instead of March 25, and that eleven nominal days should be suppressed between September 2 and 14. Thinking they had been robbed, the people actually, it seems in many places, cried, "Give us back our eleven days!"

Yet long before Blackstone lectured, and ever since his day, in spite of all glamour, and notwithstanding the dissemination of these lofty sentiments throughout the realm, we shall see the Lords and the Commons obliged to deal with divers wretches, who, in flagrant disregard of the settled principles of the English constitution, have snapped their fingers, so to speak, at the order of the House, either pooh-poohing the gentleman usher of the black rod; or, defying the sergeant-at-arms of the puissant Commons; nay, even confronting with force one after another of these exalted officials, while engaged in executing his respective duties, — all such behavior, of course, being against the peace of our sovereign lord, the King, his crown and dignity, and to the subversion of good morals generally.

A long procession of evil-minded persons has marched into the pillory, to do penance for their perverse carriage; or have had the spike-studded doors of the Tower, the Fleet, or of Newgate, thrown wide open to welcome their coming. The reader, who is curious in such matters, is referred to the elaborate work of Mr. May, who has brought together interesting material, that extends

from the time of one William Thrower, whose deviation from the path of rectitude, in 1559, took the shape of uttering words against the dignity of the Commons, for which he was pronounced summarily guilty of contempt, — down to very recent cases of libel, of assault upon members, of bribery, and of other dreadful enormities. (A Treatise on the Law, Privileges, Proceedings and Usage of Parliament, 7th Ed., Chapter VI.) The journals of Parliament, we are told, begin in 1547. Since that date the Commons have exercised the power of commitment in perhaps a thousand instances. A not infrequent cause of offense has been that of molesting an officer of the House while attending to his proper business. Mr. May details the circumstances attending these indignities, and tells us what the Lords did by way of vindicating their authority.

"The last case of the kind," he says, "was that commonly known as the umbrella case." Readers of THE GREEN BAG, I dare say, one and all, are sufficiently interested in the subject matter of umbrellas to justify my citing the remainder of the paragraph, as follows: "On the 26th of March, 1827, complaint was made that John Bell had served F. Plass, a doorkeeper, when attending his duty in the House, with process from Westminster Court of Requests, first to appear, and afterwards to pay a debt and costs awarded against him by that court, for the loss of an umbrella, which had been left with the doorkeeper during a debate. Bell, and the clerks of the Court of Requests, were summoned; the former was admonished, and the latter, not being aware of the nature of the complaint, were directed to withdraw." It must have been a lesson to Bell — not to lose another umbrella.

It seems that the Bishops, the Lords, and the knights and burgesses, a long while ago, used to sit together in one chamber, — an arrangement that for the winter season probably effected a saving in the item of fuel and lights. When so assembled, these dignitaries were called the High Court of Parliament, and as such exercised the functions of a court of judicature. One function, as everybody knows, is the privilege His Honor enjoys, when there has been a contempt of his court, of telling the sheriff to take the body of the offender, and lock it up in jail for safe keeping. After Parliament had concluded to separate into the Lords and Commons, each House, so it is thought, carried along with itself somewhat of the judicial habit.

To a parliamentary delinquent of a reflective turn of mind, it must be gratifying to be able to account for his being behind prison bars by a reference to the law and customs of Parliament, resting as they do on the solid basis of history. He will also be pleased to remember that the House of Commons can decide what constitutes a contempt, and then commit therefor, — a power that is not inherent in a merely colonial assembly.

By an open contempt of legislative authority one may contrive to put himself in jeopardy here in the United States, quite as effectually as if he had selected London as the scene of his notoriety. Congress and our State legislatures are alike jealous of their rights and privileges. We must not blame them if they prefer to have themselves respected, and their orders obeyed.

A decision of the Supreme Court of the United States, in 1880, modified the views that had been entertained previously of the powers of Congress in this regard.

I refer to the very important case of Kilbourn *v.* Thompson, that grew out of an investigation where the House of Representatives undertook to look into what had been done in a "real estate pool," so called, having some relation to the dealings of Jay Cooke & Company, debtors of the United States. The learned justices express their opinion that there is not found in the Constitution of the United States any general power vested in either house to punish for

contempt. They very carefully avoid deciding whether "this power exists as one necessary to enable either house of Congress to exercise successfully their function of legislation." This opinion to some extent rejects the reasoning of the court in the early case of Anderson *v.* Dunn (6 Wheat., 204). The turning point of the decision is that the House of Representatives had no right to inquire into the private affairs of the plaintiff, and therefore that a suit against the sergeant-at-arms for damages could be sustained (103 U. S. 168).

Here, the resolution of investigation on its face showed its object to be the collection of a debt due the government, a power Congress could not exercise. "This case" (Kilbourn *v.* Thompson), says Mr. Justice Field, "will stand for all time as a bulwark against the invasion of the right of the citizen to protection in his private affairs against the unlimited scrutiny of investigation by a Congressional committee" (*In re* Pacific Railway Commission (1887) 12, Sawyer, 578).

Our legislative assemblies are now thought not to have an inherent power to commit for contempt, as if such power had belonged to them because they are parliamentary bodies, and because Parliament, as we have seen, has it. The later doctrine is, that the right to punish must be referred to the express language of the Constitution, or to a statute, in conformity with the Constitution. Gentlemen who go into temporary seclusion on account of difficulties of this nature, have usually at least the moral satisfaction of realizing that their detention is in pursuance of a great constitutional provision, which exactly fits their case. Upon consulting the State constitutions the reader will discover that most of them limit the legislative power of imprisonment to a term that may not extend beyond a certain specified time.

By far the most numerous as well as the most interesting class of offenders against legislative privileges, in this country, have been those who, after being brought before a committee as witnesses, have refused to open their mouths to testify. Some of these martyrs, it is to be noted, were reporters for newspapers, in whose columns had been published verbatim the text of a treaty, which the Senate, utterly indifferent to a craving on the part of the American public for the latest news—was attempting to keep secret.

That the way of the transgressor is hard appears from the following instances of contumacy: John Nugent, procured from a senator, for the "New York Herald," the text of the Guadaloupe Hidalgo treaty with Mexico, in 1848; he got six weeks. C. W. Woolley (1868), silent about alleged corrupt transactions regarding President Johnson's acquittal; two weeks. Messrs. White and Ramsdell, not inclined to say how it happened that the "New York Tribune" (1871) came out prematurely with the Treaty of Washington (Alabama Claims); nine days. J. B. Stewart (1873), kept quiet on Crédit Mobilier matters; thirty days. R. B. Irwin (1875) did not talk up to the standard about Pacific Mail; two weeks, or more. Enos Runyon, too much reserve as to the electoral vote of Oregon (1876); more or less days. Hallet Kilbourn (1876) reticent as to his private affairs, in relation to an alleged "real estate pool," in the District of Columbia; forty-five days. Mr. Kilbourn brought suit against Thompson, the sergeant-at-arms (as already referred to), and recovered $20,000 damages and costs. Congress paid it.

Inasmuch as a witness before a Congressional committee is allowed two dollars a day, and his travelling expenses, one would suppose that he would gladly tell all he knew, and perhaps more, at the prospect of so munificent a remuneration. But if facts are stubborn things, so sometimes are the parties that exclusively possess the facts.

The decision in the Kilbourn case, however, ought not to be misunderstood. Let no one imagine that henceforth he may

either conduct himself with levity, or maintain with impunity a studied silence, when invited into the august presence of a committee of Congress. The latest edition of the Revised Statutes of the United States has a concise paragraph that bears upon the subject. It is there enacted that a wilful default of appearance, or a refusal to answer a pertinent question, shall be treated as a misdemeanor, to which is attached the not altogether agreeable incident of fine and imprisonment in a common jail, for not less than a month, or more than twelve months (Sec. 102), I suppose without benefit of clergy. The speaker turns the matter over to the district attorney, for the grand jury to take in hand. Investigations, it is to be presumed, therefore, will go on as usual.

"An investigation instituted for the mere sake of investigation, or for political purposes not connected with intended legislation, or with any of the other matters upon which the house could act, but merely intended to subject a party or body investigated to public animadversion, or to vindicate him or it from unjust aspersions, where the legislature had no power to put him or it on trial for the supposed offenses, and no legislation was contemplated, but the proceedings must necessarily end with the investigation, would not in our judgment be a legislative proceeding, or give to either house jurisdiction to compel the attendance of witnesses or punish them for refusing to attend."

This sound exposition of the law, extracted from an able opinion of Judge Rapallo, of the New York Court of Appeals, conveys a timely hint to persons, who, when about to be questioned by committees, have good cause to suspect that the legislative thumb-screws are to be applied for party purposes only.

A Mr. McDonald, it seems, was thought, in 1884, to be able to impart to a committee of the New York Senate, certain information regarding alleged delinquencies of the commissioner of public works of New York city. But Mr. McDonald did not respond with alacrity to certain questions propounded to him; and when the committee told Mr. McDonald that his counsel might withdraw, Mr. McDonald concluded that he would withdraw also. He did not care to stay. The Senate were of opinion, after consultation, that it would be well for Mr. McDonald to step over to the jail of Albany county, and tarry there till the legislature should have adjourned, unless discharged sooner by order of the Senate. Upon habeas corpus, the Court of Oyer and Terminer thought the Senate was right, and it dismissed the writ. On appeal, the Court in General Term thought the Senate was wrong, and dismissed Mr. McDonald. The Court of Appeals thereupon said that the General Term was wrong, and reversed its judgment, affirming the Oyer and Terminer, except so far as it remanded Mr. McDonald to jail, the session of the legislature meanwhile having ended.

The case, which will be found reported in the 99th New York Reports, at page 463, is well worth reading by all who take an interest in the question — Do investigations investigate?

SOME CURIOUS DECISIONS.

By George H. Westley.

IN the "Mysteries of Russia" by Frederic Lacroix, is to be found an interesting chapter on the courts of that country and the manner in which they dispensed justice — some might say dispensed *with* justice — in the early part of the present century. I select from that chapter the following amusing anecdote.

Nicholas Christopher, a wealthy Armenian merchant living at Kaminieck, had rented an apartment in his house to the handsome young officer, Count Balaban. It appears that this young man was indiscreet enough to make violent love to the wife of Christopher, and the latter, one day catching him at it, threw him bodily out of the window. As luck would have it, a peasant, named Grodisko, was passing underneath at the time, and upon him the flying count landed, nearly crushing the unfortunate Grodisko to death.

As a result of all this, the peasant summoned the count to appear before the civil tribunal; the count summoned the merchant, and the merchant in turn summoned his wife. The judges listened to the evidence, and considered the case long and earnestly. It was plain that Grodisko, having received serious injuries, was entitled to damages, but the question was from whom could he properly demand them. It was difficult to hold the count responsible for the consequences of an aërial voyage undertaken against his will; while as to the merchant who had thrown the noble count out of the window, he seemed to be justified in so doing by what he had seen going on between his wife and that young man. Such was the problem which exercised the Russian judge and his three assistants, and I think their decision is well worth being recorded in these pages. It was this:—

"Considering that the ukase of H. M. Paul I., dated in the year of our Lord, 1799, gives every man a right to throw out of the window into the street any useless piece of furniture which he may have in his house, provided that he takes care to cry out three times to the people passing by — 'Take care!' if not he is liable to a fine of twenty-five roubles, and responsible for all accidents which may happen through the negligence, —

"Whereas the Count Platon Alexiewitch Balaban should have without doubt been considered by Nicholas Christopher as a useless piece of furniture, and that he was consequently authorized to throw him out of the window, but on condition of his crying out three times, 'Take Care!'

"Whereas the said Nicholas Christopher did not cry out, either three times or twice, or once, and has consequently infringed upon the express injunction of the order, —

"We therefore condemn Nicholas Christopher to pay a fine of twenty-five roubles to the State, and two thousand roubles as damages to Zahor Grodisko, and moreover to pay to the latter two thousand roubles more to pay for his cure; we condemn him also to pay the costs of prosecution; the said sums to be paid within seven days from the present time. We acquit entirely Count Platon Alexiewitch Balaban, also Marie Zulma, the wife of Nicholas Christopher, leaving to the said Christopher all right to prosecute his wife before the ecclesiastical courts."

It is said that when the emperor heard of this strange verdict, he had a hearty laugh.

I was reminded, on reading the above, of an amusing legal incident which occurred some years ago out in Illinois. A carpenter in that State brought his daughter's young man up before a judge for violently ejecting him, one Sunday evening, from his own parlor. After hearing the other side, the judge said: "It appears that this young fellow was courting the plaintiff's gal, in plaintiff's par-

lor; that plaintiff intruded, and was put out by defendant. Courting is a public necessity and must not be interrupted. Therefore the law of Illinois will hold that a parent has no legal right in a room when courting is afoot. Defendant is discharged, and plaintiff must pay costs."

Some forty years ago a brace of very singular verdicts were given in a case on Vancouver's Island. An Indian, stealing potatoes in a garden, was shot dead by the owner of the premises. A redskin more or or less was not considered a very important matter by the people, and the man who had done the shooting was a very popular citizen; but the magistrate of the place felt it his duty to have the case looked into, so an inquest was held, and the farmer was arrested and tried for manslaughter. Evidence showed that the redskin had been shot through the lungs, and one witness testified that the prisoner had said to him, "Jack, I've killed an Indian!" It was a very clear case against the farmer, and the jury retired on it. In half an hour they returned. "We find," said the foreman, "that the Indian was worried by a dog." "A what?" exclaimed the judge. "Worried by a dog, sir," the foreman repeated. "What do you mean?" asked the puzzled judge. "There is no dog in this case. I cannot accept any such finding as that," and again he went over the points of the case, reminded them that shot had been found in the dead man's body, and then sent them back to their rooms to find a verdict reasonably connected with the facts. Before they appeared again a full hour had passed. As they sidled back into the court room the judge drew a paper towards him to record their finding. "Now men, what do you say?" "We say," was the reply, "that the Indian was killed by falling over a cliff." The judge shuffled his papers together and told the jurymen they might go to their work; he would find a verdict for them himself. For miles around the spot where the dead body was found, the country was as level as a table.

A somewhat similar sort of verdict was once given by a jury in England. In a trial for murder, Baron Parke, the presiding judge, told the jury that as there was very little, if any, evidence of malice adduced against the prisoner, they could, if they thought fit, find him guilty of manslaughter only. "Just," added his lordship, "as in an indictment for child-murder you may acquit the woman of murder and find her guilty of concealing the birth of the child." The jury were out for several hours, and when they returned into the court, they gave the verdict, "Concealment of birth."

Speaking of jurymen, I am reminded of an incident related by Mr. Henry L. Clinton in his interesting book "Extraordinary Cases." It was during the trial of Polly Bodine for murder, in 1844. The jury had been out for two days and two nights. Eleven of them were for conviction, but the twelfth — a country fellow who was something of an oracle in his village — held out stubbornly against it, and at length the jury had to be discharged.

"Were you for acquittal?" this juror was afterwards asked.

"No."

"Were you then for conviction?"

"No."

"What verdict were you in favor of?"

"No verdict at all."

"How is that?"

"It was all circumstantial evidence, I would not render *any* verdict on circumstantial evidence — that is not unless it was in the *fourth degree*."

"What do you mean by circumstantial evidence in the fourth degree?"

"Why, four eye-witnesses who swear that they saw the act committed."

"Thus," says Mr. Clinton, "was the life of Polly Bodine saved by this incorrigible juror who invented the doctrine of circumstantial evidence in the fourth degree."

An English jury once found a watch-thief guilty, but recommended him to mercy because it was really very hard to say whether he had taken the watch or not.

"Death by small-pox accelerated by neglect of vaccination," was the decision of a coroner's jury; but for odd verdicts it is difficult to beat this one by a jury of our own country: "We find the defendants Not Guilty, but believe they hooked the pork."

A shoplifter in Hungary — a Jewess of forty, who six months before her arrest for stealing had been baptized into the Roman Catholic Church — pleaded that she was legally an infant and as such was not responsible before the law. The rule of the country being that the date of birth figured from the date of baptism, the court sustained her plea and the six-months old shoplifter of forty was released.

Can a child legally have two fathers? The French Parliament once practically decided that he could. Briefly the case was this: Monsieur Navré had not been long married when he went to the wars, and at the battle of Saragossa was left on the field for dead. Madame Navré receiving a certificate of her husband's death from his captain, and deeming herself a widow, shortly married again; but on the day after the second marriage the supposed dead husband suddenly returned. There were hot words between the two men, resulting in a duel, where both fell mortally wounded. Navré survived his antagonist only three days. The unfortunate woman, now truly a widow, in due time gave birth to a son. With this young stranger arose the question to whom the paternity should be assigned. Upon this delicate subject medicine and law exhausted their science in vain. After much expense and litigation an appeal was made to parliament, and that body after considerable deliberation at length got out of the difficulty by decreeing that the boy should bear the names of both the dead men and receive the united inheritance.

Quite recently it was my good fortune to come across the following very curious story of justice in Spain. I do not vouch for the truth of it, but give it as it comes to me, merely remarking that I did not find it in a comic paper, as the reader might possibly think; and that remembering Don Quixote and considering how antiquated and peculiar are many of the Spanish institutions, we may reasonably conclude that the story is, at any rate, not without some basis of fact. The anecdote is certainly an amusing one, and as it turns upon several remarkable decisions, it may properly be incorporated in this article.

A certain burglar broke into a house in Madrid one night, and crept up stairs to see what he could find in the way of plunder. He had hardly begun his search when he heard footsteps approaching, and to avoid discovery he darted across the room and took refuge on the balcony. Now the balcony had been considered by its owner more in the light of an ornament than as a hiding place for a heavy man, so the burglar and the balcony reached the ground together with extreme suddenness, and, for the former, with sundry uncomfortable results in the way of broken bones. The burglar, writhing with pain and anger, was picked up and taken to the hospital, where they succeeded in patching him up so that in a few weeks he was in a condition to depart. His first step after leaving the hospital was to bring an action for damages against the owner of the house.

At the trial this gentleman admitted that the balcony had given away, but pleaded that he was not responsible for the non-adherence of the ornamental but flimsy structure to his house. His plea was sustained and a summons was immediately issued against the balcony-maker, the guilty man whose carelessness had endangered the precious existence of the burglar. This man had left Madrid; but justice was not to be balked, a detective was put on his track and at length he was found in Valladolid, and brought to Madrid for trial.

The balcony-maker admitted that the structure had been placed by him, but, he said, the woodwork of the windows needed strengthening before his part of the business could be completed, and as the carpenter was away at the time, it had been impossible for him to proceed with the supports of the balcony. Clearly the absence of the carpenter established the innocence of the accused; his plea was accepted, and the outraged balcony-maker left the court without a stain on his character, while into the dock, in his stead, stepped the carpenter.

And now the question became fraught with interest — was it after all the carpenter who was responsible? His story was this: He was hard at work on the aforesaid window frames, when, in the street below passed a lady. She was young and doubtless beautiful, but it was not this which had attracted his attention, it was the extraordinary brilliant and vivid color of the dress she wore; it flamed like a nasturtium, it glowed like the eye of an angry bull. Was it his fault that, dazzled and blinded, he could no longer see to do his work? He left, intending to return when his eyes should have recovered from the shock, but the next morning he was called to Barcelona to do some work upon window frames there; so that was how the whole thing happened. And was he, an honest carpenter, to suffer because a woman's disordered fancy flaunted a bewildering gown before his eyes? Perish the thought!

"The plea is a good one," said the judges, "it would be scandalously unjust to punish this man under the circumstances." It was plain to them that the culpability lay with the wearer of the offending dress. Where was she? So brilliant a garment must surely have attracted the attention of others than the unfortunate carpenter who had so gloriously vindicated his innocence; the woman must be tracked. The whole machinery of Spanish law was set in motion, and in less than a week the lady was found in Seville.

She admitted that the dress was strangely, crudely bright; but, was it right, was it just, was it Spanish to condemn a woman for wearing a color the vividness of which she deplored even more strongly than her judges? No, she continued with rising excitement, let that rascally dyer answer for his misdeeds. Had she not given him a pattern of her great-grandmother's gown — an intense, but dusky red — so subdued that the most sensible to color of carpenters might have continued his work in peace and comfort while she passed? And had he not sent her this gown, midway between a meteor and a flamingo? And could she afford not to wear it? Was not Pepito even now waiting till she had amassed her dowry? — and the cost of a new dress would retard the wedding!

A thrill of mingled sympathy and indignation ran through the court: sympathy with her, indignation against the unprincipled dyer. "Let him be brought!" cried a hundred voices, as the officer of the court conducted the innocent damsel from the dock; and in an hour or so the offending dyer was placed there in her stead.

He found no excuse; he was convicted and sentenced to be hanged to the doorpost of the house where the burglar had met with his accident. When the moment of execution arrived, however, an unexpected difficulty presented itself: the doorway was low, the dyer was tall. But justice might not thus be defeated — they found a shorter dyer, and they hanged him!

LITERATURE AND THE LAW.

Response to toast at annual dinner of Booksellers' League, March 15, 1899.

By Gilbert Ray Hawes, Esq., of the New York Bar.

IT has been well said by one of the most famous English writers of his day, Sir Walter Scott, that "a lawyer without history or literature, is a mechanic." This must necessarily be so. Otherwise the practice of the law is a sordid trade, not an honorable profession. If literature be disregarded, the work becomes mechanical and cannot rise above the low level of dull routine to the heights of scholarship.

In a certain sense the lawyer, like the poet, "is born, not made," or, to use the classical Latin, *nascitur, non fit.* Almost any ambitious youth with a quick mind and retentive memory can master the elementary principles of law, and acquire a sufficient knowledge of the practice and procedure under our code system to enable him to successfully pass the Regents' examination for admission to the bar. If he is studious, industrious and persevering, he may, in time, become successful. If he is a genius and natural orator, such as Abraham Lincoln was, he may become famous. But this is an exception to the rule. The office boys and clerks and half-educated young men who are now swarming into our ranks serve only to increase the already too large number of lawyers and thus detract from the high standard which should be set. A liberal education ought to be the foundation of all the professions. It is a significant sign of the times that Columbia University has just announced that hereafter no one shall be allowed to enter her Law School unless he is a college graduate. This rule should be universally adopted if we are to protect the noble and learned profession of the law from being tainted with ignorant and unscrupulous shysters or those who would degrade the profession into a business for money-making as its sole object. This naturally leads me to speak of the intimate connection which should exist between literature and the law. As the wise Francis Bacon remarked some three hundred years ago, "Reading maketh a full man, conference a ready man, and writing an exact man." And again, in his excellent treatise "Of Studies," he reminds us that "Some books are to be tasted, others to be swallowed and some few to be chewed and digested." I assume that you, gentlemen of the Booksellers' League, only handle those books which are fit to be assimilated. When, however, we consider the appetite and digestive power of the general public, we are not surprised at the mental pabulum absorbed. It is for you to say whether you merely supply the existing demand or whether you create a demand for certain undesirable kinds of literature.

But to return to the subject of my toast: law and literature should go hand in hand. The lawyer who hopes to win his cases in court, to obtain verdicts from juries or even to properly frame a brief or draft corporate papers, should have a wide acquaintance with literature. How can he hope to rise to flights of eloquence if he has not studied the masterpieces of Demosthenes and the famous orations of Cicero? Where can he find better models of logical and sustained argument than in the speeches of Chatham, Burke, Fox and Pitt and our own glorious Webster, "the Divine Dan"? If he would form a correct style and write pure English, let him peruse Addison, Steele, Shakespeare, Dryden, Cowper, Pope, Byron and that long list of distinguished English writers whom we claim as part of our common Anglo-Saxon heritage. If he would speak with authority on constitutional law, he should have read with care the "Federalist," the

Constitutional Debates and the writings of such profound thinkers as Jefferson and Hamilton and Jay. In fact, the well-equipped lawyer must have a thorough knowledge of history and literature and that general culture which springs from a liberal education. And thus we must look to the book-publishers and the booksellers for the proper tools of our profession.

Then again, the lawyer is frequently asked for advice in a matter which has some bearing on literature. He is called upon to interpret or construe a clause in the statute relating to copyright, or he may have to decide one of those nice questions which are constantly arising in the sale of subscription books, such as what constitutes a sale and when does title pass. A knowledge of literature may not be essential to enable a lawyer to properly defend the interests of his clients in the class of cases I have cited, and yet, is it not natural to suppose that the author and publisher and bookseller would prefer to retain as counsel the literary man who has an appreciative knowledge of books combined with legal attainments rather than one who is only "learned in the law," but with his finer instincts undeveloped? May we not hope that the day will come when the title "attorney and counsellor-at-law" shall be recognized as the equivalent of an educated and cultured gentleman?

If, therefore, literature and the law can be brought into closer relations, each will be strengthened by mutual coöperation. But I would not have you understand for a moment that I think that literature should be put under the domination of the law. Literature, except that which is positively obscene, should be wholly untrammeled. We boast of a free press and yet we have "in our midst," if you will allow the expression, a man clothed with a little authority who presumes to act as public censor. St. Anthony of old was tempted by beauteous visions from which he endeavored to flee away. But our modern St. Anthony is always yearning to be tempted and anxious to find some pretext for earning his salary. If he should confine his attention to the cheap and nasty libidinous publications which are exposed for sale and endeavor to suppress those periodicals which are a disgrace to any community, all decent citizens would wish him godspeed. But instead, he seems to take special delight in persecuting the respectable members of the publishing trade and in seeking to procure their arrest and confiscation of their books. He has objected to the sale of such classics as Boccaccio, Balzac and Rabelais. He has sought to interdict the works of Rousseau and even of the "good gray poet," Walt Whitman. Could ignorance or prejudice go further? And yet he is still unhappy. For the law has been successfully invoked for the protection of literature and the courts have decided against the holy Anthony in almost every instance. Even the "Triumph of Death" has compassed his defeat. So, gentlemen of the Booksellers' League, I say to you in the words uttered by the Great Gustavus Adolphus, on the eve of the Battle of Lutzen, "Fear not, thou little band." The enemy who is continually going up and down seeking whom he may devour, can annoy but he cannot defeat you, with law on your side.

To many the law is too prosaic a subject to inspire poets or authors. But the two great monuments of our literature, the Bible and Shakspeare, contain many allusions to law and lawyers, some of them, to be sure, of a not very complimentary nature. The Merchant of Venice is a dramatized law case, with Portia as the successful pleader for the man she loved. Many lawyers have reached distinction in the literary world, such as the late Irving Browne whose brilliant talents and graceful pen charmed and delighted all. Other members of the profession have also attained such high rank in literature that they have been remembered only in that field of work.

Literature is also indebted to the law for

many of its best anecdotes and wittiest sayings. Let me cull a few only for your delectation.

It is told of Ben Butler that shortly after his admission to the bar, many years ago, he was loitering about a country court house when a presiding judge suddenly summoned him to appear in court and appointed him counsel for a prisoner about to be tried for stealing a horse.

"But, your honor," he demurred, "this is a charge that may result in sending the prisoner to the penitentiary if the case goes against him, and I do not like to undertake the responsibility of his defense."

"Nonsense," exclaimed the court; "the case is not at all complicated, and I am sure you will handle it in a manner which will conserve all your client's interests."

"I have had no chance, your honor, to acquaint myself with the facts in this case, and if the trial must proceed at once, I must beg to decline to represent the defendant," insisted the young attorney.

"Your duty in the premises is clear," continued the court. "I will allow you sufficient time to consult with your client and map out your line of defense. You may retire with the prisoner into my private room for consultation. Thirty minutes will give you ample time. Go into that room; have the prisoner state his case fully to you; imagine yourself in his place, and advise him to do just what you yourself would do under such circumstances."

"And if I do this, will the court hold me blameless for whatever may result?" asked the attorney.

"Certainly, sir," replied the judge.

The lawyer and his client retired for consultation. At the end of thirty minutes the former came out of the private room and said, "Your honor, we are now ready to proceed."

"Where is your client?" inquired the court.

"I don't know, may the court please," replied the counsel.

A bailiff ran into the consultation room. A window twelve feet from the ground was open and there were two heel marks in the soft earth outside. "Only this and nothing more." *Verbum sapienti sufficit.*

They sometimes have illiterate jurymen in England, which of course could never happen with us. It was in a suit for damages, an accident case. "You see, gentlemen," said the counsel for the defendant, complacently, "I have got the plaintiff into a very nice dilemma. If he went there seeing that the place was dangerous, there was contributory negligence, and, as his lordship will tell you, he can't recover. If he did not see, it was negligence on his part not to see it. In either case, I am entitled to your verdict." The jury retired. "Well, gentlemen," said the foreman, "I think we must give him £300." All agreed except a stout, ruddy gentleman in the corner who cried hoarsely, "Give him another 50 guineas for getting into the dilemma." Verdict accordingly.

It is also related that Lord Norbury and Counselor Parsons were passing by the Naas jail in the judge's carriage, when Norbury noticing a vacant gibbet, observed, "Parsons, where would you be, if that gallows had its due?" Without a second's hesitation, Parsons responded, "Riding alone."

So you see that the lawyer has some place in literature, even if it is only "to point a moral or adorn a tale."

If I am not detaining you too long, you may pardon me for indulging in a personal reminiscence. I was in London last summer and at the special invitation of Lord Davey, one of the Queen's Privy Counselors, I was privileged to be present in the House of Lords where an interesting case was on appeal before the Lord High Chancellor and three noble lords representing the Law Committee of the House of Lords, the highest tribunal in England. The Lord High Chancellor is one of the homeliest men in the realm, but withal jolly and good-natured. In his judicial robes lined with ermine and with his

broad smooth-shaven face surmounted by a huge full-bottomed wig with long ear-tabs, he presented a somewhat comical appearance. His three associates, one of whom was Lord Salisbury, sat at small desks on either side, dressed in ordinary attire and without any distinguishing mark. A small space outside the bar was reserved for spectators, who were obliged to stand, while in the gallery were several peeresses. The Lord High Chancellor was seated on the woolsack which as you know is a broad bench or stool covered with a thick cushion. In olden times, it was merely a sack filled with wool, and hence the name. After the case had been fully argued on both sides, a Queen's Counsel who represented a subordinate interest, arose very impressively in his gown and wig and said, "My Lords" (or as he pronounced it, "Me Luds"), "it is with regret that I find it necessary to further occupy your time but," — here the Lord Chancellor, with a twinkle in his eye, interrupted him, "And we fully share your regret." The tipstaves were obliged to suppress the laughter which ensued, and the argument then proceeded with dreary decorum.

I cannot close these somewhat desultory remarks without an allusion to the ladies who are always present in our hearts, even if absent in person. Allow me, then, to offer a toast, though it cannot be classed as literaature. You may even say it is faulty in construction and rhythm; but little things like these do not bother us. *De minimis non curat lex.* So here is the lawyer's toast:

"Fee simple or a simple fee
And all the fees entail
Are nothing when compared to thee
Thou best of fees, — female!"

LONDON LEGAL LETTER.

LONDON, APRIL 3, 1899.

THE very evident intent of the authorities to appoint a *persona gratissima* to the American people on the Venezuela commission, which is shortly to begin its sessions in Paris, to fill the vacancy created by the death of the late Lord Herschell, has been carried out by the selection of the Lord Chief Justice for the position. He was so pleasantly received in the United States on the occasion of his visit to address the American Bar Association, and he has, since his return, so heartily reciprocated the feeling which prompted his welcome that his nomination has been received with general approbation. But this compliment has been paid to the American people at a considerable sacrifice. The number of available judges, particularly on the common-law side, is so inadequate even under normal conditions, that the absence of the Lord Chief Justice for the lengthy period which it is contemplated will be covered by the sittings of the commission, must be severely felt, particularly as Lord Justice Collins will be taken away from the Appeal Court to serve on the commission also. Most of the judges are men long past the prime of life, and, from the nature of their habits and their daily surroundings, are peculiarly subject to the epidemic of influenza, which is now raging with severity in England. Lord Russell is not only badly needed in the Queen's Bench division, but he is one of the few available judges who can sit on the appellate bench whenever, as frequently happens, a vacancy occurs there. The law requires that three judges shall sit to hear final appeals, and as there are but the six Lord Justices for the two courts, the embarrassment occasioned by the temporary indisposition of one of these judges is very great. A bill has been

introduced in Parliament providing that, in case the parties agree, the decision of two judges shall determine the appeal, and the measure will doubtless soon become a law. An amusing and yet at the same time serious matter for one of the litigants occurred in one of the divisions of the Court of Appeal a few days ago. Two Lord Justices only were available, and the parties agreed to accept their decision rather than that there should be delay. The decision, however, could not be given by the judges in their capacity as judges, but only as arbitrators, and as an appeal does not lie from an arbitration, the decision was a final one. Unfortunately it happened that the judges could not agree, Lord Justice Rigby holding that the appeal should be dismissed, and Lord Justice Vaughan Williams that it ought to be upheld! The result was that the decision of the *nisi prius* judge was affirmed, and there could be no appeal to the House of Lords. The counsel for the appellant urged that when he consented to accept the decision of two judges he meant their unanimous opinions, and not that of two judges who differed. But his application for leave to re-argue the case before a full bench was refused.

The need for additional judges is imperative, and probably in no country in the world is the bench so obviously undermanned. The Incorporated Law Society, the representative body of the solicitors' branch of the profession, the Bar Council, and even the judges themselves have urged upon the government that the appointment of at least one, and if possible two or three additional judges, is urgently required by the existing state of business. In Scotland and in Ireland there are nearly twice as many judges in proportion to the numbers and the needs of the people. The population of England, the volume of its trade, the expenditures on the army and navy, and on the civil service, and the expansion of foreign commerce, have wonderfully increased in the past two decades, and yet there are no more judges to-day than there were a quarter of a century ago. The Chancellor of the Exchequer, who alone blocks the way, shows signs of yielding at last, and it is now believed that it is only a question of a few months before the reform will be accomplished.

Reference was recently made in this column to the report of the joint committee of the four Inns of Court on the duties, interests and discipline of the bar on the question as to whether a law student not a British subject could be called to the English bar. The committee reported that in their opinion persons who are not British subjects should not be called to the English bar; but that if, under special circumstances, any Inn should desire to call an alien, it might exercise the right, after notice to the other Inns stating the special circumstances relied upon. The full text of the report is now at hand, and is of exceptional interest, but is of too great length to be reproduced in THE GREEN BAG. It appears that until the Act was passed in 1868, which amended the law as to promissory oaths, every student was required upon call to take the oath of allegiance. The only case known to the committee where the taking of this oath was waived was that of Judah P. Benjamin, the well-known secretary of war for the Confederate States of America, and that gentleman was "by reason of his great legal attainments, coupled with his expatriation (?) from his own country, called to the bar of Lincoln's Inn in 1868." He practiced as a leader with a patent of precedence, but he never received the appointment of Queen's Counsel, although the letters "Q. C." were always used as a designation of his rank. Mr. Benjamin, in his petition praying that he might be called to the bar without conforming to the established practice said: —

"I was born on the 6th August, 1811, and am therefore nearly fifty-five years of age. My parents were both natural-born British subjects, of

British ancestry, and I am consequently a natural-born subject of Her Majesty, although the place of my birth was the Island of St. Croix (a Danish possession in the West Indies) during a temporary sojourn of my parents in that island. (4 Geo. 2, ch. 21, II.)

"I was taken when an infant to the United States, where my father was naturalized during my minority, and I thus became entitled to all the rights of a citizen of the United States without abjuring my native allegiance."

It is difficult to understand how this eminent lawyer could contend that, if, as was undoubtedly the case, he was entitled to all the rights of a citizen of the United States and if he elected to exercise those rights, he still retained at the same time his native allegiance to Her Majesty. After his flight from the United States at the close of the war, to escape capture, he was apparently a "man without a country," but he now appears to have considered himself in the unique position of having two countries. However, after 1868 a number of gentlemen who were not British subjects were called to the English bar without the attention of the authorities having specially been directed to the matter. In 1897 a native Chinese applied to be admitted to Lincoln's Inn with a view to being called to the bar, and a joint committee was then appointed, as now, to consider the question; but upon that occasion the joint committee came to the conclusion "that in their opinion persons not being British subjects may properly be called to the bar." Their resolution embodying this decision was rejected by the Inner Temple, adopted by the Middle Temple and no action was taken upon it by either Gray's Inn or Lincoln's Inn. In an appendix to this report the present committee give the result of their inquiries as to the qualifications, as respects nationality in other countries, as follows:

AUSTRIA. — The necessary conditions are — 1st, to be "domicilié" in Austria; and, 2d, to be in the enjoyment of political rights.

BELGIUM. — To be "docteur en droit." To be a male. To have taken the oath of allegiance to the King, the constitution, and the laws of the Belgium nation.

DENMARK. — To have "la qualité de sujet danois."

NORWAY. — To be a Norwegian subject.

FRANCE. — Mr. Charles K. Hall reported that to enable one to be called to the bar the candidate must: 1. Have obtained the degree of Licentiate of Laws in one of the French Universities. 2. Take the professional oath. 3. Be a French citizen. 4. Have an independent residence and domicile within the territorial jurisdiction of the Court by which he is admitted. 5. And not follow any calling inconsistent with the profession. These conditions being fulfilled, the Advocate is allowed to practice, but he is not entered upon the roll of the Order of Advocates until he has accomplished a probation of at least three years' practice.

SWITZERLAND. — It is necessary to be a Swiss citizen.

GERMANY. — The necessary qualification is inconsistent with being other than a German, but no absolute rule can be found requiring German nationality.

The profession is open to all persons possessing the requisite qualifications for candidates for judgeships.

HOLLAND. — The following from Dr. W. R. Bisschop, a Dutch advocate practicing in London:

Before being enrolled as a barrister or a solicitor at one of the Courts of Justice in the Kingdom of the Netherlands it is necessary that the following oath be taken: — "I swear to be "faithful to the King, to obey the Constitutional Code, to honor the Judicial Authorities," etc.

In order to take the above-mentioned oath it is not necessary first to be naturalized, nor of course does the taking of this oath convert an alien into a citizen of the kingdom of the Netherlands, which can only be done by special Act.

W. ROOSEGAARDE BISSCHOP.

HUNGARY. — The conditions are (1) to be of Hungarian nationality; and (2) to have the diploma of an advocate.

GRAND DUCHY OF LUXEMBOURG. — Every advocate must take the oath of allegiance.

RUSSIA. — The advocate must be twenty-five years of age, and a Russian subject.

SERVIA. — He must be a Servian subject.

SPAIN. — He must be a Spaniard.

U. S. AMERICA. — The following communication from Mr. R. Newton Crane, an English Barrister, and a member of the Bar of the United States Supreme Court, has been received from the American Embassy: —

June 24th, 1898. 1 Essex Court, Temple.

In all of the States candidates for admission to the bar must take an oath "to support the constitution of the United States and the constitution of the State"; but, except in the State of North Carolina, I know of no rule requiring that such candidates shall be citizens of the United States. It is a question for each State to decide, except as to admission to the bar of the Supreme Court of the United States. There the rule is that the candidate shall have been an attorney or counsellor for three years past in the Supreme Courts of the State to which he "belongs."

This report has not been accepted by the Inns of Court, or at least has not been adopted, so that for the present at least no opposition will probably be offered to the admission to the bar of a student who is a foreign subject. The members of the bar themselves are in favor of the exclusion of such persons, not from the selfish or narrow personal reasons which too often lead professional men to attempt to make their profession into a trade union, but because they have a higher conception of the nature and duty of a lawyer. They consider him an officer of the court, and an aid and arm of the judge, and they hold that in such a capacity loyal and conscientious devotion to the head of the State are necessarily required. But on the other hand there is a feeling that England is so connected with the development of commerce and civilization in all parts of the world, that she can well afford not only to accept students from all parts of the globe, and instruct and educate them in her laws, but call them to her bar that, ultimately, they may go back to their respective countries to there aid in extending English civilizing influences. Every year from twenty to twenty-five per cent. of those called to the bar are not English subjects, and yet of these, those who are now in active practice at the English bar could be counted on the fingers of one hand. The others are scattered over the world — in the West Indies, the West Coast of Africa, the Cape, the Australias, India and Ceylon, and all over the Eastern ports, and in China and Japan. They not only practice in the courts of their respective countries, and in the consular courts, but many of them are judges and legislators, and have weighty counsel in national and imperial affairs of State. The technical view of the English barristers as to their exclusion from the English bar may be right, but the imperial instinct of the English commercial class is wiser.

STUFF GOWN.

The Green Bag.

PUBLISHED MONTHLY, AT $4.00 PER ANNUM. SINGLE NUMBERS, 50 CENTS.

Communications in regard to the contents of the Magazine should be addressed to the Editor, HORACE W. FULLER, 344 Tremont Building, Boston, Mass.

The Editor will be glad to receive contributions of articles of moderate length upon subjects of interest to the profession; also anything in the way of legal antiquities or curiosities, facetiæ, anecdotes, etc.

FACETIÆ.

WHILE Frederic Remington was in the West he observed a well-executed portrait on the wall of a dark room in a cabin, and asked whose picture it was.

"That's my husband," said the woman of the house, carelessly. "But it is hung with fatal effect," urged the artist. "So was my husband," snapped the woman.

ONE of those old-time negroes — the kind that Polk Miller describes so charmingly — was some years ago called as a witness in one of the courts.

"What's your name?" was the first question propounded by the Attorney-General.

"George Washington, sor," replied the old man.

"George Washington," repeated the lawyer, and after a moment of reflection said, "It seems to me that I have heard that name before."

"'Spects you has, sor," said the old negro. "I'se been libing 'bout hyar many years."

JUDGE WHEATON A. GRAY, recently elevated to the supreme court commission, was hearing a criminal case in Fresno, and on a warm day, at the end of a long harangue by the prosecuting counsel, he noticed one of the jurymen asleep. As soon as the argument was completed, the judge addressed the jury in this peculiar manner: "Gentlemen of the jury, the prosecuting attorney has completed his agrument; *wake up* and listen to the instructions of the court."

LAWYER: "Then I understand you to swear, witness, that the parties came to high words?"

WITNESS: "No, sir; what I say is, the words was particularly low."

NOTES.

THERE are advanced people in North Dakota, and they must be fully represented in the State Legislature. It was reported, a short time since, that the North Dakota Senate had passed a bill which provides that applicants for marriage licenses in that State shall be examined as to their health, and that licenses shall be denied to persons who shall be found to be suffering from various diseases, including dipsomania, hereditary insanity, and tuberculosis. The responsibility of passing upon applicants would rest upon a committee of three physicians in each county, appointed by a judge.

IN Australia a motion for a parliamentary committee to examine "Cresswell," the new Tichborne claimant, has been lost by one vote. Cresswell has been an inmate of the Parramatta lunatic asylum for many years, and recently yielded to the appeals of his friends and pronounced himself to be the real Sir Roger. One strange feature of the case is this: The Cresswell estate, to which it is practically admitted the man is entitled, adjoins the Tichborne estate, and the Parramatta authorities have announced their intention of descending upon it to recoup themselves for keeping the ex-lunatic during all the years he has been in their asylum.

THERE is one country in the world, and probably only one, which gets along with a single policeman: that is Iceland. Iceland is peopled by the descendants of Vikings, including many famous warriors and heroes, but they are so law-abiding that they have no need of policemen. The solitary officer, in spite of his great responsibility, has a very easy time. He is maintained more for ornament and dignity than for use. The Icelanders think it would not do to have a capital without a policeman, and so they keep one.

This police force is large in one sense. Its member is six feet high, broad-shouldered, and handsomely uniformed.

CURRENT EVENTS.

IN Switzerland they are making clocks which do not need hands and faces. The clock merely stands in the hall, and you press a button in its stomach, when, by means of the phonographic internal arrangements, it calls out "half-past six" or "twenty-three minutes to eleven," as the case may be.

IN Japan, what we call "after-dinner speeches" are made before dinner, thus insuring brevity, and furnishing topics for conversation during the meal itself

RECENT observations among Indians show that in South America, as well as in North America, the red woman lives longer than the red man. But the average duration of life is only seventeen years for both sexes in the South, and twenty-two per cent of the Indians die during the first year of life.

THE Chinese government does all in its power to check the opium habit, the punishments common in the Chinese army for this habit being extreme. For the first offense a man may have his upper lip cut; for the second he may be decapitated. For the last sixty years, on an average, half a ton of opium has been sent to China from India every hour.

THE earlier editions of "Webster's Dictionary" contained a verb "to Jew," and defined it "to cheat," "to play with," etc. At the request of a number of influential Israelites, the word was eliminated from the book. As a matter of fact, however, the word had no connection with or reference to the followers of the Mosaic faith. It was derived from the French "jeu" and "jouir," which means "to play with," "to cheat," etc., but its orthography had become corrupted to "jew." It did not appear in subsequent editions of the work.

RECENT investigations have shown that the principal source of the Gulf Stream is not the Florida Channel, but the region between and beside the islands of the West Indies. At Binioni the volume of this warm water is sixty times as great as the combined volume of all the rivers in the world at their mouths.

A CLUB exists in Vienna the members of which are pledged to marry some poor girl. If, by chance or design, a member marries a rich girl, he is fined two thousand dollars, which sum is bestowed on some respectable but impecunious couple engaged to be married.

LITERARY NOTES.

THE CENTURY MAGAZINE is redeeming its promise to cover the war of 1898 as authoritatively as it did the campaigns of 1861–65, though the late and shorter war demands much less time and space in the magazine, and, in fact, as a magazine feature, the April and May numbers will practically close the series so far as it relates to active operations. In the April number an article of extraordinary interest and importance is Rear-Admiral Sampson's full and frank statement of the part taken by "The Atlantic Fleet in the Spanish War." Major-General Francis V. Greene, one of the highest living authorities on modern warfare, gives a full account, from personal experience, of the actual capture of Manila, and John T. McCutcheon describes the surrender of Manila as viewed from Admiral Dewey's flagship. Mr. McCutcheon was on the bridge with Dewey during the action. An account by the American Director of the School at Athens of recent American discoveries at Corinth includes the turning up of "A Relic of St. Paul." In this connection should be mentioned an entertaining description of Jerusalem and its environments, written especially for THE CENTURY by the distinguished French artist, J. James Tissot.

PROF. JOHN FISKE, in the April ATLANTIC, treats the ever-engrossing question of the "Mystery of Evil" in a profound and thoughtful paper in which he embodies the results of his own researches and the writings of religious and philosophical authors, and draws a conclusion that cannot fail to interest all thinking and reflecting people. Samuel Harden Church calls attention to the coming "Tricentenary Celebration of Oliver Cromwell" in an interesting and instructive paper, treating of the conditions upon which Cromwell rose to power; what he accomplished for his country at home and abroad; the prominent features of his character, and the place to which he is entitled in the history of the English people and the English nation. Prof. T. J. J. See, in his paper on the "Solar System in the Light of Recent Discoveries," states, in a popular and easily understood manner, his recent important and unexpected discovery of a new law of temperature which totally reverses all the hitherto accepted theories and beliefs of the development of the universe. Professor See's discovery is as interesting to all readers in general as it is vitally important scientifically and astronomically.

"THE STUFF THAT DREAMS ARE MADE OF," is the title of the leading article in APPLETON'S POPULAR SCIENCE MONTHLY for April. Havelock Ellis, the author, is a prominent English psychologist, and he has

succeeded in making an entertaining as well as instructive paper on a subject of much psychological importance. "The Best Methods of Taxation," by the late Hon. David A. Wells, is the first portion of the final chapter in the series on "The Principles of Taxation," and is full of practical suggestions for the legislator and tax-payer. An instructive article, under the title "Mental Defectives and the Social Welfare," is contributed by Dr. Martin W. Barr. The importance of the problems connected with the care and education of the weak-minded is not generally appreciated, and many absurd ideas, as Dr. Barr points out, are rife regarding the conduct of "imbecile asylums." A number of striking illustrations add value, if not beauty, to the article. Edward Atkinson replies to a number of his critics, under the title "The Wheat Problem Again," and rather sharply arraigns the Department of Agriculture, in which one of his critics is a high official.

THE complete novel in the April issue of LIPPINCOTT'S is "The House of Pan," a romance of the eighteenth century, by Anna Robeson Brown. The reader's interest is sustained throughout by the thrilling adventures of a young French girl and the American hero, valiant and true. "Confessions of a Butcher," by William S. Walsh, has entertaining reminiscences of the author's experiences in a publishing house. Frank A. Burr's article on "The Men who Impeached Andrew Johnson" is especially good reading at this time.

WHAT SHALL WE READ?

The Making of Hawaii is the title of a book by William Fremont Blackman, Professor of Christian Ethics in Yale University, which will be published immediately by The Macmillan Company. Hardly a problem in the complex movements of the century has been absent in the compact community of Hawaii. It has been Professor Blackman's aim to give a sober and comprehensive discussion of the forces which have been at work in the social evolution of the islands. As a field for the study of some important social problems Hawaii offers unusual scope due to the blending of temperate and tropical climates, the mixing of widely different races, the contact of civilized and aboriginal people under unique conditions, and finally to the control of industries by corporations to an unusual degree, and the close juxtaposition in recent years of a very wealthy few and a very poor multitude.

THE MACMILLAN COMPANY have in press for early publication, *The Government of Municipalities*, by the Hon. Dorman B. Eaton, formerly Commissioner of the United States Civil Service. The author has treated the subject theoretically in reference to American constitutions and the relations of the city to the State, and practically in the light of the experiences of both American and European cities. The causes of our municipal evils are set forth, and the author has explained the organizations and methods which he thinks likely to be most effective for their removal. The question of Home Rule and the theory of an autocratic mayoralty are broadly treated. Both the actual and the true relations of political parties to city government are set forth, and it is shown by what means parties have gained an unjustifiable control of American cities. The relation of Tammany politics to the government of New York City is very fully treated, as is also the new charter of Greater New York.

A delightful story of travel, mingled with interesting discussions on theological and philosophical questions, as well as pertinent observations on other familiar topics, will be found in the Rev. Reuen Thomas's *Kinship of Souls*.[1] The author is one of our most distinguished preachers, a profound thinker, and a man of unusual scholarly attainments. The book gives an account of a trip made by a philosophical professor, his intellectual daughter, and a young theological student, including descriptions of various portions of England and Germany visited by the persons of the narrative. Mr. Thomas shows a familiarity not only with theology but with novelists, philosophers, and poets as well. Kant, Hume, Hegel, George Eliot, Wordsworth, Arnold, Carlyle, Milton, Dr. Johnson, and many other thinkers and writers are touched upon. His undogmatic discussions of theology and philosophy will appeal to the serious-minded. The work is one of more than ordinary interest, and we heartily commend it to our readers.

Perhaps the most original contribution to recent fiction is *The Miracles of Antichrist*,[2] by Selma Lagerlöf. This volume represents the more mature work of the author of "The Story of Gösta Berling." A more sustained interest is apparent in this later book; yet *The Miracles of Antichrist*, like "Gösta Berling," abounds in little incidents that reveal the nobleness and deep motives of life. It has the same power and poetic beauty of description, and the mingling of natural and supernatural by a wealth of legends and folk-lore. Treating of the South instead of the North, Miss Lagerlöf seems to have ac-

[1] THE KINSHIP OF SOULS. A narrative by Reuen Thomas. Little, Brown & Co., Boston, 1899. Cloth. $1.50.

[2] THE MIRACLES OF ANTICHRIST. By Selma Lagerlöf, author of "The Story of "Gösta Berling." Translated from the Swedish by Pauline Bancroft Flach. Little, Brown & Co., Boston, 1899. Cloth. $1.50.

quired a quiet beauty to correspond with the theme. A noteworthy element of the book is its intuitive grasp of Sicilian character. The author has studied the life and environment thoroughly, so that the book depicts not only the feelings of individuals, but the common heart of the people also. The religious miracle-loving side of their nature is introduced; in this case without offense, as the incidents revolve around Antichrist. Antichrist, whose kingdom is of this world, Miss Lagerlöf identifies with Socialism; his image, made in imitation of the true image of the Christ-Child, performs many miracles among the people.

NEW LAW BOOKS.

THE LAW OF PARTNERSHIP, including limited partnerships. By FRANCIS M. BURDICK, Dwight Professor of Law in Columbia University School of Law. Little, Brown & Co., Boston, 1899. Cloth. $2.50.

This last addition to the "Students' Series" is a work of unusual merit, and Professor Burdick has succeeded in making a somewhat perplexing branch of the law reasonably clear to the student. The author's long experience as a teacher, and his thorough acquaintance with his subject, make his personal opinions, upon controverted points, of great weight and authority. The work will prove a valuable aid to students, and should meet a hearty reception from our Law Schools.

THE JURISDICTION OF FEDERAL COURTS as limited by the citizenship and residence of the parties. By HOWARD M. CARTER of the Chicago Bar. Little, Brown & Co., Boston, 1899. Law sheep. $3.50, *net.*

This work covers a topic to which little attention has been paid in treatises on United States practice. The jurisdiction of the Federal Courts in this particular is of a special and limited nature, and it is of importance for the practitioner to know the exact limit of their powers. Mr. Carter gives us a most thorough and exhaustive treatment of the subject, and the volume will be found invaluable by all lawyers practicing in the United States Courts. Eight hundred cases are cited, and the index is full and analytical.

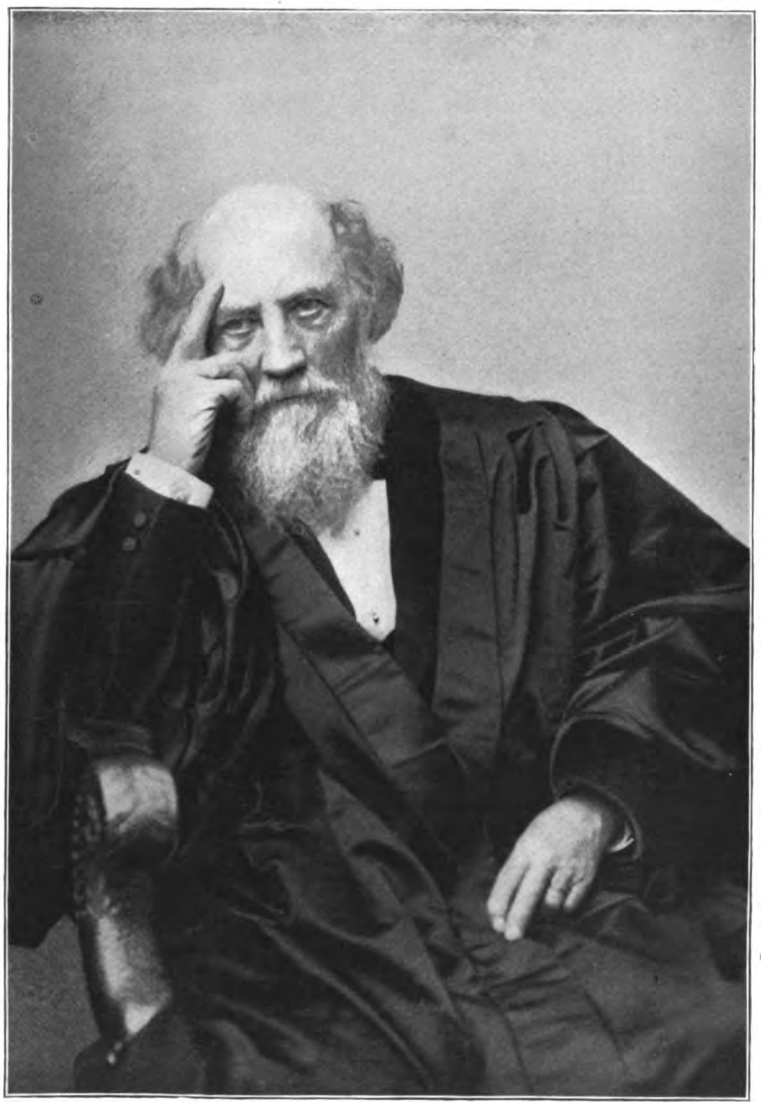
CASES ON INTERNATIONAL LAW DURING THE CHINA-JAPANESE WAR. By SAKUYÉ TAKAHASHI, Professor of Law in the Imperial Naval Staff College of Japan. With a preface by Prof. T. E. Holland, D.C.L. The Macmillan Co., New York, 1899. Cloth. $2.75.

This work is one which cannot fail to interest all students of International law. The author has exceptional claims to speak with authority upon the subject, as at the close of hostilities he was commissioned to compile the official history of all legal affairs connected with the war. In Part I. Mr. Takahashi treats the affairs which relate to visit, search and detention — in short, prize affairs; and in Part II. he describes and discusses miscellaneous affairs which have a bearing upon the naval operations of Japan. The book is a valuable monument of the history of the Far East, and the details with which it is enriched are the best testimony to the care with which Japan entered on a line of operations, naval and judicial, quite novel to her. The value of the work is greatly increased by the official documents, proclamations, reports, opinions, conventions and regulations, with which its statements are copiously illustrated.

THE LAW OF REAL PROPERTY, Vol. V, being a complete compendium of real estate law, embracing all current case law: carefully selected, thoroughly annotated and accurately epitomized; comparative statutory construction of the laws of the several States; and exhaustive treatises upon the most important branches of the law of Real Property. Edited by TILGHMAN E. BALLARD and EMERSON E. BALLARD. The Ballard Publishing Co., Logansport, Ind. Law sheep. $6.50.

This series maintains its high standard of excellence, and is really almost indispensable to the lawyer who wishes to keep up with the innumerable judicial precedents upon the subject. The present volume covers nearly four thousand new cases, touching almost as many distinct points. To add to the convenience of those using this series, the Editors have prepared, in a separate volume, an accurate and minute index to the five volumes already issued. We commend the work to our readers as one which will save them much time and labor in acquiring information upon any question touching the law of Real Property.

THE AMERICAN STATE REPORTS, containing the cases of general value and authority decided in the courts of last resort of the several States and Territories. Selected, reported and annotated by A. C. FREEMAN. Vol. 64. Bancroft-Whitney Co., San Francisco, 1898. Law sheep. $4.00.



Stephen J. Field

The Green Bag.

VOL. XI. No. 6. BOSTON. JUNE, 1899.

THE LATE MR. JUSTICE FIELD.

BY ARCHIBALD HOPKINS.

THE average impression of the judicial career doubtless is, that whatever may be its attractions and rewards, it is on the whole a very humdrum and monotonous one, dealing chiefly with dusty maxims, dry precedents, and the adjustment of controversies in no respect different from thousands that have gone before. Under the prevailing conditions of civilized society, and in most communities, the correctness of this view may be admitted, but in the case of Mr. Justice Field of the United States Supreme Court, recently deceased, it certainly does not hold good. No attempt to account for him or to understand him would avail much, without some knowledge of his ancestry and early life. Zachariah Field was one of the first Puritan settlers of New England, and the independence of character which brought him there was developed and increased in his descendants by the hard struggle required to subjugate the wilderness and drive out the savages. His grandfathers on both sides bore commissions in the Revolutionary war, and his father, the Rev. David Dudley Field, soon after Stephen was born, November 4, 1816, moved from Haddam, Ct., to take charge of the Congregational church in Stockbridge, Mass., of which Jonathan Edwards had been the pastor, and between whom and himself there had been but one incumbent. There, on a salary of $600 a year, Dr. Field supported a large family, well-known members of which were in addition to Stephen, David Dudley, Cyrus W. and Henry M. Field. Boys brought up as they were, owed their success not altogether, as is often assumed, to their inherited qualities, and the education they received, but to the circumstance that from early childhood the constant lesson of their lives was self-reliance, and that they knew and accepted with cheerfulness and courage the fact that they must from the first make their own way. Stephen was a delicate child, but very early showed marked intellectual capacity and quickness, and when he was thirteen years old his sister, Emilia, having married Rev. Josiah Brewer with the purpose of accompanying him to Syria, there to establish schools, it was thought best to take the boy along, with the idea of his learning the Oriental languages, having in view a professorship for him in the future. He remained in the East three years, learned to speak modern Greek, and acquired a good knowledge of Italian, French and Turkish. During the same period he traveled through Asia Minor and Greece. Contact with Mohammedans, Greeks and Roman Catholics greatly broadened his views, and led him to think favorably of the Turks, and he had the trying experience of passing through two epidemics, one of plague and the other of cholera, in which he was of great service to the suffering. All this time he had been fitting himself for college, and returning to the United States, entered Williams College in the fall of 1833. For his alma mater he always expressed great affection, and for her president, Dr. Hopkins, a profound reverence. He graduated

in 1837 with the valedictory oration in spite of a decided tendency to college pranks, and immediately entered his brother Dudley's office in New York as a student. Illness interrupted his studies, and he went to Albany for a change, where he taught in the female academy, and occupied himself in the office of John Van Buren, then attorney-General of the State.

In 1841 he returned to New York, became his brother's partner, and remained there till 1848, when feeling the need of a change, he went to Paris, where he met his brother Cyrus, and travelled in Europe for a year. On his return, at his brother Dudley's suggestion, he decided to go to California, where the gold excitement was at its height. The voyage to Chagres took a week, the isthmus was crossed on mule back, and then at Panama a crowd of twelve hundred were packed into an old steamer, which was twenty-two days reaching San Francisco; food and water were poor and insufficient, and Chagres fever in its worst form broke out. Mr. Field saved many lives by the skillful and assiduous nursing which his experience in the East enabled to give to the sick. He landed at San Francisco December 28, 1849, with ten dollars in his pocket, and two trunks; it cost him seven dollars to have them taken to an old adobe building where for himself and two fellow-passengers a room ten by eight was secured at $35.00 per week. The next morning the cheapest breakfast he could find cost $2.00, and he started out to look for something to do with a capital of $1.00. A bundle of thirty New York papers he had brought, sold for a dollar apiece, and, fortunately, his brother had given him a note for $400 to collect against a man, whom he at once found, and who had "struck pay dirt," and met his obligation promptly, with interest.

As the gold excitement grew inland, he left the city, and taking a steamer up the Sacramento river got off at the junction of two rivers, where there was a camp; he liked the location and decided to remain. There was no recognized authority, but in a few days the settlers met and organized a local government. The place was called Marysville, and Mr. Field had already so impressed himself upon the new community that he was chosen the first alcalde, and was compelled, as he became the centre for society to form about, to use wide and extensive powers. There were large numbers of desperadoes and refugees from all nations, and much depended upon how he dealt with his first case. A man was brought before him, accused of having stolen gold dust, and was clearly proven guilty; there was no jail, and if he had fallen into the hands of the crowd he would have been instantly hung. The alcalde sentenced him to a severe whipping, which was promptly given, and the reign of law and order began.

The State government soon came into effect, and Mr. Field began the practice of law under it. The first district judge before whom he came was a drunken, brutal bully from Texas, who took a violent dislike to him on the theory that he was an abolitionist, and on Mr. Field attempting to maintain the rights of clients before him, had him arrested for contempt, and on his suing out a writ of habeas corpus and securing his release threatened him so openly that Mr. Field began to go armed.

Writing of the period, he says: "When I came to California I came with all those notions in respect to acts of violence which are instilled into New England youths; if a man were rude I would turn away from him. But I soon found that men in California were likely to take very great liberties with a person who acted in such a manner, and that the only way to get along was to hold every man responsible and resent every trespass upon one's rights. I purchased a pair of revolvers and had a sack coat made with pockets in which the barrels could lie and be discharged; and I began to practice firing the pistols from the pockets, and in

time was able to hit a small object across the street. I had come to the conclusion, that if I had to give up my independence, if I had to avoid a man because I was afraid he would attack me, if I had to cross the street every time I saw him coming, life was not worth having."

The determined fearlessness thus shown, was eminently characteristic of Justice Field, and was manifest not only in his personal relations, but in the discharge of every duty and the maintenance of every cause he undertook. He sent word to Judge Turner, "Tell him from me that I do not want any collision with him; that I desire to avoid all personal difficulties, but that I shall not cross the street to avoid him, nor go a step out of my way for him; that I have heard of his threats, and that if he attacks me or comes at me in a threatening manner I will kill him."

These extracts are given because it was this attitude consistently adhered to, that carried Mr. Field safely through many difficulties and dangerous situations. In one instance he felt compelled to send a challenge; and in another to accept one to fight in a small room with pistols and bowie-knives. In both cases he had been outrageously assailed and in both cases apologies to him resulted without any fight. Speaking in general of the subject he says: "Until the summer of 1854 I carried weapons, and yet they were not such provocatives of difficulty as some of our Eastern friends seem to think. On the contrary, I found that a knowledge that they were worn generally created a wholesome courtesy of manner and language."

The difficulty with Judge Turner, the Texas judge referred to, by whom he was temporarily disbarred threw him out of active practice, and he ran for the legislature and was elected in 1850. He had made a good deal of money at the bar which was unfortunately invested, resulting not only in the loss of all he had, but leaving him nearly $20,000 in debt for which he paid ten per cent a month interest. In the legislature he was placed on the judiciary committee and did a great work for the State. The condition of the law was chaotic, the Spanish code with Mexican variations, the common law and crude statutory provisions being hopelessly commingled, to the confusion of suitors and the delay and defeat of justice. Mr. Field drafted, and succeeded in passing, acts reorganizing the courts of the State on the most enlightened basis. He also from an intimate knowledge of the miners and their wants had legislation passed for their protection, and for the settlement of mining controversies, which had an immediate and beneficial result, and has been copied everywhere. In it he gave the fullest effect to the customs and rules the miners had themselves established. He greatly liberalized the law as to debtors, and in fact, as has since been recognized, contributed far more than any other one man to building up the governmental fabric of California on a safe and enduring foundation. On his return to Marysville after the adjournment of the legislature, as previously stated, he was bankrupt, arriving there as he says with eighteen cents in his pocket. In some recollections, he thus describes his surroundings at this time, vividly illustrating early life in California: "On the next day I looked around for quarters. I found a small house thirty feet by sixteen and took it at eighty dollars a month. It had a small loft in which I placed a cot purchased on credit. On this I spread a pair of blankets and my valise for a pillow. I secured a chair without a back for a washstand, and with a tin basin, a pail, a piece of soap, a toothbrush, comb, and a few towels, I was rigged out. I brought my own water from a well near by. I had downstairs an old pine table and a cane-bottomed sofa, and with these and the statutes of the previous session, I put out my sign and began again the practice of my profession." Within two

and a half years he had paid all his debts including the exorbitant interest, and was in the full tide of a lucrative practice.

One other incident depicts the times, as well as his own character. He was trying a case in a saloon before a jury involving title to a valuable mine, and charged attempted bribery which had come to his knowledge. He says: "At this thrust there was great excitement and click, click, was heard all through the room which showed a general cocking of pistols, for every one went armed. I continued: 'There is no terror in your pistols, gentlemen; you will not win your case by shooting me; you can win it in only one way — by evidence showing title to the property; you will never win it by bribery or threats of violence.'" He got a verdict, and within two weeks the owners of the claim had taken out over ninety thousand dollars in gold dust.

As an advocate and adviser he had won wide confidence and success, and in 1857 was elected to the Supreme Court for six years, and in 1859 became chief justice. Soon after he married Miss Sue Virginia Swearingen of San Francisco, a charming and cultivated woman, who survives him at Washington, where she made his home a centre for all that is best and most attractive in its social life. When he left the bench of California in 1863, Judge Baldwin, one of his associates, said among other things, speaking of the time when Mr. Field came to California and of his influence: —

"It is safe to say that, even in the experience of new countries, hastily settled by heterogeneous crowds of strangers from all countries, no such example of legal or judicial difficulties was ever before presented as has been illustrated in the history of California. There was no general or common source of jurisprudence. Law was to be administered almost without a standard. There was the civil law, as adulterated or modified by Mexican provincialisms, usages and habitudes, for a great part of the litigation; and there was the common law for another part, but what that was, to be decided from the conflicting decisions of any number of courts in America and England, and the various and diverse considerations of policy arising from local and other facts. And then, contracts made elsewhere, and some of them in semi-civilized countries, had to be interpreted here. Besides all of which may be added that large and important interests peculiar to this State existed — mines, ditches, etc. — for which the courts were compelled to frame the law, and make a system out of what was little better than chaos.

"When, in addition, it is considered that an unprecedented number of contracts, and an amount of business without parallel, had been made and done in hot haste, with the utmost carelessness; that legislation was accomplished in the same way, and presented the crudest and most incongruous materials for construction; that the whole scheme and organization of the government, and the relation of the departments to each other, had to be adjusted by judicial construction — it may be well conceived what a task even the ablest jurist would take upon himself when he assumed this office. It is no small compliment to say that Judge Field entered upon the duties of this great trust with his usual zeal and energy, that he leaves the office not only with greatly increased reputation, but that he has raised the character of the jurisprudence of the State. He has, more than any other man, given tone, consistency, and system to our judicature, and laid broad and deep the foundation of our civil and criminal law. The land titles of the State — the most important and permanent of the interests of a great Commonwealth — have received from his hand their permanent protection, and this alone should entitle him to the lasting gratitude of the bar and the people."

Judge Baldwin's tribute in no way overstates Justice Field's service to the State and

to jurisprudence. He made the California reports known and cited throughout the country, and when Congress provided for an additional judge on the Supreme Court of the United States, the universal voice of the Pacific coast designated the chief justice of the Supreme Court of California to fill the place and President Lincoln appointed him. He was commissioned March 10th, 1863, and took his seat at the next session of the court. The ensuing years, next to those at the foundation of the government, were the most important and far-reaching in its judicial annals. Marshall and his contemporaries had defined its powers and settled the foundations on which it stood. These foundations were shaken by civil strife and had almost to be relaid, the new amendments must be construed and applied and the development and change of a new era met and provided for within the limits of the Constitution. It would be impossible in one article to follow Justice Field through the discussion and determination of the important questions that arose, nor for the profession is it necessary to do so. The question of martial law in a loyal State, the test oath as a condition for the practice of a profession, pardon and amnesty, confiscation, and kindred political subjects, all came before the court, and to them all Justice Field applied the fundamental maxims of Anglo-Saxon liberty and jurisprudence to which he always clung.

In the legal-tender cases he stood with Chief Justice Chase for sound principles and sound money, he vigorously opposed the income tax law and through all his opinions there run certain controlling ideas: The absolute freedom from interference by each from the other of the general and the State governments, and the vigorous maintenance of the powers of each within its just sphere; the perfect protection of the individual in all natural or contract rights from encroachments, from any source. It is as Courts and legislatures have swerved from the recognition and application of these great principles, that the rights of property have been questioned, a dangerous centralization developed, and a false socialism encouraged which threatens the peace and prosperity of the years to come. The transfer of Justice Field's residence from the midst of a new and rapidly changing community to the staid and settled life of the Capital did not bring as might have been expected freedom from the exciting incidents of his earlier career. Twice his life was endangered by disappointed suitors; in one case by an infernal machine sent through the mail from California and traced circumstantially to the part he had taken in the settlement of a land title, and again growing out of his fearless administration of justice when he so narrowly escaped murder at the hands of Judge Terry, whom the United States marshal detailed to protect the Justice, killed in the attempt. Warned of the danger, and urged not to go to California at that time, he said simply that it was his duty and when urged to arm himself replied: "When it comes to such a pass in this country, that judges of the courts find it necessary to go armed, it will be time to close the courts themselves."

There were other episodes in the life of Justice Field not within the scope of the ordinary judicial career. One of these was participation in the deliberations and decision of the tribunal which determined succession to the presidency in 1877, and another the use of his name in a political convention in 1880 and 1884 as a candidate for the presidency, where his courageous and consistent course in having upheld the rights of the Chinese, and on other subjects, angered the Pacific coast politicians and defeated him.

Referring to his possible candidacy in 1884, he made the following characteristic declaration in a letter to a friend: "My judicial opinions on subjects of interest in California — the position of the Chinese in

the State, the taxation of the property of railways, and the Mexican land grants — have, I am aware, given offense to a large number of the people who would have had me disregard the law, the treaties with China, and Mexico, and the Constitution, to carry out their views and schemes. I could not thus do violence to my convictions of duty — the thing was impossible. Indeed, I would not have changed a line I wrote had I known beforehand that for it I would lose the support of California, nor would I now change a line to secure the vote of every man in the State." That the author of such a declaration would have made a wise and firm President, controlled always by principle, who can doubt? and it may be said in passing, that Judge Field combined to an extraordinary degree, the patient investigation and calm deliberation of the judicial temperament, with the prompt decision and immediate vigorous action required of a successful executive.

Another incident which many will regard as the crowning triumph, and highest honor of his life, was the unanimous request of his associates soon after the death of Chief Justice Waite, that he be appointed to fill the vacancy. Such action was never taken by the court before, and carried with it both in the manner of its expression and by implication, the loftiest tribute his associates could pay him. He retired, December 1, 1897, having served thirty-four years, a little longer than Marshall and longer than any justice who ever sat on the Supreme Bench. He died, April 9, 1899, eighty-three years old. To the bar, familiar with Justice Field's opinions, any extended characterization of him as a lawyer and a judge is unnecessary. His grasp of principles was of the widest, and his consistency and fearlessness in applying them, notable. Probably no judge ever sat to whom such novel and chaotic conditions were presented, or before whom more difficult and important questions were argued. With profound study, and with learning always equal to the occasion, he brought order out of confusion, and with resistless logic and unfailing lucidity marshalled seemingly discordant and contending principles along the unswerving lines of justice. He will live in judicial annals with Marshall and Story, with Curtis and Miller, among the great judges of our august tribunal.

Justice Field was a man of wide reading in many directions, and with keen enjoyment of all that is best in literature. Some years ago, having always as he said, taken such things for granted, he turned his attention to theological reading and inquiry. He went into the question of revealed religion *de novo*, putting aside all preconceived notions and impressions, and bringing to bear on the subject, his ripe and experienced judgment, and his trained powers of ascertaining truth as impartially and laboriously as though he were trying a case. For two years, he said, his library was filled with books on both sides, and as the result, while his belief in a Supreme Being and a future life were in no wise shaken, he discarded the Trinitarian and atonement dogmas, and failed to find any evidence that made miracles credible to him.

The justice was a man of nearly six feet in height, with a figure slightly inclining to stoutness. He wore a full beard and moustache and his nearly bald head was large and symmetrical. Deep, penetrating, gray eyes looked from beneath his dark brows and his features were strong and noble. Clad in his official robes, the whole effect was one of commanding dignity, forceful will and high intellectual power. In all his domestic relations he filled the highest ideals, and his genial, charming social qualities, his quick responsiveness to humor, and his natural, hearty enjoyment of life's pleasures and beauties, endeared him to numerous friends wherever he went, and made him sought for in every circle.

In one of Berkshire's most peaceful valleys close by the softly-flowing Housatonic, his

kindred lie buried. It were fitting that there, where his boyhood days were passed, in the midst of the reposeful beauty which he never ceased to love, he too should rest, after his life of fierce conflict and strenuous incessant toil.

MILITARY LAWYERS.

By One of Them.

THE Bar of England has always been more or less connected with military life. The students of law acquired the property of the Temple from the renowned order of the Knights Hospitallers of St. John of Jerusalem, who themselves had acquired it from that great military order of the Knights Templars. It is unnecessary to say anything respecting these two illustrious orders, as their history is too well known, but we will deal chiefly with the active part taken by lawyers in the military history of this country. Beginning from the period of the Norman Conquest we find the names of six men holding commands at the battle of Hastings, who afterwards became judges. They were as follows: William Fitz Osborne, who commanded one of the three divisions; Bishop Odo, whose mace caused such fearful havoc; Geoffrey of Constance, who held a distinguished command; William de Warrenne; Robert, Earl of Morton, who carried the banner of St. Michael; and Richard Fitzgerald. In the year 1138, Walter Espec, justiciar, conducted an expedition against the Scotch, and so at the battle of the Standard laid the first foundation of the future successes of the English arms. Several of our judges took part in the wars of King John, and of those, Roger Bigot, justiciar, and William de Huntingfield, justice itinerant, were amongst the twenty-five barons appointed to enforce Magna Charta. Hubert de Burgh, chief justiciary, and William Mareschale, Earl of Pembroke, justiciar, commanded the levies who defeated the French invasion, in 1216. at Dover and Lincoln. The London "Voluntaries," who fought at Lewes in 1264, were commanded by Nicholas de Segrave, son of Gilbert de Segrave, justice of the Common Pleas. In the year 1297, Hugh de Cressingham, justice itinerant, was defeated at the battle of Stirling, by Wallace. Robert Bouchier, chief justice of the King's Bench in Ireland, and Richard le Scrope, afterwards chancellor, were both present at the battle of Crecy, the former with so large an array that his allowance amounted to £401 10*s.*; the latter also took part in the defeat of the Scotch at Nevil's Cross, and in the great sea fight and victory at Rye in 1350; John de Delves, afterwards keeper of the great seal, won his spurs at the battle of Poictiers, as one of the four squires of Lord Audley; and Lord Chancellor Beaufort held a high command at the battle of Agincourt. In 1381 the Inns of Court took part against Wat Tyler and his followers. John Fortescue, chief justice, fought at Towton and Tewkesbury; Richard Nevile, Earl of Salisbury, chancellor to Henry VI, and father of the famous Earl of Warwick, was taken prisoner at Wakefield and beheaded the following day. Thomas Thorpe, baron of the Exchequer, was made prisoner at the battle of Northampton and afterwards beheaded; and Thomas Urswyke, chief justice of the Exchequer, when recorder of London, was

instrumental in defeating the Lancastrian attack on the city of London in 1467.

The first organized body formed by members of the Inns of Court appears to have been in 1584, for the purpose of assisting in the defense of the country from the Spanish Armada. The deed associating the members of Lincoln's Inn is still in existence, having been preserved by Thomas Egerton, then solicitor-general, and afterwards chancellor, who was the first to sign it. It is now amongst the Egerton papers in the possession of Lord Ellesmere, and a copy of it was published by the Camden Society in 1840 (vol. 12, p. 108), and is as follows:—

"Forasmuch as Almightie God hath ordayned Kynges, Quenes, and Princes to have domynion and rule over all theire subjectes, and to preserve them in the profession and observation of the true Christian religion accordinge to His holy word and commaundements . . . . Therefore wee, whose names are or shall be subscribed to this writinge, beinge naturall borne subjectes of this realme of Englande, and having so gracious a lady, our sovereigne Elizabeth, by the ordynance of God our moost rightfull quene, raignynge over us theise many yeres with greate felicitie to our inestimable comforte . . . we doe also think it is our moost bounden duties, for the great benefites of peace, welth, and godly government, which we have more plentifully receaved theis many yeres under Her Majesty's Government then our forefathers have done in any longer tyme of any other her progenitors, kinges of this realme, do declare and by this writinge make manifest our loyall and bounden duties to our said soveraigne lady for her safetie. And to that end wee and every of us, first calling to witnessne the holie name of Almightie God, doe voluntarilie and moost willingly bynde ourselves, every one of us, to the other jointlie and severally in the bonde of one fyrme and loyall societie, and do hereby vowe and promise before the Majestie of Almightie God, that with our whole powers, bodies, lyves, landes, and goodes, and with our children and servants, wee and every of us will faithfully serve and humbly obey our said soveraigne lady Queen Elizabeth, against all estates, dignities, and earthly powers whatsoever, and will, as well with our joynte as particuler forces, during our lyves, withstande, offende, and pursue, as well by force of armes as by all other meanes of revenge, all manner of persons of what estate soever they shalbe and their abettors, that shall attempte by any acte, counsell, or consent to anythinge that shall tende to the harme of Her Majestie's royal person . . . In witnesse of all which promises to be inviolably kepte, we doe to this writinge putt to our handes and seales, and shalbe moost ready to accepte and admytt any others hereafter to this our society and association. —Tho. Egerton, Rauffe Rokeby, John Davy, George Kyngesmyll, Chr. Jenneye, Peter Warburton, C. Rytche, Avarez Copley, Joly Aston, Tho. Thornton, Ric. Kyngesmyll, Amos Dalton, Humphry Brydges, Robert Ryche, Robert Clerke, John Glanvyle, Thomas Palmer, Roger Pope, John Evelyn, etc.

The original document bears ninety-five signatures, but the Camden Society, from want of space, have omitted to print more than the first twenty.

Sir Francis Drake and Sir Walter Raleigh were both members of the Middle Temple. A copy of the order of the benchers, directing a banquet to be given to Sir Walter Raleigh, "member of this house," on his return from his voyage round the world, is framed under his portrait at the Middle Temple. Sir Philip Sydney was a member of Gray's Inn.

One of the early acts of King Charles I, after his accession to the throne, was to address a circular letter to the benchers of the different inns, requesting them to call upon the students at their times of recreation, to exercise themselves in arms, and particularly in horsemanship, in which the

English nation was very deficient, not "that any of the students of our Lawes should by this occasion neglect their studies, but that they should change their former exercise in time of vacancie and recreation." As the result of this appeal, the gentlemen of the Inns of Court, on February 3, 1633, rode "in solemn triumph" before his majesty, properly armed and equipped.

On the arrest of the "Five Members," in 1641, great riots took place. The gentlemen of the Inns of Court seem to have considered that the time had come for action, and accordingly they marched down, five hundred strong, to offer their services to the king as body-guard, which offer was accepted, and they remained at Westminster as his body-guard for some days. This determined action on their part, and in addition a threat used by one of them that, if necessary, they would send down to the country and fetch up their tenants — produced an effect in the Parliament which was evidently very great, and after a hasty deliberation four members were sent off to ascertain from the different Inns what their intentions were. In reply to them, the four Inns returned the extremely proper answer, "that they had only an intent to defend the King's person, and would likewise to their utmost also defend the Parliament, being not able to make any distinction between King and Parliament, and that they would ever express all true affection to the House of Commons in particular."

At the beginning of the Civil War, when the king was at Oxford, he granted to Lord Lyttleton, keeper of the great seal, a commission to raise a regiment of infantry from the gentlemen of the Inns of Court, for the defense of the city and the University of Oxford. All the Inns of Court men were not, however, Royalists, for General Lambert, and many others of Lincoln's Inn, took the side of Cromwell.

At the period of the French Revolution the Inns of Court were most active in promoting the volunteer movement, which then first became general all over the country. One of the corps formed by Lincoln's Inn was commanded by Sir William Grant, the master of the rolls, who had rendered military service by commanding a body of volunteers at the siege of Quebec by the Americans, first under General Montgomery, and afterwards under Colonel Arnold. He is said to have been the only lawyer who has ever, in active service, discharged military and legal duties on the same day.

It is said that the court used to adjourn at three o'clock, "to allow Mr. Grant to attend his battery." Lord Erskine had seen service both in the army and the navy, having, in 1764, joined the "Tartar" as a midshipman. In 1768 he retired from the navy and entered the army as an ensign in the Royals or First Regiment of Foot, and in 1775 he retired from the army and joined the bar.

Speaking of two reviews of volunteers connected with London or the neighborhood, held on the 26th and 28th of October, 1803, in Hyde Park, by King George III, in person, Earl Stanhope says: "Reckoning both days, upwards of 27,000 men were present under arms. When the 'Temple companies' had defiled before the king, his majesty asked Erskine, who commanded them as lieutenant-colonel, what was the composition of that corps? 'They are all lawyers, sire,' replied Erskine. 'What! what!' exclaimed the King, 'all lawyers? Why, then, call them The Devil's Own.'" Although Erskine had been a lieutenant in the army, and used to eat his obligatory law dinners in his scarlet regimentals, Lord Campbell says: "I did once, and only once, see him putting his men through their manœuvres, on a summer's evening, in the Temple gardens; and I well recollect that he gave the word of command from a paper which he held before him, and in which, I conjectured, that his 'instructions' were written out as in a brief."

Eldon and Ellenborough were in the rival corps — "The Devil's Invincibles," — but both, unhappily, in the awkward squad. Lord Eldon used to say, "I think Ellenborough was more awkward than I was; but others thought it was difficult to determine which of us was the worst." This corps had attorneys in its ranks, and it was said of it that, when Lieutenant-Colonel Cox, the master in chancery, who commanded it, gave the word "Charge!" two thirds of its rank and file took out their note-books and wrote down 6*s.* 8*d.* It is also said that, when a volunteer company of lawyers which was raised during the apprehension of the French invasion were told by the drill-sergeant to "about face," not a man of these logical patriots stirred, but they all stood still, and cried, 'Why?'"

When the volunteer movement began after the Crimean War, the members of the Inns of Court held a meeting on the 21st of November, 1859, for the purpose of raising a corps of its members. The "Times" of that date thus describes the meeting: —

"The Profession mustered in great force, and, seen in a mass, it would be difficult to find a more spirited body of men. Many of them from the universities, accustomed to athletic exercises, no more promising band could be submitted to the training of the drill-sergeant."

The following extract is from the "Times" of December 17, 1859: —

"The Corps of the Inns of Court continues to receive fresh additions to its numerical strength every day; starting little more than a fortnight ago, with about two hundred members, the numbers up to last night had increased to 520, and the practice proceeds with unflagging energy and spirit."

Among the judges of recent years who have belonged to this corps are the following: — Baggallay, T. Chitty, Davy, Grantham, Herschell, Lefevre, Lopes, Matthews, Baron Pollock, A. L. Smith, Willes, Thesiger, Selwyn, North, Macnaghten, Lindley, Kekewich, Hannen, Fitzgibbon, Cotton, J. W. Chitty, Rigby.

Sir Henry Havelock, of Indian Mutiny fame, was at one time a member of the Inns of Court, and read in Chitty's chambers. There are two other distinguished military officers who were called to the bar; the one was the late General Herbert Stewart, of the Inner Temple, who died of wounds at Above Klea; and the other is General Sir Evelyn Wood, V. C., a barrister of the Middle Temple.

For some years past the Inns of Court Corps has rather flagged in military zeal, and it was feared at one time that the corps would cease to have a separate existence; but now, happily, it is looking up again, and has considerably increased its members. Every young member of the bar ought to take a pride in joining such a distinguished corps, and the members ought easily to be increased to five or six hundred. — *The Law Times.*

A COMING CAUSE CÉLÈBRE.

By John DeMorgan.

IT is within the realm of certainty that the case of Poulett *v.* Poulett, when it reaches the courts will prove one of the most important trials of modern times. Not because the claimant has had such a strange and adventurous career, but on account of the many issues which may be raised, and which may lead to new interpretations of old laws, or the passing of new ones. It may even involve the House of Lords and cause a division in that august body, leading, it may be, to the abolition of the house as an hereditary branch of the legislature.

When a few weeks ago Earl Poulett died, the estates and title were claimed by Viscount Hinton, who for some years had earned a precarious living in the streets of London by playing a piano-organ. His title was disputed, by order of his father, both by word of mouth on his deathbed and by testamentary desire, and the title was assumed by the Hon. William J. Lydston Poulett, a son, by a third wife, of the late earl. The House of Lords called this son to take his seat and he was duly acknowledged as one of the hereditary legislators.

The story of Viscount Hinton is well known to all newspaper readers, but the strange and peculiar history will only be known officially when the cause célèbre has been tried and the result decreed.

Many of the highest families are involved, for Paulet, Marquis of Winchester; Powlett, Lord Bolton; Powlett, Duke of Cleveland; and Poulett, Earl Poulett, are all branches of the same common stock. The Earl of Rosebery is the son of a Duchess of Cleveland, and so related, though distantly, to the organ grinder. The first Powlett who was ennobled played no inconsiderable part in four successive reigns, and the story of the siege and sack of Basing House, by Cromwell, forms the subject of a fresco in the corridor of the House of Lords.

Viscount Hinton's case seems to be a strong one, and the defense appears, at present, very weak. The facts on which the case is based go back exactly half a century.

The family, by which is meant the opponents of the viscount, say that in June, 1849, the late Earl Poulett, then a subaltern in the army, landed at Portsmouth and went with his brother officers to the United Service Hotel. They were drinking at the bar when Poulett began to notice one of the barmaids and devoted more attention to her than to his brother-officers. They chaffed him and he said he would marry the girl, whereupon a bet was made of a thousand pounds that he would not marry her. Poulett accepted the bet, proposed to the barmaid over the bar, was accepted, and a few days afterwards the marriage took place.

The date of the marriage, as shown by the certificate, is June 23, 1849, and the bride is described as Elizabeth Lavinia Newman, daughter of a Landport pilot.

The marriage was a quiet one and the couple went to live at Brougham House, Cottage Grove, Southsea, and there the boy, now claiming to be Earl Poulett, was born in December of the same year, or six months after the marriage. The young officer separated from his wife, refused to recognize the child, but made the mother an allowance.

It is not denied that the child was born in wedlock, and the English law has always recognized that such a child must be legitimate, the marriage of the parents being sufficient. Medical testimony will doubtless be given to prove that a birth may take plaee six months after conception.

Earl Poulett persistently refused to acknowledge the child born twenty-five weeks after marriage and did all he could to prevent him succeeding. The question will be, first as to the legitimacy and then as to the legality of the cutting off the entail and resettling the estates.

Viscount Hinton says he is able to prove that his father knew Miss Newman and lived with her two years before the ceremony of marriage, and that the chaffing only made him determined to "make an honest girl" of the barmaid. It is true that the earl took no action towards the annulling of the marriage, and when his first wife died she was buried as "The Right Honorable Elizabeth Lavinia, Countess Poulett, wife of William Henry, sixth Earl Poulett."

In Debrett's Peerage, Viscount Hinton figures as heir to the title, though some of the other peerages ignore him.

Soon after his wife's death the earl married a second time, but this wife died without children. In 1879 he married Rosa de Melville, by whom he had a son, William John Lydston Poulett, who now claims the title and estates.

Some few years ago the late earl took legal proceedings known as "perpetuation of testimony," whereby he hoped to establish the illegitimacy of Viscount Hinton.

The claimant is not the uneducated man generally supposed; he received a good education in his youth, can speak French, German and Spanish. His education was paid for by members of the Poulett family and his children have been educated by the Dowager Duchess of Cleveland, mother of Lord Rosebery. One of the sons now holds a good official position.

The claimant inherits the extravagance of the Pouletts, and to that inheritance he owes his strange career. He has been clown, actor, ballet dancer, and lastly organ grinder, carrying, displayed on the front of the organ a card setting forth that he was "Viscount Hinton, eldest son of Earl Poulett," and that he was disinherited by his father. His wife was a ballet dancer and afterwards a chorus singer, known as Mademoiselle Conquest. She has been a faithful wife to him and has stood by him in all his vicissitudes of fortune.

There is another peculiar question involved. The House of Lords having called Lydston Poulett and acknowledged him to be Earl Poulett, cannot, by its rules, recognize the claimant even if he proves his title. Should then the claimant succeed he will demand that the oath be administered to him as a member of the upper house, and two Lords Poulett will have seats there, for once admitted always a member, and a certificate of the courts that Viscount Hinton is the successor to the title would give him a right, which the lords cannot deny, of a seat in the house. This would undoubtedly be used by the opponents of hereditary legislators and strengthen the hands of Lord Rosebery in his movement for the reform of the House of Lords.

The estates have been re-settled by the late earl, but it is a question whether the entail could be cut off without the consent of the heir, and if the claimant should prove his title, that would give him the right to a voice in the disposition of the property.

So, while the claimant may be a worthless character as an individual, the questions to be raised by the forthcoming trial may work a revolution in parliament and the courts.

There have been many "romantic" episodes in the Poulett family since the day when Sir Amyas Paulet, as the jailor of Mary Queen of Scots, refused to assassinate her at command of Elizabeth. Many of the episodes are similar in character to that which is the cause of the new complications.

The third Duke of Bolton married an actress by whom he previously had three illegitimate children, and as the English law, unlike the Scotch, did not legitimize children *born before* marriage and as he had no children born in wedlock, the title and estates went to his brother. The fifth duke

had an illegitimate daughter, who married Mr. Orde, a secretary of the treasury, who was rewarded with a peerage in 1797, and became Baron Bolton, the dukedom having expired with the sixth duke.

A big estate is now to be fought for. The claimant, despite his adventures and his organ grinding, has very wealthy backers, and the son of the third Countess Poulett will have the revenues of the property to draw upon. Some big retainers will be paid and a number of juniors will be well cared for during the trial of the cause célèbre, which may last several years.

CHINESE CENSORS.

IT has been wittily remarked that under the censorate in China, every official, and even the Emperor himself, is "in the presence of a chronic day of judgment." This aptly describes the effect of a system which is one of the many institutions which differentiate China from the rest of the world. Its conception is so strange that we look with curiosity for some authentic record of its working, and in the pages of the "Peking Gazette," through which the utterances of the censors are alone made public, we find ample and strange materials by which we are able to judge of the functions and the practice of these guardians of the public morals. Their practice, it is true, is not always to be admired, but the first thing that strikes the reader of their memorials to the throne, is the extreme boldness of their utterances. From the highest to the lowest, from the Emperor down to the meanest policeman, all come under their lash, and surprise is naturally excited that in so corrupt an officialdom as that of China, men should be found brave enough to hold up the faults and shortcomings of superior officers, in whose hands rests the power of making life a dismal burden to all who come under their ban.

Like most institutions in China, the censorate is consecrated by tradition, and has been handed down from time immemorial as an outcome of the wisdom of the ancient sages. Certainly at the time when David reigned in Jerusalem the system was in full force, and through all the changes and chances of the dynastic revolutions which have supervened, it has been preserved as a sacred heritage. As at present constituted, the office of censors at Peking consists of two presidents, one a Manchu and one a Chinese, the provincial viceroys and six resident vice-presidents, with whom are associated the provincial governors. Besides these there are twenty-four supervising censors whose duty it is to revise the decisions of the six boards of government. These all have their headquarters at Peking, while fifty-six detached censors are distributed over the eighteen provinces of the empire, whose duty it is to roam over the country scenting out abuses, and a still further number are employed as superintendents of police for the five divisions of the city and suburbs of Peking.

According to the statutes of the empire, the censors are intrusted with the duty of supervising the manners and customs of the people, of investigating all public offices within and without the capital, of discriminating between the good and bad administration of business, and between the depravity and uprightness of the Mandarins. To this it is added that "each should take the lead in uttering his sentiments and

reproofs, so that the Mandarins may be spurred on to greater diligence in the discharge of their duties, and that the government of the empire might be rendered secure." These powers, it will be admitted, are sufficient to cover every species of fault-finding, and it is to the credit of the Chinese government that so long as the censors do not obviously trump up cases, and so long as they conduct themselves with decorum and without arrogance, they find the protection necessary to secure them against the consequences of their denunciations. Even when their claims for protection clash with the interests of superior officials, they are allowed full latitude to make the charges which they esteem it their duty to bring forward; and although their recommendations are not in all cases adopted, their representations, as a rule, are given effect to, if not directly, yet with equal certainty, by means of the circuitous contrivances common to Chinese official administration.

That the duties of the censors are multifarious, the above extracts from the imperial statutes show; and that the powers confided to them are freely employed, is proved by the pages of the "Peking Gazette," where we find that with perfect impartiality the highest dignitaries as well as the meanest subjects of the crown are alike denounced.

That the censors do good work by exposing abuses cannot be denied. In the flood of iniquity that overflows the land, they are powerless to do more than expose here and there some few of the evils which affect the people of that distressful country. When one reads of such a case as the following, which, affecting as it does the officials of the board of punishments, is of obvious importance, it is gratifying to know that there exists a body of men, who, though they may only bring to light one case of oppression and wrong in a thousand, are yet capable of serving the ends of justice and mercy to that degree. The president of the board of punishments reported to the Emperor that a woman had commited suicide by cutting her throat while being examined as a witness in the judgment hall of the board. Nothing further would have been said in the matter had not Censor Hsi memorialized the throne, stating "that the woman, whose evidence was of a very damaging character, was forced to make away with herself by her judges, who had been bribed to act thus by an influential family implicated in the matter." The edict published in response ordered a strict investigation to be made into the circumstances of the case. The unsatisfactory part of such investigations is, that if the accused be either sufficiently wealthy to satisfy the avarice of the commissioners, or sufficiently well connected to make those officials shrink from bringing a true bill against him, he is apt to escape all punishment, or at worst to be removed to another post. The censorate is unquestionably and unfortunately a feeble instrument; but it is better than nothing, and until an honest system of administration is introduced into the country, we may well be thankful that it exists.

AN ANSWER THAT DOES NOT CONFUTE.

By Benjamin S. Dean.

IN discussing my recent article on "The Constitution or a Theory — Which?" Mr. Eltweed Pomeroy, president of the National Direct Legislation League, tells us that "seven or eight people have asked me to answer this article," and then he takes up several columns of the valuable space of THE GREEN BAG in not doing what these people have requested him to do, if we are to understand that by "answering" he was expected to confute the propositions which were put forward in that discussion. He seems to have entered upon the task of answering my objections to the initiative and referendum with the firm conviction that when he had completed the work I would, like Satan, stand

> ". . . confuted and convinced of his
> weak arguing and fallacious drift,"

but he must, upon reading over what he has written, feel that he has in some measure fallen away from the ideal, for he has in no wise met or intelligently considered the points which I raised. As an advocate of municipal ownership of essential monopolies in my own city, where we have met with some success in the matter, I have not failed to come into contact with the same elements of opposition to good government which are so vividly portrayed by ex-Mayor Swift, Oliver McClintock, Dr. Parkhurst, and other men who have sought to improve the conditions of the masses, but this has no more to do with the question which I discussed than it has with our duties in the Philippines. My discussion was based upon the proposition that constitutional government, such as we have known in America, was inconsistent with the idea of the initiative and referendum; that the two systems of legislation could not exist in the same territory without the essential destruction of our republican form of government, and this question is not considered by Mr. Pomeroy. Nor is it material that the referendum, in some form, is in use in many of the States, New York among them. The question is not whether it may not, under some circumstances, be wise and proper to submit to the people whether a given statute shall take effect, as is frequently done in the matter of municipal charters, but whether it is consistent with our constitutional system of government to permit the people, by a bare majority of the votes cast, to determine what shall and what shall not become a law.

While it is true that our State and Federal constitutions are constructed upon different lines, the one being a delegation of plenary powers, and the other a limitation upon powers which were otherwise plenary, the essential principle of all constitutions is the agreement between the people as to the power which shall be exercised by the government. There are certain things, among them "the right to life, liberty and the pursuit of happiness," which we insist shall be respected and maintained; we deny the right, even of majorities, to infringe upon these, unless by due process of law, and for the protection of the higher rights of society as a whole. The basic principle of the initiative and referendum is that a minority have the right to force the consideration of measures, and that the decision of the majority is final, and it is at this point that it comes into conflict with constitutional principles. For instance, there is no reason to doubt that a measure could be passed by a majority of the voters of the State of New York that the cost of improving the Hudson river (assuming it to be a State charge) should be borne by those owning abutting property, on the same theory that in our

cities we compel the owners of abutting property to pay a greater or less portion of the cost of paving. According to the theory of those who advocate the referendum, this decision, no matter how unjustly it distributed the burden of the improvement, would be final. Under the constitutional theory the courts would step in and say that this was taking private property for public purposes without just compensation, and without due process of law (Norwood *v.* Barker, 172 U. S. 269), and the statute would be declared null and void.

In other words, under our constitutional system we agree among ourselves upon the principles which shall limit and govern legislation; we make these stipulations in the abstract, when we have no immediate interest to warp and distort our judgment and our convictions as to what is right and wrong, and then we institute the judiciary to determine when we have overreached these limitations. For my own part, realizing, perhaps, as keenly as Mr. Pomeroy the abuses which have, through a false system of education and an abuse of the privileges of corporate powers, grown up in this country, I prefer the system which permits of a judicial review of legislation to that which subjects the individual to the arbitrary will of the majority, liable at all times to be misled by prejudice, passion, self-interest or mistaken philanthropy. I say this in no disparagement of the masses, of the great unwashed, nor of any other classification of citizens. I realize fully the dangers of concentrated wealth, the advantages which it has been able to command in legislative halls and in executive chambers, and the wrongs which the masses have suffered; I have never been out of the ranks of the common people, as measured by the dollar standard, nor have I any ambition in that direction, but I am opposed to the initiative and referendum, because, in my judgment, it offers no relief to the masses, and increases the power of selfish interests by fostering a warfare among those who ought to stand unitedly for the preservation of those rights which our constitutional systems were intended to secure.

That the initiative and referendum is a cumbersome and unscientific method of dealing with public business will be admitted by every one who is disposed to be fair, and in order to justify its adoption the friends of the measure are forced to admit that in the comparatively simple task of selecting from among their friends and neighbors honest men to represent them, the people have made such an absolute failure of popular government that it is necessary largely to increase the expenditure of time, money and resources in order to preserve their rights. If this hypothesis is true, what are we to expect from a government in which the people are to participate directly in the more complicated problem of sifting out from the mass of suggestions the wise, just and humane subjects of legislation? If we have reached a point where the people are so corrupt and venal that there are none among them who can be trusted with the responsibilities of representing their neighbors in the public concerns of the State and nation, then it were wiser that we admit that the experiment of the American republic is a failure, and that we drift resistless into the more economical form of monarchical government. But this proposition is not true; the men who represent us in our legislative bodies are fair exponents of the degree of political intelligence, honesty and worth manifest in their respective communities. They may be said to be the epitome of the active civic virtue of their several districts, and the evils which we are called upon to suffer are the results, not of the particular machinery of legislation, but of "the decency that is languid and the respectability that is indifferent," to quote the picturesque language of Dr. Parkhurst. A mere change in the method of doing business will not change mankind; the difficulty is deeper than that,

and the sooner our reformers realize this fact, and begin an intelligent and consistent effort to bring men to the consideration of correct principles of economic and political action, the better. When the people have been made to understand that the true principles of popular government demand the protection of the individual in his economic right to "life, liberty and the pursuit of happiness," as well as his political right in the same blessings, there will be no lack of honest, earnest and intelligent men who will be willing to serve in legislative positions, and to safeguard all of the rights of the people.

It is not worth while to consider the allegation of Mr. Pomeroy that I have misapplied the quotation from Washington's farewell address, or his *reductio ad absurdum*. It is sufficient to say that I nowhere deny the right of the majority ultimately to govern in matters within the legitimate scope of legislative control. I insist, however, that the declaration that all "governments derive their just powers from the consent of the governed," is the keystone of our constitutional system, not in the sense in which he undertakes to use it, that the criminal must consent to his own punishment, but in the broad sense in which it is used in the Declaration of Independence that "governments derive their just *powers* from the consent of the governed." By this we are to understand, not the jurisdiction of the criminal who violates the law, but the power to make the rules necessary to determine who is, and who is not, a transgressor of the law. We consent to the power on the part of the congress to declare war, to establish post-offices and post roads, to punish counterfeiters, etc., and having consented to these powers, the government has a right to enforce the laws made pursuant to these grants. The majority has no right, simply because it is a majority, to do wrong; and when we look over the history of the world, and at the long list of crimes and injustices which have been committed by majorities; when we contemplate the evils which are certain to follow upon a relaxation of the constitutional safeguards under the reign of the initiative and referendum, prudent people will be disposed to rely upon the old-fashioned constitutional government, to a system which places the majority in a position to enact, without restriction, such of law as may please the temporary fancy.

It may be urged, and no doubt will be, that the Constitution may limit the power of the majority, but, as the constitutional guarantees are only effective where the judiciary is free to act without the coercive control of the majority, such safeguards would be of no consequence. The courts could not be depended upon to stand out against the expressed will of the majority, where such expression came in the form of an election by the people upon the particular question, and, if they did, the State would be powerless to impose the judgment of the court upon the majority of the people. The referendum is an invitation to revolution, inconsistent with the higher rights of society, and its advocates honest, but mistaken reformers, whose energies might better be directed to practical problems calculated to produce the ends which all good citizens desire — the greatest good to the greatest number, the impartial and just administration of laws, and equal opportunities for every man, woman and child in the Republic.

GLANCES AT OUR COLONIAL BAR.

II.

JOSEPH GALLOWAY, who practiced law in Philadelphia in 1774, was one of the few native-born lawyers of the colonies who became a Tory, and losing his practice there, went to New York, where he endeavored to obtain legal foothold; until, in 1779, Parliament summoned him to testify as to military mismanagement. Before a committee he was very severe on Admiral Lord Howe. He always lived afterwards in London, and became barrister there. He had a great personal dislike for Howe and after the latter had evacuated New York, Galloway pencilled this couplet on a brief:—

"Lord Howe he came in
with a terrible bout;
But when the war ended,
lord! how he came
out."

PEYTON RANDOLPH.

Peyton Randolph was born in Virginia, nine years before George Washington, and was a descendant of Powhatan. Sent to England, he graduated at Oxford and returned home to practice as a lawyer. When only thirty-three years old he became attorney-general of his native State. He was delegate to the first Continental Congress and was elected its president — the term speaker then, because a British term, not being used. During a session a slight disorder arose, whereupon after the methods in France he put his hat on as signal that the sitting was closed.

"Now I feel I am a descendant of the father of Pocahontas," Charles Thomson, then clerk of Congress is reported to have heard him say, "for here I am Pow-wow-hat-on." He continued to practice law in Philadelphia, and died there in harness, of apoplexy, from overwork in two capacities, and nine months before the Declaration of Independence was adopted. The legal traditions of Virginia give him high rank as its attorney-general. He was succeeded as speaker by John Hancock.

Once in a great while hunters for rare books encounter one entitled "A memoir of the American Revolution from its commencement to the year 1777, by William Henry Drayton." He was a distinguished colonial lawyer and judge of South Carolina, both under British and colonial rule. A patriotic charge that he made in March, 1776, to a grand jury won him the title of the Samuel Adams of the South. When at the end of their term he discharged them, after they had indicted several Tories for

unpatriotic excesses, he remarked to the foreman, "You have indeed vindicated the jury's title — *grand*."

Oliver Ellsworth, after having served as judge of the superior court of Connecticut, was made federal chief justice and, while in that high office, was sent on a special mission to the court of Bonaparte, who, in his brusque way, asked what was his occupation in the United States. He answered, "My 'chief' business is 'justice.'"

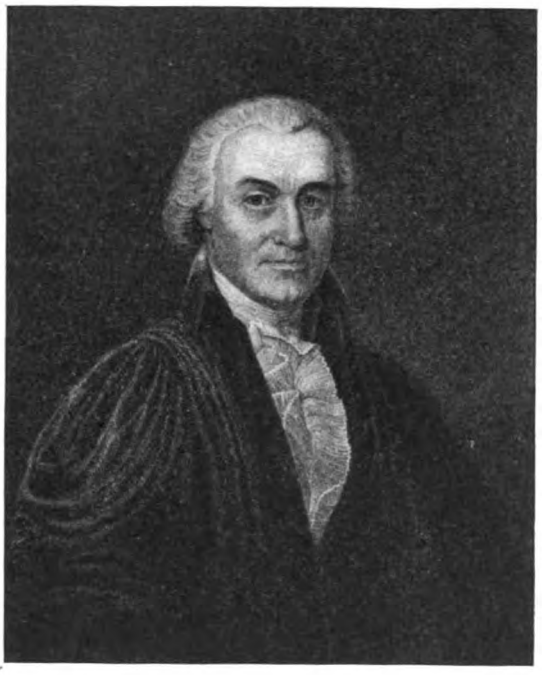
WILLIAM H. DRAYTON.

A distressing chronic malady caused him to resign to make way, as it turned out, for Marshall. Loth, however, to part with him, Connecticut nominated him her chief justice, but he declined and prophetically said, "I shall shortly be, as I hope, a member of the Heavenly Court, in the light of the Chief Justice of the Universe." He soon afterwards died at only threescore.

At the age of twenty-seven, Patrick Henry was known in Hanover, Virginia, as a lazy pettifogger and a hanger-on at his father-in-law's tavern bar where he often served drinks. Previously he had tried business and failed; and always thought more of hunting and fishing than of mental exercise. At last he found opportunity. In his twenty-eighth year there was a contest between the tax authorities and the clergy on the question of stipend for the latter in the nature of tithes. A court had decided that the parsons were entitled to some pay. One of them brought suit against a parishioner in the court where his father was local justice of the peace, with a jury of six who were to assess damages. Lawyers shunned fighting the clergy and the lazy pettifogger was employed as a *dernier ressort*. But he was not afraid of "the parsons"; and, in a speech, rhetorically flayed them before a jury for their greed. There had to be some nominal damage given, under technical law, but so surprisingly eloquent was he that the jury brought in only sixpence against his client. Thereafter he became a hunter of legal precedents and a fisher of verdicts; attended legal bars and became leading patriotic lawyer with Sons of Liberty as public clients. So that in his reputation as patriotic orator his legal fame was rather merged. But he should be remembered as lawyer also; and Wirt's biography of him does his short but suc-

cessful professional career great justice. He died in the same year with Washington; but while the latter died childless, Patrick Henry was by two wives father of fifteen children, some of whose descendants also followed their ancestor's profession and distinctly showed the Patrick Henry blood.

Charles Cotesworth Pinckney, who while an ambassador to the French government, framed the sentence that has become historical, "Millions for defense but not one cent for tribute," naturally went into the profession of the law because his father became chief justice of South Carolina. He was first scholar in the celebrated Westminster school, then at Oxford, and finally admitted into the Temple, London. It was in 1769 that he began the practice of his profession in Charleston. While student in the London Temple he had dared to write a thesis against the Stamp Act; and, of course, he soon became a patriot soldier and rose to be a general. When peace was declared he resumed his profession and attained legal eminence; soon he brought his legal experience to the aid of framing, as a delegate, the Federal Constitution. Charleston traditions and the early South Carolina reports largely commemorate his professional skill; for he lived into the administration of Monroe and died an octogenarian.

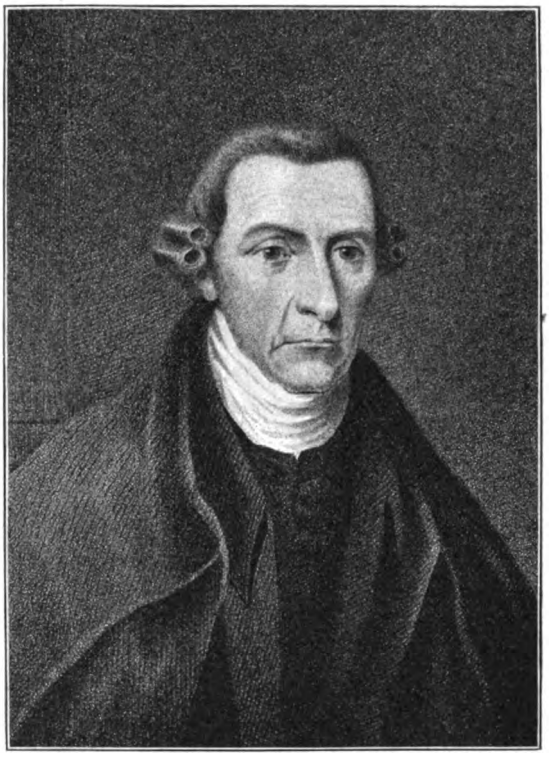


OLIVER ELLSWORTH.

It is not widely known that Declaration-signer Charles Carroll of Carrollton — whose autograph on the immortal document rivals in boldness of penmanship that of John Hancock — was a lawyer; and, who, after studying jurisprudence in both Paris and London practiced about ten years in his native Maryland until the era attracted his attention to patriotic politics. He was the last survivor of the fifty-five signers of the Declaration of Independence, and he died an object of the greatest popular veneration within four years of becoming a centenarian, at the time President Jackson was besieging the United States bank.

Gen. John Sullivan of Revolutionary military fame, would undoubtedly, if given the choice, have preferred to be remembered as a lawyer and as a judge rather than as a general, although he was one of the first brigadiers commissioned under Washington; to soon become major general; to supersede Arnold in Canada and to serve in the disastrous battle of Long Island; to be taken prisoner and be exchanged; and finally to participate in many actions only to resign because harshly criticised by the board of war. On the eve of the establishment of the Republic he was governor of New Hampshire, and next, judge of its Federal district. Born in Maine, he was educated and studied law in Durham, New Hampshire, which sent him to the Continental Congress. In an address before Dartmouth College, on one occasion, Rufus Choate paid a fine tribute to Sullivan's

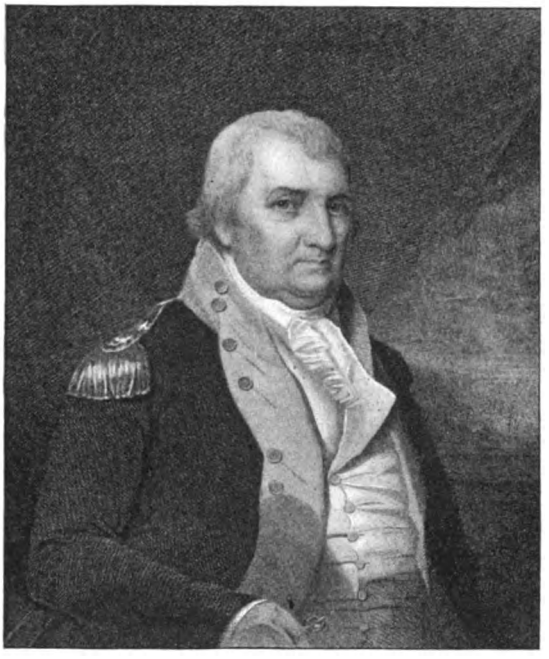
ability as a lawyer and a judge of discriminating learning. He died when fifty-five years old. Unfortunately for his military fame, he was twice, as general, caught napping: first, at the Long Island battle, where he allowed Sir Henry Clinton to get with bayonets in the rear of the American column, while Hessians took it in the front with powder and ball; and, again, at Brandywine, when he allowed Cornwallis to cross that little river unobserved and fall upon the colonists' rear. But Sullivan's biographer narrates that "no one ever caught him napping at the bar or on the bench; and that while *dormientes* of the law maxim might apply to his military career, *vigilantes* belonged to his legal experience."



PATRICK HENRY.

The catalogue of Yale College includes the name of colonial Abraham Baldwin, both as its A.B. and tutor. Born in Connecticut, during the Indian war in which Col. George Washington was already preëminent, he left the State, at the age of twenty-five, to emigrate to Savannah, where in due time he was admitted to its bar and became known as the most prominent lawyer in Georgia. The State sent him to Washington to assist in framing the Federal constitution, and subsequently rewarded his labors with a Federal senatorship, in fulfilling the duties of which he died. Visitors to the Congressional burying-ground often note his tombstone, commemorating him as the founder of the University of Georgia. The modest name of "A. Baldwin" will be found at times in Cranch's reports, showing that the pursuit of politics did not interfere with that coincident practice of a noble profession which commemorated a Wirt, a Webster, a Woodbury, a Choate, a Seward, and a Conkling.

A jolly and versatile Irish *émigré* was he who became known during Revolutionary times, in Charleston, to its bar and bench, under the odd but classic name of Ædanus Burke. A young lawyer of the Galway district, he came to this country for the expressed purpose of fighting King George. Admitted at once to the South Carolina bar, his legal talents were so conspicuous that, although a military participant for a time in the revolutionary events of the place, the provincial legislature thought he was best fitted for civic influence, and made him judge of the supreme court before he was thirty years old. But Charleston for a time fell prostrate before British power; and Judge Burke, ceasing to sing law, imitated Æneas and sang arms, by taking a commission as colonel. He is mentioned laudably in military despatches; but at peace he resumed judicial office. He opposed the Federal constitution, because, as an Irishman, he feared consolidated power; never-



CHARLES COTESWORTH PINCKNEY.

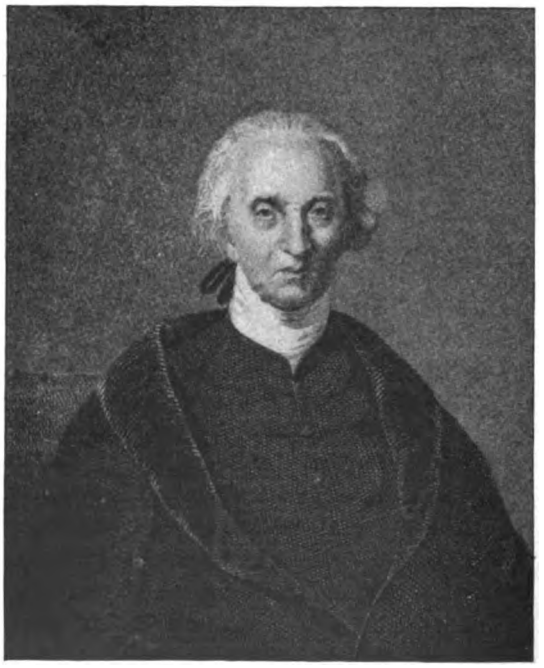
theless he consented to become one of South Carolina's first Federal senators. He wrote strongly against the formation of the Society of Cincinnati, because believing it to be an aristocratic wedge. In Washington City he became a boon companion of Aaron Burr, and his humor and conviviality tinctured their social characteristics as comrades. Wine seldom affected Burr, but it made inroads into the constitution of Burke, and gave him dropsy. On one occasion, when he was being tapped, and the water was freely flowing, Burke, with his peculiar Milesian smile, observed: "Doctor, where does all this water come from? — for since I arrived at years of discretion I never drank as much."

"You will be better now," said the physician.

"I doubt it," was the reply; "for nothing in my house was ever the better after it was tapped."

Burke was noted for absent-mindedness. It was the custom of the Charleston judges to leave their gowns with a middle-aged lady who acted as janitress of the court house, who carefully hung them in her own wardrobe. Judge Burke, coming late to court one morning, hastily entered her apartment for his gown, and she being absent, he innocently picked up a gown of hers and hurried into court with it, and was about to don it, when stepping to the bench, he astounded associates and court room with the involuntary exclamation: "'Fore Gad, I've got Dame Van Tuyl's Sunday petticoat!" He was said to have died with a characteristic joke upon his lips, without the ministrations of his church.

William Pinkney of Maryland, before becoming one of its bar, studied medicine like Thomas Addis Emmet. His early education had been sadly neglected. His adolescence having been during the exciting period of the Revolution, accounted for his distraction from education to patriotic impulses. But when eighteen years old, he took up severe study under the Jesuit fathers at his native Annapolis, and sub-



CHARLES CARROLL OF CARROLLTON.

sequently the study of law. There were no reports of courts during his beginnings at the bar, but Maryland traditions ascribe to him rapid progress as jury advocate. But at the formative period of the Republic every lawyer entered public life as did Pinkney; so that his legal fame is also lost sight of in his political services. President Washington sent him to London as legal commissioner under the Jay treaty. Returned to Baltimore, he became attorney-general of Maryland, and its published records show that his legal talents in the office shone conspicuously. And these undoubtedly contributed to his selection by President Madison afterwards to the same office in the Federal government. During the naval war, Pinkney was a volunteer officer and was distinguished in the Bladensburg action. Congress soon claimed him, and diplomacy also as minister to St. Petersburg during the stirring Napoleonic times. He died at Washington as Federal senator, after some

WILLIAM PINKNEY.

ÆDANUS BURKE.

exhausting co-labors in the supreme court, where he had been incessantly employed in important cases, as the successive volumes of reports of the period show. His briefs and citations therein found attest his greatness as a lawyer. He was always a remarkably handsome man, was of distinguished bearing, and his portrait in the Maryland capital suggests personal resemblances to Daniel Webster.

Louisiana holds in grateful remembrance the name of François Xavier Martin as its greatest lawyer and judge, and in the Congressional Library at Washington his dozen volumes of reports, mainly of his own decisions as chief justice, amply attest his learning and industry. His first twenty years were passed in his native France, and then leaving the books of Pothier, he came first to North Carolina, then to New Orleans, where he took up the books of the French Provincial legislature. The inhabitants being mainly French, his earlier studies accorded

with these, his later; for Louisiana jurisprudence has always been based upon French and Roman law. He soon became judge of the Mississippi Territory, and then puisne judge of the new State of Louisiana, and eventually its chief justice; serving on its bench, in all, twenty-seven years with never a syllable in disparagement of his integrity or impartiality. He was retired at the age of eighty-four by operation of a new constitution, and was succeeded by George Eustis, father of the present ambassador to France. None can read Martin's avalanches of opinions — for in his day, Louisiana litigation was confusing and complicated — without being impressed with his powers of analysis and his comprehensive expression.

The biography of Edward Livingston shows how valuable to him was the coöperation of Judge Martin in the former's well-known labors at annealing English commercial law with the Code Napoleon in Louisiana jurisprudence. Chief Justice Martin bore a marked resemblance to the pictures of *le Grand Monarque*, and he was in his later days the most picturesque figure in the cosmopolitan life of the Crescent City.

CALHOUN AS A LAWYER AND STATESMAN.

By Walter L. Miller of the South Carolina Bar.

II.

IT was after his return from Litchfield that Mr. Calhoun made his début in the arena of politics. The attack of the British frigate Leopard on the American frigate Chesapeake stirred up the whole country and called forth public meetings all over the Union, to give expression to the feeling of righteous indignation. A meeting was announced to be held at Abbeville, the county-seat of the district in which Mr. Calhoun resided, and he was appointed on the committee to draft the resolutions which were to be presented on that occasion. It so happened that he was selected to prepare the resolutions for the committee, and so ably did he discharge this duty that he was requested to address the meeting in support of the resolutions before the vote was taken. It was a grand occasion for this rural community and as a consequence the meeting was largely attended. In his speech Mr. Calhoun acquitted himself handsomely, and the result was that he was nominated for the legislature and triumphantly elected at the head of the ticket, although, as I have already said, there was a strong prejudice against lawyers in this district. From this time on until the day of his death, — a period of more than forty years, — Abbeville district and South Carolina were loyal and faithful to Mr. Calhoun. He served two terms in the legislature and while there made a fine record. He introduced and carried through several measures which have become a part of the permanent legislation of the State. While in attendance upon the legislature, an informal meeting of the Republican members was called to nominate candidates for the places of President and Vice-President of the United States. Mr. Calhoun took occasion to express his views upon the state of the country. The great struggle for mastery between Great Britain and France was then going on and they paid but little attention to the rights of neutrals. Mr. Calhoun criticised the restrictive measures which had been adopted by our government and gave it as his opinion that a war between this country and England was inevitable. Events turned out just as he predicted. His speech made a fine impression and the bold and aggressive course which he advocated and pursued added to his popularity and at once gave him a position among the leading politicians of the day. Says Francis' "Orators of the Age": "Give a man nerve, a presence, a sway over language, and, above all, enthusiasm, or the skill to stimulate it; start him in the public arena with these requisites and ere many years, perhaps many months, have passed, you will either see him in a high station, or in a fair way of rising to it." Mr. Calhoun measured up to these requirements and, as a consequence, he returned home from the legislature crowned with honor and with all the prestige of success.

At this time war with Great Britain was apprehended and the members of Congress were selected with that end in view. Owing to the high stand which Mr. Calhoun had taken in the legislature and especially to the bold course which he had advocated and pursued on this measure, it was but natural that the eyes of the people should be turned to him as a suitable person to represent them in the national halls of legislation, at this crisis in the country's history. We are not surprised, therefore, to learn that in the fall of 1810 he was elected a member of Con-

gress by a large majority over his opponent. He took his seat as a member of the Twelfth Congress on the fourth day of November, 1811. He was still a young man, being then only twenty-nine years old, but his reputation had already preceded him. During this same year he married his cousin, Floride Calhoun. Previous to this time he had removed to Bath on the Savannah..

There was a galaxy of distinguished men, that perhaps has never been surpassed, in the House of Representatives at the time Mr. Calhoun entered it, embracing such names as Henry Clay, John Randolph, Peter B. Porter, Mr. Grundy, Mr. Key, and others. Not only was this Congress noted for the brilliant array of talent that composed its membership but also for the importance of the questions that came before it. Indeed it was an epoch that was long to be remembered and a crisis in the country's history. What shall be done with England on account of her encroachments on our rights, her disregard of our grievances, and her impressment of more than three thousand of our sailors? Shall we tamely submit, or shall we try the arbitrament of arms? Questions such as these had to be solved. How will our young Carolina Congressman, a lawyer of only a few years' experience from a backwoods country town conduct himself? How will he be able to sustain the reputation which he has made, when brought in competition with such men and on questions too of the gravest import? It was easy enough to speak away down at Abbeville where he was surrounded by his neighbors and admirers. But how will he acquit himself here, at the nation's capital, when the eyes of the whole world are turned upon him? Will he become abashed and fail, or will he prove equal to the occasion and win himself fresh laurels? I have no doubt Mr. Calhoun lay awake many a night pondering over just such questions as these. But the question was solved. Mr. Calhoun at once stepped to the front and assumed his proper place, that of a leader of great men on a great question. Mr. Lamar explains how this happened so beautifully that I am sure I shall be pardoned for quoting from him.

"He had been admitted to the bar only two years before. Yet this unknown young man, and obscure attorney from an obscure country village, a stranger to the elegant accomplishments and the graces of scholarship, before he had made a speech, took his place at the head of these distinguished and brilliant men, as their equal and even their superior, and maintained it with increasing power and ever-widening fame to the end. In the light of after-events the cause of this extraordinary circumstance could be easily discerned. In the presence of a great impending crisis, full of solemn import to men of sense and virtue, whose extent the most far-sighted cannot fully measure, and before whose dangers the most resolute naturally quail; when the voice of faction is hushed, and rivalries and animosities cease; in such a crisis, demanding immediate action, mastery and leadership go of their own accord to the master-spirit, to the man of transcendent intellect, bravery of soul, promptness of decision, energy of action, all strengthened and vivified by an ardent and disinterested patriotism."

Or to make the explanation shorter and simpler, in Mr. Calhoun, the man, the hour, and the occasion met. He was appointed by the speaker, Henry Clay, to the second place on the Committee of Foreign Affairs, its chairman being Mr. Peter B. Porter of New York. On this committee also were Felix Grundy of Tennessee, Philip Barton Key, and the eccentric John Randolph of Roanoke.

Party feeling at this time ran high and the most intense excitement existed throughout the entire country. The President's message was impatiently waited for and, when it came, though warlike in tone, was somewhat ambiguous. That part of it which related to other powers was promptly referred to the Committee on Foreign Affairs. The attention of the country was now transferred to this committee and its report. When the report was submitted, it uttered

no uncertain sound. It was strong and vigorous in its tone and aggressive in its character. It strongly recommended immediate and active preparations for war. Speeches were made in support of the report by the chairman, Mr. Porter, and by Mr. Grundy. An able and eloquent speech was made on the opposite side by Virginia's gifted but erratic statesman, John Randolph, who deprecated war and in scathing terms criticised the report. Great crowds of people attended these discussions, and, as the debate continued, the interest and attendance increased until at last, the lobby and the galleries fairly swarmed with people.

To Mr. Calhoun was assigned the task of replying to Mr. Randolph. He had spoken only once before, but his remarks were then very brief, and his manner betrayed some embarrassment. On this occasion he came forth "as a strong man to run a race." He had about him the appearance of a man who was self-possessed and at his ease and who was confident that he had right on his side. Ably and eloquently did he sustain the report of the committee. He did not hesitate to enter the lists with Virginia's champion and to assail his positions mercilessly. His speech makes good reading matter even at this distance of time. It struck a responsive chord in the heart of the nation and won for its author a reputation as an orator and statesman throughout the entire country. Mr. Thomas Ritchie, the able editor of the "Richmond Enquirer," after referring to Mr. Calhoun's argument in reply to Mr. Randolph paid to the former the following graceful compliment: —

"Mr. Calhoun is clear and precise in his reasoning, marching up directly to the object of his attack, and felling down the errors of his opponent with the club of Hercules; not eloquent in his tropes and figures, but, like Fox, in the moral elevation of his sentiments; free from personality, yet full of those fine touches of indignation which are the severest cut to the man of feeling. His speech, like a fine drawing, abounds in those lights and shades which set off each other; the cause of his country is robed in light, while her opponents are wrapped in darkness. It were a contracted wish that Mr. Calhoun were a Virginian: though, after the quota she has furnished with opposition talents, such a wish might be forgiven us. We beg leave to participate, as Americans and friends of our country, in the honors of South Carolina. We hail this young Carolinian as one of the master-spirits who stamp their names upon the age in which they live."

Nor like Single-speech Hamilton did he content himself with one effort, but throughout the entire war he was its champion and the leading spirit of his party. In the main he supported the measures of the administration, but whenever it became necessary to take issue with it, he did not hesitate to do so. He condemned the non-importation and embargo acts which were administration measures and indeed by his course on these questions found himself at variance with many of his party friends. As a matter of fact, party fealty never was one of his leading characteristics. He claimed the right to think and act for himself. He had the moral courage to separate from his party, whenever in his judgment the dictates of duty demanded of him that he pursue a different course from that mapped out by his party associates. And he carried his independent ideas even further. He was no trimmer. He neither courted party favor nor popular applause. We have all heard the expression that when Mr. Calhoun took snuff, South Carolina sneezed. If this was true, it was because the people of this State approved of his views, for he never truckled even to win the support of his own people, dearly as he loved them. In line with my contention I will cite his own words: "I never know what South Carolina thinks of a measure. I never consult her. I act to the best of my judgment, and according to my conscience. If she approves, well and good. If she does not, or wishes any one to take my place, I am ready to vacate. We are even."

This independent spirit was well illustrated when he was vice-president and was nominated for a second term along with President Jackson, on the Republican ticket. The tariff bill of 1828 was then before the Senate, and as a tie vote was anticipated, it was thought that it would be necessary for the president of the Senate to cast the deciding vote. Mr. Calhoun's views on this question were well known, and it was thought by some of his friends that it would not be politic for him to show his hand, as it would hurt his chances of reëlection. Accordingly it was suggested that he should be conveniently out of his seat when the vote was taken. He courageously declined any such suggestion, but he went on to assure his friends that, if it should become necessary for him to cast the deciding vote, rather than it should injure Jackson, he would at once take his own name off the ticket.

I would not, however, at this point be misunderstood. I do not think Mr. Calhoun was perfect. Like other men, he too had his weaknesses. It is true that he was ambitious and that he aspired to the highest office in the gift of the people. And it is true also that in the earlier part of his career he watched the trend of public thought and very naturally, like his great compatriots, Clay and Webster, from motives of expediency he may have varied somewhat from the strict rigidity of the course which he himself thought best, and may, to some extent, have so shaped his political conduct as to be in line with the popular sentiment of the day; but, in the main, and certainly in the latter part of his career, he was actuated by the highest motives of patriotism and pursued an independent, manly course.

His advocacy of the war of 1812, his bold and aggressive course, the strong and vigorous measures which he advocated, the eloquent and fiery speeches which he delivered in the House of Representatives, emboldened the members of Congress, gave an impetus to the war, stirred up the patriotic ardor of the people, and acted like magic throughout the entire country in dispelling the despondency and gloom which had fallen like a pall upon the people, and in bringing back to the hearts of his countrymen fresh hope and courage. So eloquent, so animating, so inspiring, so courageous and martial in their tone, were the speeches which he delivered on the floor of Congress, that they were not only spread broadcast throughout the Union, but they were also read to the soldiers by the generals in command of our armies.

In his speech on the tariff act of 1816, Mr. Calhoun advocated the building up of the navy, an improvement of the army service, the establishment of good military roads, and the encouragement of the industries of the country by a proper tariff. The concluding part of this address is so broad and national in its sentiment, so elevating in its character, and so buoyant and hopeful in its spirit, that I cannot resist the temptation to quote it. And then I wish to quote it for another reason. As a rule Mr. Calhoun's speeches, though always expressed in plain, good English, are sometimes criticised as lacking in ornament and beauty of style. This quotation clearly shows that, if he clothed his thoughts in simple garb, it was not because he lacked the ability to adorn them with attractive rhetoric and beautiful imagery. The quotation is as follows:

"The love of present ease and pleasure, indifference about the future, that fatal weakness of human nature, has never failed in individuals or nations to sink to disgrace and ruin. On the contrary, virtue and wisdom, which regard the future, which spurn the temptations of the moment, however rugged their path, end in happiness. Such are the universal sentiments of all wise writers, from the didactics of the philosophers to the fictions of the poets. They agree that pleasure is a flowery path, leading off among groves and meadows, but ending in a gloomy and dreary wilderness; that it is the cup of Circe, which he who drinks is converted into a swine.

This is the language of fiction, reason teaches us the same. It is my wish, to elevate the national sentiment to that which every just and virtuous mind possesses. No effort is needed here to impel us the opposite way, that may be but too safely trusted to the frailties of our nature. This nation is in a situation similar to that which one of the most beautiful writers of antiquity paints Hercules in his youth. He represents the hero as retiring into the wilderness to deliberate on the course of life which he ought to choose. Two goddesses approach him; one recommending to him a life of ease and pleasure; the other of labor and virtue. The hero adopted the counsel of the latter, and his fame and glory are known to the world. May this nation, the youthful Hercules, possessing his form and muscles, be inspired with similar sentiments and follow his example."

While Mr. Calhoun was a member of Congress the law was changed giving the members of that body an annual salary of fifteen hundred dollars in place of a per diem allowance, as had been the case hitherto, and this measure received his support and vote. It proved to be very unpopular. On his return home he found both his uncles, Joseph Calhoun of Abbeville, and General William Butler of Edgefield, both of whom had once represented his district, condemning his course on this matter, the latter even coming out for Congress against him. Mr. Calhoun went before the people, however, and boldly vindicated his course and the result was that he was reëlected. The members generally could not stand the pressure, and the law was put back as it was before at the next session. Mr. Grosvenor, a Federal member from New York, who had personally become estranged from Mr. Calhoun and had quit speaking to him, was so favorably impressed with the latter's course on this occasion that he complimented him highly on his speech and then added: "I will not be restrained. No barrier shall exist which I will not leap over, for the purpose of offering to that gentleman my thanks for the judicious, independent, and rational course which he has pursued in this House for the two last years, and particularly upon the subject now before us. Let the honorable gentleman continue the same manly independence aloof from party views and local prejudices, to pursue the great interests of his country, and fulfil the high destiny for which it is manifest he was born. The buzz of popular applause may not cheer him on his way, but he will inevitably arrive at a high and happy elevation in the view of his country and the world."

In after years an incident very similar to this, again occurred in the experience of Mr. Calhoun. The Ashburton treaty was under consideration in the Senate, and he made so able and eloquent a speech upon it that his colleague, Mr. Preston, who was not on social terms with him at the time, was so delighted that he hurried over to the House and unbosomed himself to his friend, Mr. Holmes, in the following language: "I must give vent to my feelings: Mr. Calhoun has made a speech which has settled the question of the Northeastern boundary. All his friends, nay, all the senators, have collected around to congratulate him, and I have come out to express my emotion, and declare that he has covered himself with a mantle of glory."

As secretary of war under Mr. Monroe, Mr. Calhoun acquitted himself with credit. He brought order out of chaos and so conducted the office as to bring it up to the highest state of efficiency. As vice-president, he has never been surpassed either before or since in the discharge of his duties. As the presiding officer of the Senate, he was fair, impartial, and courteous. In the discussion of the Panama question, Mr. Randolph, the senator from Virginia, criticised the administration in the severest terms and went outside of the merits of the question to abuse the secretary of state, Mr. Clay. It was thought by some at the time that the former should have been called to order by the presiding officer, but Mr.

Calhoun took the ground that he had no right to call a member to order for words spoken in debate. I believe it has been pretty generally admitted that he was right at the time, though the rules have since been amended so that the president of the Senate can call a member to order when he abuses the privileges of the floor.

But I must hasten on. The perspective of this article is not intended to embrace all the ramifications of Mr. Calhoun's long political career. I can only touch upon the more salient points. It was in the Senate of the United States that he was in his proper place and won his greatest renown. And in the history of the world where will we find a more august body! The Roman Senate with all of its pristine splendor even in its palmiest days did not surpass it. The Assembly of France with its Senate and its Chamber of Deputies cannot match it. The Parliament of England with its long list of titled nobility and illustrious commoners can only rival it for brilliant oratory, high character, and profound statesmanship. It was in the Senate that Henry Clay led his hearers captive by his magnetic style and brilliant oratory. It was here that he won for himself the double title of "The great Pacificator" and "Father of the American System," and shared with Pitt the sobriquet, "The great Commoner." It was in the Senate that Daniel Webster, the great expounder of the Constitution, with his great heart and splendid intellect, delivered those magnificent orations that have never yet been surpassed for beauty of style, charms of rhetoric, depth of thought, and eloquence of delivery. It was in the Senate that Calhoun, South Carolina's chosen son, lifted aloft the banner of his country, boldly took his stand as the leading champion of the South, eloquently maintained its rights, and achieved for himself a reputation as a logician, which justly entitles him to be classed with Sir William Hamilton. It was in the Senate that John Randolph of Roanoke delivered those philippics that for keen irony, cutting sarcasm, bitter invective, scorn of manner, flashes of genius, and peculiar eloquence of style stand without a parallel. It was in the Senate that George McDuffie, the Demosthenes of American oratory, poured forth a torrent of eloquence that well-nigh swept every thing before it. It was in the Senate that the silver-tongued Preston with his Ciceronian culture delighted the ear and captivated the fancy of his hearers. It was in the Senate that "glorious Bob Toombs," of Georgia, manfully vindicated the rights of the South and hurled defiance in the face of its enemies. It was in the Senate later on that Voorhees of Indiana, "the tall sycamore of the Wabash," won his reputation for beauty of diction and charm of rhetoric. It was here too that Benjamin H. Hill, the great Georgian, crossed blades with Blaine, "the plumed knight of Maine," pierced the armor of Mahone, and uncovered his position. It is here too, in these latter days, that John W. Daniel, with his golden tongue and persuasive lips, maintains the high reputation which Virginia has always had as the mother of statesmen and the home of great men. And it was here that only the other day Mr. Hoar, the venerable senator from Massachusetts, in discussing the Philippine question, reached the height of his great argument and raised a clarion note that on electric wing swept across a continent, crossed the seas, and girdled the globe in behalf of light and liberty, freedom and independence.

In the days of Calhoun the Senate had reached the zenith of its fame. At no time before or since has it been surpassed for argumentative skill, brilliancy of oratorical talent, profound statesmanship, and scholarly attainments. The great debate of 1833 was perhaps the most important of all the discussions in which Mr. Calhoun was ever engaged. Mr. Hayne had resigned his place in the Senate some time before and had been elected governor of South Carolina. Mr. Calhoun too had resigned the vice-presi-

dency and had been elected to the Senate to succeed Mr. Hayne. The tariff act had been passed and South Carolina had retaliated by passing the ordinance of nullification. President Jackson had issued a proclamation denouncing the course pursued by South Carolina and proclaiming his intention of enforcing the tariff laws regardless of consequences. The whole country was in the highest state of excitement. As Mr. Calhoun journeyed to Washington, great crowds gathered together to see him at different points along his route. When he entered the Senate chamber to take the oath of office, you could have almost heard a pin fall, so still did the chamber become. Mr. Calhoun was the cynosure of all eyes. As he took the oath to support the Constitution, he was calm and self-possessed, and, so sincere was his manner, that those who witnessed it could not help feeling there was no mental reservation in his performance of this ceremony. The day the debate began, there was an immense throng of spectators, the chamber and galleries being packed with people. The discussion took place over the Force bill.

In speaking of this debate, Mr. Stephens says that it was "the greatest since the formation of the government, for *then* principles were discussed." There were many able men in Congress at that time, but the three bright particular stars were Clay, Calhoun, and Webster. Mr. Randolph was present and heard Mr. Calhoun speak and it is said that it was his last appearance in the Senate chamber. One who was present at the time describes Calhoun's manner and appearance on that occasion in the following graphic style: "After the advocates of the bill to enforce the tariff laws in South Carolina had stated their case, Mr. Calhoun rose to reply. There was hushed silence in the Senate chamber, and the deep emotion of the speaker was reflected in the faces of his auditors. He apologized for his excitement, on the ground that he had not spoken in a deliberative assembly for sixteen years, having been secretary of war for eight years and vice-president for nearly as many more. His mode of speaking accorded singularly well with the position he occupied. His native State was imperilled. She was encompassed by foes on every side. Her natural allies were cold or hostile, and her chosen champion stood like a lion at bay, — or rather like a lion in a cage. His back was against the railing which separated the Senate from the lobby. There was a long desk before him. He had pushed the chairs out of his way, to the ends of the desk, and delivered his speech walking rapidly from side to side of his cage." He soon warmed up with his subject and there came forth from his mouth syllogism after syllogism of seemingly faultless logic.

And then came the responding speech on the part of Mr. Webster. It, too, was a splendid specimen of logic, — strong, compact, unusually argumentative in style, and with less of ornament and imagery than was its author's wont. In the words of another: "His speech was complete in every element, logical, rhetorical, and moral. It exhausted the argument, and justified the eulogy of Stephens, that 'it was the habit of Daniel Webster to say everything that could be said on his side of the question, and to say it better than anybody else.' He possessed unquestionably a 'nationality of soul,' and he availed himself of his opportunity." He carried his audience with him and seemed fairly to vanquish his opponent and to tear into shreds the argument which he had advanced.

A few days after came the reply of Mr. Calhoun, and it proved to be perhaps the grandest effort of his life. "The whole speech was a sample of logic as perfect as anything which our language can afford. In unity, energy, and condensation, it will compare with Demosthenes' orations. Not a superfluous word or sentence can be found. On such a field, Calhoun had no superior,

either in America or in the British Parliament. His logic, keen as Saladin's scimetar, flashed upon the sight. Its incisive power penetrated the armor of his adversary. He rallied his forces, and by his single arm gallantly redeemed the day."

It was a battle royal between giants. The question to be solved was whether or not this was a Union of free, equal, sovereign States with the right to each to withdraw from the same whenever in its judgment its Constitutional rights were infringed upon, or a government bound together and established under a constitution in such a way as to be indissoluble and indestructible. The whole debate hinged largely upon one word, compact. Was the Union a compact between sovereign States?

As is usual in such cases, both sides claimed the victory for their champion.

And even yet it is an unsettled question to whom the decision should be awarded. I have read and re-read the speeches of each recently and I find myself very much in the condition of a petit jury after listening to two able lawyers, —I am disposed to think both are right, When I read Mr. Webster's speech, it seems to me to be unanswerable; and then when I read Mr. Calhoun's argument, I find myself coming to the conclusion that he has right on his side. Dr. Charles Cotesworth Pinckney, who was present at the time and heard both speeches, says that he was impressed the same way on hearing them—whichever he heard last, he thought the best at the time. On sober second thought, however, he decided in favor of Mr. Calhoun. Mr. Webster's argument seems as clear as crystal. I may be mistaken, but Mr. Calhoun appears to me to make his points too fine,—to draw such nice distinctions that it is hard to follow him, and to that extent he is unsatisfactory. And yet I have somehow always been impressed with the idea, that, if either got the best of the contest, it was Mr. Calhoun. Certainly he had every reason to congratulate himself on the way he came out on this occasion. In the concluding part of his oration, he reached a culmination—a climax of argument and oratory that was grand indeed. I can only quote a sentence or two. "It has been said by the senator from Tennessee (Mr. Grundy) to be a measure of peace! Yes, such peace as the wolf gives to the lamb—the kite to the dove! Such peace as Russia gives to Poland, or death to its victim! A peace, by extinguishing the political existence of the State, by awing her into an abandonment of the exercise of every power which constitutes her a sovereign community. It is to South Carolina a question of self-preservation; and I proclaim it, that, should this bill pass, and an attempt be made to enforce it, it will be resisted, at every hazard—even that of death itself. Death is not the greatest calamity; there are others still more terrible to the free and brave, and among them may be placed the loss of liberty and honor. There are thousands of her brave sons who, if need be, are prepared cheerfully to lay down their lives in defense of the State, and the great principles of constitutional liberty for which she is contending. God forbid that this should become necessary! It never can be, unless this government is resolved to bring the question to extremity, when her gallant sons will stand prepared to perform the last duty—to die nobly." Says Mr. Stephens "That speech was not answered then. It has not been answered since, and, in my judgment, never will be, while truth has its legitimate influence and reason controls the judgment of men." The venerable John Randolph of Roanoke, then in the evening of his days and with the shades of night gathering fast around him, who in the years that had passed had himself felt the keen strokes which Mr. Calhoun knew so well how to deal, was present and heard this speech. Now, standing on the threshold of another world,—with all spirit of resentment and jealousy gone,—true to his

Southern sympathies and instincts, he nodded assent when Mr. Calhoun appealed to the Constitution and to the testimony of his contemporaries, and when, as he thought, Mr. Calhoun had completely demolished Mr. Webster by turning the latter's argument against himself, he whispered to a senator, "Webster is dead; I saw him dying an hour ago." Mr. Lamar contends that Mr. Calhoun prevailed in this debate,—that he carried his point and had the satisfaction of seeing the obnoxious tariff law repealed. I would be remiss in my duty in my description of these scenes, were I to leave out the part of the drama which Mr Clay acted. He came nobly to the rescue. He poured oil on the troubled waters. He healed the breach and brought about the celebrated Compromise. "Immortal honor to the name of Henry Clay!"

PERSONAL RECOLLECTIONS OF ENGLISH LAW COURTS.

I.

By Baxter Borret.

THE CHANCERY COURTS.

PERHAPS the personal recollections of an old fogey, of the Chancery courts as they existed in the years 1860 to 1870 may amuse and interest the readers of The Green Bag.

I went as an articled clerk into a large agency house in Lincoln's Inn Fields, in 1860, and hardly a day passed without my strolling round the courts, studying the appearance of the Chancery judges and the leaders of the equity bar, and listening now and then to the silvery lisp and drawl of Sir R. Bethell, the brilliant and earnest eloquence of Sir Hugh Cairns, and the constant jokes of Knight Bruce. In those days the usual court of Appeal in Chancery was that presided over by Lords Justices Knight Bruce and Turner. You could always reckon on hearing a ponderous joke from Knight Bruce if you went in soon after the usual adjournment for luncheon, and it was strange to watch Sir G. Turner's face, doing his utmost to preserve the dignity of the court, and yet compelled to laugh in spite of his dignity. I never saw any man take snuff so persistently as Sir G. Turner. He had lost his voice after arguing an appeal in the House of Lords for some three weeks without a break, except for Sundays, and the effect of the sudden changes from the lower tones to the piping treble of a boy was ludicrous. A little, old mad woman used to hover about the court, supposed, but I think wrongly, to be the original of Dickens's Miss Flite. One day the old woman strayed into the court and began haranguing the Lords Justices; they were accustomed to her ways, and in mercy used to let her talk for a few minutes, rather than interrupt her. Turner sat busily reading the papers in an appeal case which had been opened, while Knight Bruce was equally busy writing letters, with the aid of a large magnifying-glass. After a time the old lady's fount of eloquence dried up, and she left the court, whereupon Mr. Bacon, even then an old man with a thin, wheezy voice (also a great snuff-taker), rose to re-

sume his argument. Knight Bruce sat finishing a letter; and when it was folded and the envelope addressed, looked up as if in astonishment. "Oh, Mr. Bacon, I owe you many apologies; I was not listening; I thought that old lady was talking still."

Lord Campbell was the Chancellor then, and used occasionally to sit with the two Lords Justices. I remember coming into the court one day after the great prize fight between Heenan and Sayers. Lord Campbell was sitting very glum; he had recently lost his wife, and out of respect for his loss Knight Bruce was sparing of his jokes. A very little man, Mr. De Gex, was on his legs. I think it was the appeal of a bankrupt against the disallowance of his certificate, which in those days would have had the effect of giving him, speaking financially, a clean bill of health. Mr. De Gex was pounding away with great vehemence, denouncing all the delinquencies of the debtor, his faulty book-keeping, his trading long after he knew of his utterly insolvent circumstances, and, finally, the glaring enormity of his Stock Exchange speculations, which capped the pinnacle. At last, when Mr. De Gex paused for breath, Knight Bruce turned to Lord Campbell: "Ought we not, sitting here as umpires, to 'call time,' my lord?"

I was in court when Bethell was sworn in as Lord Chancellor. He and Knight Bruce always disliked each other. Knight Bruce administered the oath with great solemnity, he and Turner and all the bar standing — then Bethell prepared to leave the court, bowing to the bar, and then to the Lords Justices, and Knight Bruce's bow, slow, solemn, sarcastically profound, till he bent nearly double, was a sight never forgotten by those who saw it.

Many are the stories told of Bethell. His bitter sarcasm and his self-satisfied vanity made him more enemies than friends. One well-authenticated story of him I have never seen published. It must have leaked out through one of the juniors in the case. Bethell had to appear on the reference of some academical matter, as to the rights of the Fellows of an Oxford College, and the hearing was to be before the Archbishop of Canterbury (Longley), Lord Wensleydale (I think, or it might have been Sir John Taylor Coleridge) and Dr. Travers Twiss. Bethell came into the consultation room and, without opening his papers, said to the other counsel: "Gentlemen, I really need not trouble you; in my opinion, we are right on every point, legally right, equitably right, academically right, morally right, and I hope to be able to make our case clear to the somewhat heterogeneous tribunal before whom I shall have to bring forward my argument. Let us not be too confident, however; of whom does that tribunal consist? An effete archbishop, a judge in his dotage, and a simple vacuity."

It was a record of the office in which I was working, that the senior partner had sent one of his clerks into Shadwell's Court to ask Bethell what order Shadwell had made on a certain petition. The answer was: "Silly man! he has given me all I asked." In later years, as Lord Westbury, he said of one newly-appointed judge: "With a little more experience he will make positively the worst judge on the bench."

Poor Bethell; his enemies were many, but his genius was so great that very few were able to get an advantage over him. In those days Sir J. Wickens, the ablest junior, and certainly the ugliest man at the Chancery bar, held the coveted office of counsel to the Treasury in charity matters. Once Bethell thought he would snub Wickens. It was at a consultation. "I should like to ask you, Mr. Wickens, was the opinion of any counsel taken before these proceedings were commenced in this form? I cannot conceive it possible that any member of the bar should have so completely misconceived his remedy."

"Oh, yes, sir, I have the original opinion here. Shall I read it to you?"

"Pray be so good, Mr. Wickens."

The opinion was then read by Wickens, and after the reading of it, Bethell in his blandest tone remarked: —

"What a most extraordinary production! What a farrago of unqualified nonsense! You do not give me the name of the distinguished lawyer who wrote it."

"The signature is R. Bethell."

"Dear me, that must have been many years ago, Mr. Wickens. It has often been a matter to me of pious wonder what has become of those unfortunate people who were foolish enough to consult me in the early years of my career."

Only one more story of Wickens. I went into Stuart's court one day. Wickens was at the back of the court with his chin resting on the back of the last seat in the court. Stuart always sat in full court dress, black silk stockings, and shoes with large buckles, and was very proud of his legs. He was also fond of having witnesses examined orally in his court — a rare thing in those days. A case was on relating to some ancient right of way, and the oldest inhabitant of the village was in the witness-box, looking very bucolic and very much perplexed. A strange man came up to Wickens and began asking him who the different people in the court were, the judge and the various counsel. Wickens answered him politely enough at first; then when he was asked "Who is the curious-looking old gentleman standing there?" pointing to the witness-box, "Oh, that is the testator in the cause," said Wickens.

My favorite court was Wood's. There the giants congregated and did battle. I think Sir William Page Wood (afterwards Lord Hatherley) impressed me more than any judge I ever saw, except perhaps Sir William Erle. An extreme courtesy and kindness to all the members of the bar, and indeed to every one about him; a thoroughly good face, always showing intense eagerness to follow counsel in their arguments and to arrive at a right decision; and a very rapid delivery, perplexing to stenographers, were his characteristics. His was the favorite court, for in those days a plaintiff could choose his own court, and Wood's court was always overflowing with work. Sir J. Romilly was getting old then, Sir R. T. Kindersley was a nonentity, and Sir J. Stuart's decisions were almost always reversed on appeal. The attraction of Wood's court, after the judge himself, was the bar. At the time I speak of, in 1860, Mr. James (afterwards Sir W. M. James, and a Lord Justice of Appeal, but never known by any name except "fat James," Mr. Willcock, and Mr. Daniel, had fallen out of the running. They had been outstripped in the race by Rolt and Cairns, who were their superiors in forensic advocacy; but in after years James's powerful judicial mind caused him to be reckoned as probably the ablest equity judge of this half of the century. And now and then, in heavy cases, leaders from the common law bar came into Wood's court. I have seen Sir Fitzroy Kelly and Mr. Mellish there; but it was nearly even betting that any time you went into Wood's court, Rolt would be arguing.

Sir Hugh Cairns always greatly impressed me. He was a great dandy in his dress, always wore highly-varnished patent leather boots, a spotless shirt front, and a wig without a hair out of place. With his delicate face and clear complexion, and a slight vibration of his nostrils with every breath, he always reminded me of a highly-bred and well-groomed race horse. He was in every way a great forensic orator. I remember once going into Wood's court; a great case was on, and a great bar assembled. I think the case was Borghesi *v.* Pamphili, and related to the property of a noble Italian lady. There were Sir R. Bethell, Sir Fitzroy Kelly, Rolt and Cairns, and many others, and Wood was listening intently to the arguments of a junior,

then unknown, whose special knowledge of Italian law evoked a very high compliment from the judge. "That man's fortune is assured; let us find out who he is," said my companion. We found that it was Mr. Henry Matthews, who made a rapid rise at the bar, though never to the position of a great leader, but he afterwards became Home Secretary, and more recently still was created Viscount Llandaff.

It was as vice-chancellor that Wood made his great reputation; as for his judgments, are they not recorded in Kay and Johnson's Reports? As Lord Chancellor (taking office when Lord Selborne left the Cabinet upon Mr. Gladstone's bringing in Irish Disestablishment) he did not fulfil all expectations. It was in his blameless private life, and in his untiring support of every good scheme for the higher welfare of the working classes that the memory of Lord Hatherley will be kept green in the hearts of Englishmen. He wrote the life of Dr. Hook, of Leeds, his life-long friend.

In Stuart's court the leaders were Bacon and Malins, "long-winded Malins" (both judges in later years), but his uncertainty as a lawyer made his court a bye-word. Once poor Stuart was inveighing against the prolixity of a marriage settlement of some great nobleman, and he was heard to say that it was a disgrace to the conveyancing bar of the country; that he would like to send the deed to one of the conveyancing counsel of the court with directions to cut it down to one fifth of its length, whereupon counsel quietly replied that the original draft was settled by Sir E. Sugden (Lord St. Leonards). Poor Stuart! I suppose it was from him that Malins learned the habit of incessant and frivolous chatter, which made one of the counsel who practised in his court threaten to pay a stenographer to take down and publish every word spoken in the court during a whole morning.

Before we leave Lincoln's Inn, let me mention one or two men who rose to be good judges, but after 1870, Mr. Pearson, Mr. Charles Hall (who might have sat for a likeness of Mr. Punch), Sir H. M. Jackson (who was appointed a judge but died suddenly before having taken his seat), Mr. F. North, Mr. Fry, — I remember them all as juniors in the "sixties." I have seen a sight which very few, I think, can say they have seen. It was in Wood's court, but after Wood's time. I saw Joshua Williams (the greatest of real property lawyers, and greatest in two senses, for he stood over six feet six high), and Sir William Vernon Harcourt, in wig and gown, arguing a case of copyhold law. I fancy very few can say they ever saw Harcourt in court. One more very able man I remember in Wood's court, Mr. Druce, Q. C., whose career, which should have been so brilliant, was cut short by a fall from his horse on an early morning ride round Kennington Oval. He was a favorite with every one, judge, brother-barristers and solicitors; he was just getting into an enormous practice, and had everything before him, when the end came so suddenly and so sadly.

Now we must leave Lincoln's Inn, cross Chancery Lane and visit the old Rolls Court, where Sir John Romilly is sitting, facing a large oil painting of his predecessor, Lord Langdale.

Lord Romilly never greatly impressed me after I had seen him once in his ordinary and rather shabby clothes, on a penny steamboat going from the Temple to Westminster; but his court was the nursery of great men. Foremost of all, Mr. Roundell Palmer, holding a brief on one side or the other, in every case in the court. A somewhat supercilious expression of self-satisfied superiority spoiled what would otherwise have been a pleasing face, and was in marked contrast with that of his chief competitor in that court, Mr. Selwyn, whose kindly face betokened the geniality and friendliness of disposition which made him immensely popular at the bar, and after-

ward (for only too short a time), on the bench. Palmer was a strange study. He seldom read papers or took notes in court, but sat gazing earnestly in front of him, absorbed in thought, and usually fidgetting with something in his fingers, now twisting and retwisting, and then twisting again, a piece of red tape, or perhaps building castles with wafers on the back of his hand, as if *that* were the work he was absorbed in. But he was "all there" all the time, ready to spring up in a moment and correct a mis-quotation of a judgment, or to cite a more recent decision. He was perhaps the most careful and painstaking leader the Chancery bar has ever known.

After Palmer and Selwyn came others, Hobhouse, Macnaughten, and then Jessel. One well-known figure in the Rolls Court at the close of the sixties was poor Southgate, on whose once handsome figure, paralysis played such cruel havoc, laming one leg, depriving him of the use of one hand, distorting his face, rendering his speech thick, and indistinct. Yet his genius enabled him to triumph over these cruel impediments until in his day he led in the Rolls Court. Then, after one long vacation, he slipped out of sight and I never heard what became of him, but there was a rumor of softening of the brain.

I first saw Jessel as a junior in his own chambers — short, sharp, decisive, even then. When he was raised to the bench he gradually, but quickly, earned the reputation of getting through more work and doing it better than any other judge on the bench. I will describe a scene in his court. It is "petition day"; there are one hundred petitions down on his list for hearing; about midday he is half way through his paper; the name of one petition is called in its order, and a young junior rises: — "If your lordship pleases, my leader, Mr. Chitty, is engaged in the Appeal Court, and there are some difficult points which I should be glad for him to argue before your lordship. Will you allow the matter to be placed at the end of the list?" "No, Mr. ——, I read the papers at home last night. I see no difficulty about it; you are entitled to your order, if you will file an affidavit verifying such and such facts. Next case."

I have got rather beyond the sixties; but it was in the sixties that I first saw and spoke to Jessel. There were giants in those days; at least it seems so to me, and somehow I fail to see any giants of the old form now.

I take it to be an aphorism that the courts of really great judges are the best nursery grounds for successful barristers; and so the race of giants is perpetuated.

THE AMERICAN SEAMAN UNDER THE LAW.

THE personal treatment accorded the seaman by American ship's officers is the most oppressive, because the most acute, feature of his life. Extreme brutality is the rule, almost without exception. It is a standing charge against our maritime law that it requires no qualification other than that of citizenship on the part of sailing-ship officers. In this respect the United States stands alone among maritime nations of any consequence. The result is that the men in authority on board American ships are chosen for their ability to "drive," *i. e.*, to beat, the men under them, rather than for their ability as seamen and navigators. The reputation thus attained finds its sequence in an *esprit de corps* leading to the commission of the most wanton brutalities conceivable by minds trained to ingenious methods of inflicting torture upon their subordinates, and undeterred by the fear of consequences, social or legal.

The frequent recurrence of seaman's charges against ship's officers and the monotonous regularity with which these charges are dismissed by the courts, has created a feeling of indifference, and even scepticism, on the part of the public. The charges made by the seaman appear incredible when judged by the standard of conduct prevailing on land. But it must be remembered that the standard prevailing at sea is one of practical slavery, in which a Legree is an actual personification.

An investigation shows that during the past eleven years more than one hundred ships' crews have brought charges against their officers in ports of the United States alone. This list includes only those cases that have come most prominently before the public. Characteristic features of this record are: Fifteen deaths resulted from the treatment received: many cases resulted in the loss of limbs, eyes or teeth, and in other injuries of a permanent character, including insanity: several suicides are attributed to persecution: Only seven convictions were obtained, and, with one exception, the penalties inflicted were merely nominal. The names of certain ships and their officers recur frequently in the list.

This condition of affairs is due primarily to the construction of the law on the point. The statute provides that any officer who, without justifiable cause, beats or wounds or imprisons any seaman, shall be punishable by a fine not exceeding $1,000, or by imprisonment not exceeding five years, or by both. Read conversely, the term "without justifiable cause" authorizes corporal punishment at the sole discretion of the ship's officer. Under this law, courts and juries have consistently approved the declaration of accused persons that assaults upon seamen were justifiable, or, at any rate, that they were deemed such. — WALTER MCARTHUR *in The Forum.*

THE BENCH AND THE BAR IN THE MIDDLE AGES.

UP to the thirty-sixth year of the reign of Edward III, the pleadings in the courts were carried on in Norman-French. But the people naturally complained of this. They said that their rights and liberties and lives were subject to laws which they could not understand; and they knew not what was said either for or against them "by their serjeants or other pleaders." A statute was therefore passed, in 1362, which enacted that all pleas should be pleaded, defended, debated, and judged in the English tongue, but that they should be entered and enrolled in Latin. Nothing, indeed, could be more barbarous than the language used in courts of law. An examination of their phrases seems to show that they thought in English, and clothed English ideas and sentences with foreign words; and the practice of jumbling together French, Latin, and English in pleadings and indictments continued until a comparatively recent period. During the Protectorate of Cromwell an act was passed for the introduction of the English language into the pleadings, but at the Restoration, although all proceedings in private causes, which had been commenced since the death of Charles I, were legalized, that act was limited in duration to August 1, 1660. After that period the absurd use of an unknown tongue was renewed, and continued to be employed for seventy years longer, till in the reign of George II, English was again substituted by an act of the legislature, and litigants were permitted to understand the allegations for and against them. To give an idea of the jargon of legal language in old times, we quote the following from the marginal notes of Chief Justice Trely to Dyer's Reports: —

"Richardson C. B. de C. B. at Assizes at Salisbury in summer 1631 fuit assault per Prisoner la condemne pur Felony: — que puis son condemnation ject un Brickbat a le dit Justice, que narrowly mist. Et pur ces immediately fuit Indictment drawn pur Noyenvers le Prisoner, et son dexter manus ampute et fixe al Gibbet sur que luy mesme immediatement hange in presence de Court."

The chief justiciary, or Justiciarius Angliæ, was the chief officer next the king in the Curia Regis. In the sovereign's absence he presided there in all civil and criminal causes, and also in the exchequer, having, by virtue of his office, the principal management of the royal revenue; and, in addition to this, the entire government of the State was intrusted to him, as regent, when the king was absent from the realm. After a period of two hundred years, this office was discontinued in the reign of Henry III, when its principal judicial duties were transferred to the chief justice of the king's bench. The title of chief justice of the king's bench was not given to the head of the king's court until 1268, in the fifty-second year of Henry III, when a salary of 100 marks was assigned to the office, although a yearly allowance of 1,000 marks had been formerly granted to the chief justiciaries.

The chancellor, Cancellarius Regis, was another officer of the Curia Regis, but at first his rank was very inferior to that which he afterwards attained. He probably acted as a kind of secretary, and this rendered it almost necessary that he should be an ecclesiastic, for few except the clergy in those days could read or write. It was his province to prepare the various writs and precepts that issued out of the Curia Regis, and to supervise the royal charters and grants to which the king's seal was attached. We have no information as to the mode in which a mere clerk or secretary began to exercise judicial functions until at last he became a high officer of the state, but most probably ques-

tions would arise before him as to the form of the writs which he was called upon to issue, and the grants and charters he had to prepare, so that he gradually assumed the functions of a judge. We may here mention that the great seal is not, in truth, carried about in these days in the bag or purse in which it is theoretically supposed to be kept. In fact, it is never put into the purse except on two occasions, viz., when it is received from the queen and when it is delivered up to her. At other times the great seal reposes in a small, plain, green leather box, the key of which the Lord Chancellor alone has, and the great seal should always be where he is.

Although the term baron of the exchequer was used as early as the reign of Henry I, it was then applied solely to the barons of the realm who also performed the functions of judges. It was not until the eighteenth year of Henry III that this title was given to private individuals selected for that special duty. But it seems that even at a later period the chief baron was not necessarily a lawyer, for the statute of *nisi prius*, (14 Edw. III, c. 16), enacts "that if it happen that none of the justices of the one bench nor the other come into the county, then the *nisi prius* shall be granted before the chief baron of the exchequer, if he be a man of the law." In the fifth year of Richard II, the Commons petitioned the crown that in future no one should be made a baron of the exchequer unless he were a man well learned in the common law or otherwise in the legal courses and usages of the exchequer. But this prayer seems to have been disregarded.

As the proceedings in the Curia Regis were carried on in a foreign tongue, either Norman-French or Latin, the parties engaged in causes were obliged to employ persons who were familiar with the language of the court. These were called *conteurs*, or, in Latin, *narratores*, and none others were allowed to be heard.

The fees paid to counsel in old times were not large, even when allowance is made for the change in the value of money. In 1500 three counsel in Serjeant's-inn received 3*s.* 1*d.* each, from the mayor and aldermen of Canterbury, for their advice on the affairs of that city. They were sometimes treated by their clients. Thus the following items occur in a bill of costs in the reign of Edward III: "For a breakfast at Westminster, spent on our counsel, 1*s.* 6*d.*; to another time for boat hire in and out and a breakfast for two days, 1*s.* 6*d.*

It was the custom for the sheriff of Northumberland to send an escort with the judges when they rode from Newcastle to Carlisle across the wild border country, and a regular receipt was given by the sheriff of Cumberland when their bodies were safely delivered to him. To pay the expenses of this, the mayor and aldermen of Newcastle used to make the judges a present of a sum of money, and this custom was kept up until a very recent period. Before the time of Mary the judges rode to Westminster Hall on mules; and Mr. Justice Whyddon, who was appointed a judge on the king's bench in the first year of her reign, is said to have been the first who bestrode a horse in the solemn procession.

Let us now glance at the lives of some of the earliest judges, who, of course, were generally ecclesiastics. But they were not only men of the gown, but men of the sword — as ready to fight in the field as decide knotty points of law in the courts. Thus Hugh de Cressingham, who was at the head of the Justices Itinerant during four years of the reign of Edward I, and at the same time rector of Chack, in Kent, was appointed treasurer of Scotland when Baliol renounced the throne in 1296, and, on the rising of Wallace in the following year, he threw aside his legal robes and cassock, and fell in battle on the banks of the Forth. He was detested by the Scotch for his oppression, and it is said that Wallace ordered as much skin to

be taken off his dead body as would make a sword-belt. William le Vavasour, a justice itinerant in 1304, served the king in his expedition into Gascony and in his wars in Scotland. William de Vesey, while filling the office of chief justice in Ireland, was charged by John FitzThomas with confederating against the king, and challenged his accuser to meet him in mortal combat; so that Lord Norbury might have quoted a precedent, if he wanted one, when he told a barrister who affronted him on the bench that he was ready to fight a duel with him when he had thrown off his gown. De Vesey came ready armed into the field, but FitzThomas showed the white feather and kept away. John de Delves, before he was made a judge in the common pleas in 1364, fought at the battle of Poictiers as squire to Lord Audley. Geoffrey le Scrope, who was chief justice of the king's bench in the reign of Edward III, accompanied the king in the invasion of Scotland, and displayed his banner and pennon at the affair of Stannow Park. He also served at the siege of Tournay in 1340.

Richard le Scrope, who was chancellor in the reign of Richard II, had been a distinguished soldier, and fought at the battles of Crecy and Nevil's Cross in the same year, 1346. So bravely did he bear himself against the Scotch, that he was made a knight-banneret in the field. After he had been deprived of the great seal, he resumed the profession of arms, and accompanied King Richard on an expedition against Scotland in 1385.

As might be expected, there are very few personal anecdotes to be gleaned from the lives of the judges for the first three or four hundred years after the conquest, except in the case of such men as Becket and William of Wykeham. The judges in those days occasionally swore when on the bench, at least, so we may conjecture from the language used by John de Mowbray in 44 Edw. III, as reported in the year-book, who called out to the Bishop of Chester, a defendant in an action tried before him, "Allez au grand diable!"

John de Cavendish, who was one of the judges in the latter part of the reign of Edward III seems to have had a spice of dry humor in him. A case occurred before him in which a question arose as to a lady's age, and her counsel urged the court to call her before them and decide for themselves whether she was within age or not. But women are the same at all times, and the judge showed that he knew them when he observed: "Je n'ad nul home en Engleterre que puy adjudge a droit deins age ou deplein age; car ascun femes que sont de age XXX, ans voilent apperer d'age de XVIII ans."

It was by no means uncommon for judges when they were removed from the bench to resume their practice at the bar, and in some cases they seem to have acted as advocates, even while they held the office of judge. Thus William Inge, in the reign of Edward II, appears as an advocate in the year-book when he was a justice of assize, and he was regularly summoned among the judges to Parliament. He was afterwards elevated to the chief justiceship of the king's bench. But perhaps in acting as justice of assize he was only in the same position as queen's counsel at the present day, whose names are put in the commission, and who occasionally assist the judges by trying causes and prisoners in the civil and criminal courts. When Pemberton, a judge in the reign of Charles II, was dismissed from the bench, he returned to his practice at the bar. He was afterward made chief justice, first of the king's bench and then of the common pleas, and, being again dismissed, he a second time returned to the bar, and was one of the leading counsel in the defense of the seven bishops in 1688.

We pride ourselves, and justly, on the purity of our judges, and perhaps no body of men, whose corporate existence extends over eight centuries, would, upon the whole,

come more unstained out of the ordeal of a searching inquiry into their characters. But there are startling exceptions. A story is told of the great warrior judge and learned author, Ranulph de Glanville. He is said to have unjustly condemned Sir Gilbert de Plumpton, in 1184, on a charge of rape, for the purpose of enabling the knight's widow, who was a wealthy heiress, to be married to a friend of his own. Sentence of death was passed and immediate execution ordered, but the Bishop of Worcester humanely interfered, and on the case being referred to the king, Sir Gilbert's life was spared, although he was kept in imprisonment for the rest of the reign.

There seems to be no doubt that the judges were in the habit of taking money from others beside the king. In the reign of Edward I wholesale corruption disgraced the bench. On his return from France, in 1289, he was met with heavy complaints that his judges took bribes and gave false judgments. The king immediatlely instituted inquiries, and the result was that almost all the judges were dismissed from their office, and some of them only redeemed themselves from imprisonment by the payment of considerable fines. In the sixth year of Edward II, John de Boses, one of the judges of assize, was convicted of abstracting a king's writ and substituting a false one in its place. In 1350 William de Thorpe, the chief justice of the king's bench, was convicted of receiving bribes to stay justice. For this he was committed prisoner to the Tower, all his property was confiscated, and he narrowly escaped hanging. When the bench was so corrupt, we can hardly suppose the bar was pure. The statute of Westminster (3 Edward I) enacts that, if "serjeant countors do any manner of deceit or collusion in the king's court, he shall be imprisoned for a year and a day, and from thenceforth shall not be heard to plead in the court for any one." What was known to the Roman law as the base offense of *prævaricatio*, to which Cicero more than once alludes, existed also in England, for one of the petitions to Parliament, in the eighteenth year of Edward I, complains of a counsellor of one party having received a bribe from the other, for whom he procured a verdict.

The judges seem to have been employed in old times in drawing acts of Parliament, and we are not sure that much of the confusion and many of the mistakes which occur in modern statutes might not be avoided if they performed the same function now. At all events, the bills in Parliament might usefully be submitted to them for revision before they are finally passed. But the judicial staff is, under present arrangements, too much overworked to admit of this.

— *The Law Times.*

The Green Bag.

PUBLISHED MONTHLY, AT $4.00 PER ANNUM. SINGLE NUMBERS, 50 CENTS.

Communications in regard to the contents of the Magazine should be addressed to the Editor, HORACE W. FULLER, 344 Tremont Building, Boston, Mass.

The Editor will be glad to receive contributions of articles of moderate length upon subjects of interest to the profession; also anything in the way of legal antiquities or curiosities, facetiæ, anecdotes, etc.

FACETIÆ.

WITHIN a very short space of time, Justice Hawkins in one case sentenced two women and two men to death, and in another case two men. One woman was released by order of the Home Secretary the same week. The sentence of the other three was commuted to penal servitude for life. The two men in the *other* case were also reprieved. One was liberated in a few weeks, but the innocence of the other was not proved until over a year had elapsed. Long after the cases had ceased to be publicly discussed the judge found himself in a big Northern town. His valet, who usually shaved him, was taken ill, so the judge went into a barber's in a street near his lodgings. The assistant lathered him and began to shave him. "Fine morning, my lord," said he. "Ah," said his lordship, "you recognize me, then?" "Well, I ought to, my lord," replied the man, waggling the razor scientifically under the judge's chin. "Don't *you* remember *me?* Why it's only a year or two ago that you sentenced me to death!"

The judge was glad when that shave was over. He told a friend that it was about the most uncomfortable five minutes he ever passed in his life. A few days later he was in another town, and took a cab. When he paid his fare the cabman smiled at him. "Don't remember me, my lord, do you?" "No; I cannot say I do. Have you ever been before me?" "Oh, yes, my lord, and a jolly bad time I had of it. You sentenced me to death!" The judge blushed and presented the cabman with half a crown over his fare. He felt that it was the least he could do under the circumstances.

His next extraordinary adventure was in London. He was a sporting judge, and had been to the Derby. When he got back to Victoria from the Downs he walked part of the way from the station, and feeling uncomfortable from the dust in his throat, he turned into the private bar of a big public house and asked for a brandy and soda. A showy-looking barmaid served him, and her features seemed familiar to him. "Where have I seen you before?" he said. "Oh, at the Old Bailey, my lord. I'm Al—". The judge didn't wait to finish his refreshment or to let the barmaid finish her speech. He fled. The barmaid was the young woman he had sentenced to death, and who had been almost immediately released by order of the Home Secretary.

RECENTLY a Milwaukee judge was called upon to hear the testimony in an equity case in a law office down town. When he arrived he found the rooms packed full of witnesses.

"I have no time to hear all these witnesses, gentlemen," he said. "You must confine yourselves to six liars to the side, and I will try and decide which lot has the biggest liars."

The case was proceeded with on that basis, and the judge had little difficulty in reaching his conclusions.

NOTES.

A SUIT for libel against a newspaper is a common occurrence, but it is quite unusual that a novelist should be called to account in the same way. An action of this sort, however, is at present causing the noted French writer, Gyp, a great deal of trouble, and, according to "Literature," she is in extremely hot water because of a certain passage in one of her latest books, "Le Journal d'un Grinchu." This passage is only a dozen words in length, and it states: "M. Trarieux became a Protestant for the sake of making an advantageous marriage." That might not seem at first sight a very dangerous statement, but the fact that M. Trarieux is a senator alters the case. For each copy of the book sold Trarieux de-

mands five hundred francs, the suppression of the passage in future editions, and fifty thousand francs damages. This is probably the only case of the kind on record, and the first instance of a novelist plunged into mourning by the enormous sales of her books.

A PROMINENT lawyer of Switzerland has called attention to some very peculiar tariff laws existing in this country. As an example he gives the one of October 23, 1894, which provides that duty is to be paid on the full weight of goods, including the packing, according to which an ordinary wooden box may be taxed, on the basis of its contents, as high as thirty cents a pound. The law also provides that if the goods enter the country without the packing, an estimate of the weight of the case should be made, and added to the weight of goods.

A CIRCULAR addressed to the bishops by the Spanish minister of justice has revealed a curious fact. In accordance with a certain law promulgated in 1837, a pension of one franc per day was to be paid to all the nuns in certain convents. According to the statements furnished to the government by the religious authorities, not a single death has taken place among these particular nuns since 1851. It follows, therefore, that many of them are centenarians, and one must have reached the age of one hundred and twenty-seven. The minister, astonished at this remarkable longevity, has decided to withhold the pension from any *religieuse* who cannot furnish a certificate to the effect that she is alive.

THE following "ad." appears regularly in a Missouri newspaper: —

CAUTION.

If you have conveyances to make or wish a marriage solemnized, be cautious about the prices you pay.

REMEMBER THAT

at the Probate office you can get a deed made for 25 cents, an acknowledgment taken for 25 cents or a marriage solemnized for $1.

C. A. SKIDMORE,
Probate Judge.

P. S. I keep an assortment of fine lithograph (very large) marriage certificates.

C. A. S.

WHEN convicts in the Colorado State Prison become unruly, instead of being confined to bread-and-water solitary confinement, they are spanked, the instrument used being a paddle a little more than two feet long, three inches wide, and weighing fifteen and a quarter ounces. According to the chief of the institution, this method is entirely satisfactory, and is free from the pernicious effects that often follow the ordinary treatment. "During the spanking process," says the warden, "the prisoner has no time to brood, — to store away in his mind vicious thoughts, and grow mentally one-sided as he grows physically weaker; for all of his time and thoughts are concentrated into one spot for a minute or two, and when it is over he goes back to his work none the worse for the treatment."

IN England a ship in dock is a factory, according to an important legal decision made in the first instance by Judge French in the London Bow County Court, and unanimously upheld by three judges in the Court of Appeal. The case arose out of the explosion of percussion caps during the unloading of the "Manitoba" in the Royal Albert Dock. To the relatives of the two men killed Judge French gave two sums of three hundred pounds each, and to five injured men an allowance of one pound a week for life, under provisions of the British Workmen's Compensation Act of 1897. The decision was resisted by the Atlantic Transport Company. The Court of Appeal was obdurate, and unless the House of Lords reverses the decision, a British sailor in dock has the protective privileges of the workmen upon shore.

A JUROR in Worcester, Mass., recently asked to be excused on account of deafness. The judge refused to excuse him and he sat patiently through a trial lasting several hours. At its close the other eleven jurors were for conviction, but he voted persistently for acquittal, on the ground that as he could not hear the testimony, he could not vote for conviction.

MR. JUSTICE DAY is the English flogging judge, he having sentenced 137 criminals to 3766 strokes of the cat in fourteen years. Five other judges have used the discretion given them by statute in greater moderation, their combined record being 1776 strokes to 89 criminals. A

gang of highway robbers that had terrorized Liverpool, some of whom he had himself seen at work, came before Justice Day for sentence ten years ago. "I am not going to give you men long terms of imprisonment," he said; "but when you go in you get twenty lashes of the cat, when you have been in nine months you get twenty lashes of the cat, and before you come out you get twenty lashes of the cat. And then you can show that to your friends."

CURRENT EVENTS.

THE post-office of India has to contend with difficulties of which we have no conception. The matter-of-fact "Report" of the working of this magnificent establishment for 1897–8 is not without its touches, now of humor, now almost of romance or of tragedy. The postal-runners climb the lofty Himalayan snow-passes and traverse the dangerous jungle. River squalls, cyclones, and earthquakes bring destruction to mail-boats and offices, and death to the messengers. A swinging bridge over the Chenat gives way, and down falls the village postman, never to emerge alive. Yet, in spite of all, the department handled in the year some four hundred and sixty million pieces of matter, an average of 1.63 pieces per head for the general population, or of 38.58 for the literate population. Human nature vies with inanimate nature to increase the tribulations of the Director-General. A tremendous pother was raised by a local magnate in Bengal over the behavior of a village postman. The ponderous machinery of investigation was set agoing, and it transpired that the humble offender had handed the big man a letter with the left hand instead of the right! The post-card is becoming exceedingly popular, and, strangest of all, telegraphic money orders are coming widely into vogue in Burmah, being used by the emigrant laborers there, who often wire money to their distressed kindred at home during the famine. The "value-payable post" is an institution which we Americans might well adopt from India.

THE Merchants' Association of San Francisco has been trying the experiment of sprinkling a street with sea-water, and finds that such water binds the dirt together between the paving stones, so that when it is dry no loose dust is formed to be raised by the wind; that sea-water does not dry so quickly as fresh water, so that it has been claimed when salt-water has been used that one load of it is equal to three loads of fresh water. The salt-water, which is deposited on the street absorbs moisture from the air during the night; whereby the street is thoroughly moist during the early morning, and has the appearance of having been freshly sprinkled.

AT present it is estimated there are in the world's oceans seven million cubic miles of salt, and the most astonishing thing about it is that if all this salt could be taken out in a moment, the level of the water would not drop one single inch.

TORPEDO-BOATS may be made invisible, according to an inventor, who has applied for a patent on his contrivance, by attaching a mirror to the bow of the boat so as to deflect the rays of the search light and show only the surface of the waves. The principle is old, but its application is brand new.

ACCORDING to English advices the Russian government has made an important change in the Mosaic law. The Fifth Commandment in the future will be: "Honor your father and mother, your ruler and his officials, that thy days may be long in the land which the Lord thy God giveth thee." Teachers are required to see to it that no other form is used.

AMONG recent inventions is a locomotive headlight which, when the train is rounding a curve, turns in such a manner as to keep its projected shaft of light continually upon the rails, instead of pointing off to one side, as occurs with a stationary headlight. The motion of the headlight is controlled by means of an air-cylinder, connected with the air-brake system of the train, and regulated by a valve in the cab. When the locomotive strikes a straight section of track the headlight automatically returns to its proper position.

LITERARY NOTES.

HARPER'S MAGAZINE for June contains interesting articles on "Korean Inventions," by Homer Beza Hulbert, F.R.G.S. In addition to a phonetic alphabet of its own, Korea has invented the earliest iron-clad war-ship, the earliest movable metal types, the earliest twisted cable, the earliest bomb and mortar; "Quivira and the Wichitas," by James Mooney. The author gives a pleasant glimpse of aboriginal Indian life, and identifies the site of the Wichitas villages discovered by Francisco de Coronado, 1540; "The Century's Progress in Scientific Medicine," in which Henry Smith Williams, M.D., in a brief and comprehensive manner tells of the invention of the stethoscope, the discovery of the anæsthetic properties of sulphuric ether, the establishment of the science of bacteriology, and the development of the use of anti-toxins. In "Needful Precautions for Safe Navigation," John Hyslop, the author, points out the grave

dangers that threaten the safety of ocean steamers, and indicates simple and efficient remedies. "The Mothers of Honoré" is a story by Mary Hartwell Catherwood. There are also continuations of "The Spanish-American War," Part V, by Henry Cabot Lodge; "The Princess Xenia," Part III, and "Their Silver Wedding Journey," Part VI, and the usual number of short stories.

SCRIBNER'S MAGAZINE for May has secured from Major-General Leonard Wood, the military governor of Santiago, the first official account of the great work which has been accomplished in that province. A striking account of colonial government is also given in the picturesque paper by G. W. Steevens on "The Installation of Lord Curzon as Viceroy of India," which reveals what long years of British rule have made out of a subject people. Another attractive bit of descriptive writing is F. Hopkinson Smith's "Between Showers in Dort" — his memories of a summer vacation in Holland, illustrated from his own paintings. A new note is struck in Sidney Lanier's "A Poet's Musical Impressions," being letters written in his delicate and poetic prose to his wife, conveying his impressions of music and musical people. Senator Hoar's "Political Reminiscences" detail many incidents in the careers of the great statesmen of his time, and give the inner history of the famous Hayes-Tilden election contest of 1876. Quiller-Couch's serial, "The Ship of Stars," confirms the impression of the first instalment as to its wonderful literary quality. Governor Roosevelt describes the life of the troops "In the Trenches" after the battle of San Juan.

"PRINCESS NADINE," by Christian Reid, the complete novel in the May issue of LIPPINCOTT, appeals strongly to all readers who revel in a good, stimulating love-story. The number contains also a scholarly paper, "The Question of the Philippines Reviewed," by John Foster Kirk; a character sketch of "Philippe de Comines," by Emily Stone Whiteley; "The American Fondness for Movements," by Edward Leigh Fell; "Glasses and their Uses," by John S. Stewart; "Democracy and Suffrage," by M. L. G. Of shorter fiction there is a remarkably strong story by Adeline Knapp, entitled "His Lack of Courage"; a timely tale of Memorial Day, "Kate," by George William, and a bright little society sketch, "Jacqueminots," by Edgar Maurice Smith.

THE authorship of "The Etchingham Letters," which has been running anonymously as a serial in THE LIVING AGE since the first of January, is now disclosed. The letters are the joint work of Mrs. Fuller Maitland and Sir Frederick Pollock, a combination which goes far to account for their range and cleverness. The publication in THE LIVING AGE is by a special arrangement with the authors. People who find a good deal of current fiction somewhat too gruesome and gory will appreciate Mr. Robertson's essay on "The Murder Novel," which forms the leading article in THE LIVING AGE for April 29.

THE May ATLANTIC opens with an article upon "The Australasian Extensions of Democracy," by H. de R. Walker, who discusses the management of affairs in the five great Pacific colonies of England. H. Phelps Whitmarsh vividly depicts the jealous care with which all other nations, especially England, cultivate their mercantile marine and shipping interests. In "The Orator of Secession," William Garrott Brown describes the character and career of William L. Yancey. Henry W. Farnam treats of "Some Economic Aspects of the Liquor Problem," giving facts and statistics of great interest. Charles Mulford Robinson continues his papers on "Improvement in City Life," with an account of recent educational progress in the great cities. W. V. Pettit, in his article on Porto Rico, describes the nature of the island and the character of the inhabitants. Jacob A. Riis, in "The Battle with the Slum," picturesquely details the advances that have been made in New York during the last twenty years in improving the condition of the helpless poor.

THE CENTURY'S plans for the treatment of the Spanish War culminate with the publication in the May number of a remarkable series of papers in which the commander of every American vessel but one describes his share in the battle off Santiago. The only exception is in the case of the Oregon, whose commander, Captain Clark, endorses Lieutenant Eberle's account of that ship's participation in the fight, and himself contributes a criticism of the Spanish admiral's strategy. "The Story of the Captains" is written with remarkable animation and in wholly untechnical language. In this number, David Gray begins a series of golf stories that bids fair to be liked as well as his "Gallops"; Frank R. Stockton records some further adventures of "The Vizier of the Two-Horned Alexander"; an eclipse in India is vividly described and pictured by the painter R. D. Mackenzie; and Jacob A. Riis tells a police-reporter's story of "The Last of the Mulberry Street Barons." Among the miscellaneous papers is Mrs. James T. Field's sympathetic sketch, from personal acquaintance, of the lives of "Two Lovers of Literature" — Charles and Mary Cowden Clarke. Professor Wheeler's "Alexander the Great" deals with the

Macedonian conqueror in Egypt and the founding of Alexandria; and Mr. Crawford's romance, "Via Crucis," continues its course.

THE AMERICAN MONTHLY REVIEW OF REVIEWS for May devotes considerable space to a survey of recent developments in American cities. The editor comments on the reëlection of Mayor Carter Harrison in Chicago, on Mayor Jones' remarkable triumph in Toledo, on the Detroit project for municipal ownership of the street railways, and on the general situation in Boston, San Francisco, Minneapolis, Cleveland, Denver, St. Louis, Philadelphia, Pittsburg, and New York. Dr. Shaw also contributes a special study of the new San Francisco charter — a remarkable document in its way; and Mr. George E. Hooker gives some interesting facts about Mayor Quincy's administration of Boston. There are also illustrated character sketches of the American commissioners to the Czar's conference at The Hague. Mr. Julius Moritzen contributes a dispassionate and well-informed statement of the influences tending to bring about a disruption between Norway and Sweden; and Professor John Bassett Moore, who served as secretary and counsel of the American Peace Commission at Paris, writes on the points of international law brought out in the war with Spain.

MR. WILLIAM GEORGE JORDAN has just retired from the editorship of the Philadephia SATURDAY EVENING POST, which he started so auspiciously on its new career. When the Curtis Publishing Company purchased the moribund SATURDAY EVENING POST, Mr. Jordan was induced to become its editor. In a short time his enthusiasm and genius quickened the POST into new life, until it bristled with new ideas that rapidly made for it hosts of new friends and subscribers.

WHAT SHALL WE READ?

IN *The Maternity of Harriott Wicken*,[1] Mrs. Dudeney gives us a story of more than ordinary power and interest. Her theme is heredity, and the book is a protest against marriage without full knowledge of the antecedents of the contracting parties. Harriott Wicken, an attractive girl, and, to all appearances, the embodiment of physical health, marries and has an idiotic child. She learns, too late, that on the father's side she comes of a line of epileptic and drinking ancestors and that she never should have married. A well-worked out plot, abounding with exciting incident, the details of which we leave the reader to find out for himself, is based upon this guilty (as Harriott conceives it to be) marriage. This story is almost morbid in its intensity, but it is one that once begun will not be laid aside until the end is reached.

THOSE who read Mr. Johnson's delightful romance, "The King's Henchman," will welcome the sequel to that story, which has just been published and is entitled, *King or Knave, Which Wins?*[1] Much of its interest centres in the personality of the famous Gabrielle d'Estrées and the efforts of Henry of Navarre to obtain possession of the throne of France. There is plenty of exciting adventure and dramatic situation, and, incidentally, a graphic description is given of the defeat of the Spanish Armada. The book is not only absorbingly interesting, but it also gives a faithful portrayal of the manners and course of events in France at that period.

TWO of the most delightful books of travel published in recent years are Mrs. Dodd's *Cathedral Days*[2] and *Three Normandy Inns*.[3] A new edition of these works has just been issued which is beautifully illustrated with sketches and photographs. In *Cathedral Days* the reader is taken over an ideal route in Southern England, extending from Arundel to Exeter and the author's charming descriptions of that picturesque part of England inspire one with an intense longing to follow in her footsteps. The *Three Normandy Inns* visited are at Villerville, Dives and Mont St. Michel; all of them fascinating. Mrs. Dodd knows how to travel, is a close observer of human nature, appreciates to the uttermost the beauty of the scenes through which she passes, and, best of all, has the rare art of imparting to others what she has seen in such a manner that her pen pictures glow with all the warmth and beauty of originals. No one will lay down either of these books without a feeling of regret that these journeys are so soon over, and an ardent wish that they might be continued indefinitely.

The Ladder of Fortune[4] is a vivid account of how many a family in America rises from the poorest and lowest ranks of life to the top rung of society. The husband who makes the money necessary for the gradual rise on the ladder, with the ambitious wife

[1] THE MATERNITY OF HARRIOTT WICKEN by Mrs. Henry Dudeney. The Macmillan Co., New York, 1899. Cloth, $1.50.

[1] KING OR KNAVE, WHICH WINS? An Old Tale of Huguenot Days. By William Henry Johnson. Little, Brown & Co., Boston, 1899. Cloth, $1.50.

[2] CATHEDRAL DAYS. A Tour in Southern England. By Anna Bowman Dodd. New Edition. Little Brown & Co., Boston, 1899. Cloth, $1.50.

[3] IN AND OUT OF THREE NORMANDY INNS. By Anna Bowman Dodd. New Edition. Little, Brown & Co., Boston, 1899. Cloth, $1.50.

[4] THE LADDER OF FORTUNE. By Frances Courtenay Baylor. Houghton, Mifflin & Co., Boston, 1899. Cloth, $1.50.

who improves herself assiduously, being quick to observe and to adapt herself to new conditions, are graphically depicted, and one feels that such types are faithful representations of certain phases of our American life. One of the daughters, who is ambitious like the mother, marries a nobleman who makes her life miserable; and the other, who is charming and lovable, shows the true American spirit in that she marries the man she loves, in spite of his poverty, and "lives happy ever after." The story is interesting and well written, and well adapted to make an idle hour pass pleasantly.

MESSRS. HOUGHTON, MIFFLIN & CO. have just published two volumes of short stories which will appeal to those who are looking for interesting summer reading. *The Queen of the Swamp*[1] contains a dozen or more of Miss Catherwood's charming tales, many of which embody phases of American life which have about entirely passed away. They are all admirably written. In *Tiverton Tales*[2], Alice Brown excels herself as a delineator of New England life and character. Humor and pathos are skilfully blended in these sketches, and the reader finishes the book wishing that instead of twelve stories there had been doubly the number.

MESSRS. HARDY, PRATT & CO., of Boston, have just issued, under the title of *The Versailles Historical Series*, a collection of memoirs, correspondence and letters of noted persons belonging to the different European courts. Graphic descriptions are given of court life, state secrets, and the private sayings and doings of royalty, etc. The series is made up of *The Memoirs of the Duc de Saint-Simon*; *The Memoirs, Letters and Papers of the Prince de Ligne*; *The Correspondence of Madame, Princess Palatine*, and *The Book of the Ladies*, by Pierre de Bourdeille. The translation has been entrusted to Miss Katharine Prescott Wormeley, who has done her work with marked ability. The volumes are superbly illustrated, and the work will appeal to every lover of good books. The edition is limited to eight hundred numbered sets.

[1] THE QUEEN OF THE SWAMP, and Other Plain Americans. By Mary Hartwell Catherwood. Houghton, Mifflin & Co., Boston and New York, 1899. Cloth, $1.25.

[2] TIVERTON TALES. By Alice Brown. Houghton, Mifflin & Co., Boston and New York, 1899. Cloth, $1.50.

NEW LAW-BOOKS.

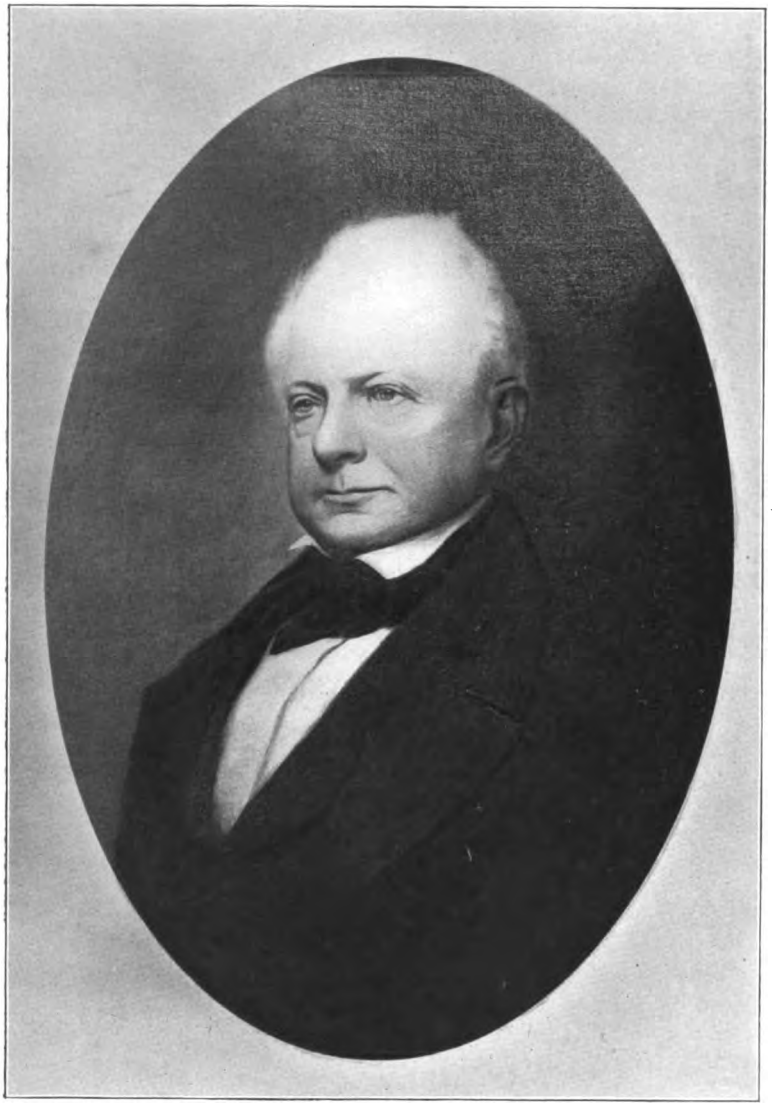
THE ANNOTATED CORPORATION LAWS OF ALL THE STATES. Generally applicable to Stock Corporations. Including Statutes and Constitutional provisions relating to Receivers, Practice, Taxation, Trusts and Combinations, Labor, and Crimes by Corporations and their Officers. Compiled and edited by Robert C. Cumming, Frank B. Gilbert and Henry L. Woodward of the Albany, N. Y. bar. J. B. Lyon Co., Albany, N. Y. 1899. Three vols. Law Sheep. $18.00, *net.*

The work is one of the most important offered to the legal profession during the present year. Covering all the corporation laws of the several States with the adjudications of the courts based upon those statutes, it places in the lawyer's hands the means of ascertaining at a moment's glance just what he may wish to know upon any statutory question which may arise. The work is necessarily a compilation in which the opinions of an author have no place as they have in ordinary text-books. These volumes, therefore, are rather a supplement than a rival to the standard treatises already published on the law of corporations. The authors are men of authority and experience in this line of work and absolute reliance can be placed upon the accuracy and exhaustiveness of this compilation and annotations. The publishers promise to keep the statutes and cases up-to-date by the issue of supplements, which will be furnished at intervals. The Lawyers' Coöperative Publishing Co., of Rochester, N. Y. have undertaken the sale of the work, and all orders should be addressed to them.

GENERAL DIGEST, AMERICAN AND ENGLISH ANNOTATED. Refers to all reports official and unofficial. Vol. VI, new series. The Lawyers' Coöperative Publishing Co., Rochester, N. Y. 1899. Law sheep. $6.00.

This digest is now so well known to the profession, and has been so favorably received by both Bench and Bar, that any further words of commendation seen almost superfluous. It is to our mind by far the best digest of current law, covering all the cases reported in the "Reporter System" and every other publication reporting decisions. In addition to this it also contains bibliographic notes giving abstracts of contents of all new text-books, and an index of all articles on legal subjects published in current periodicals. Besides all this a judicious selection of cases puts the practitioner in touch with the last century's law. If any of our readers are not familiar with this work we commend it to their attention.

AMERICAN STATE REPORTS. Vol. 65. Containing the cases of general value and authority decided in the courts of last resort of the several States and Territories. Selected, reported and annotated by A. C. Freeman. Vol. 65. Bancroft-Whitney Co., 1899. Law sheep, $4.00.



GEORGE WOOD.

The Green Bag.

VOL. XI. No. 7. BOSTON. JULY, 1899.

GEORGE WOOD, LL.D.

BY THE LATE A. OAKEY HALL.

GEORGE WOOD was born of Quaker parentage in historic Burlington, New Jersey, in 1789, and came to its bar during the hubbub of our naval war, selecting New Brunswick as his locale of practice. His first prestige in his remarkable career of professional fame came from his participation in what is legally known as the Henderson *cause célèbre* during the years twenties. A case that embodied theological and sectarian strife among the denomination of the Friends, and involving property claims between Hicksites and Orthodox Quakers. This was at the era when Samuel Hansox Cox (father of the late Episcopal Bishop, Arthur Cleveland Coxe) astounded his fellow-Quakers by quitting them and becoming a Presbyterian divine and simultaneously publishing a ponderous volume against them, entitled "Quakerism not Christianity," and which the library of the New York Historical Society possesses as now a curiosity,

George Wood in simplicity of appearance. dignity of carriage and demeanor, gentleness of disposition and as lover of peace amid litigation (a very *componere lites* man) rather than of bitter contentions, preserved evidences of his Quaker lineage throughout his long career. He, unlike many youthful attornies, shunned the hustle and bustle of *nisi prius*: and early selected the specialty of briefs and arguments *in banco*, which ever afterwards continued to be his great specialty, and therein winning for himself most unexampled renown. But in 1831, finding that this specialty offered more scope in the adjacent city of New York, he then removed to New York City but still retained his connection with the legal procedures of his native State. I did not come to the New York bar until two decades later, and I recall him as possessing an unshaven face, which a sculptor might have placed for its expression upon a bust intended to represent Benevolence; leonine eyes as seen when the jungle monarch is in repose; a voice which was richly persuasive; and a presence that could have served as model for a statue representing such dignity as the late Chief Justice Shaw had. Yet the first impression George Wood made upon an observer who was ignorant of his identity and prestige, would be one perhaps unfavorable to his mental calibre.

A bar anecdote long current at the national capitol will illustrate this. Daniel Webster, taking interest in an argument that his fellow-senator and legal comrade, William C. Preston of South Carolina, was about to make in the Federal Supreme Court, casually asked the latter, "Who will be your legal opponent?" When Preston rather flippantly answered, "Oh, a sleepy-looking New York lawyer named George Wood!" Webster who had already met the latter in court rejoined, "Well, Preston don't wake him up if you wish to win."

"Wood's fame" (as once said Chief Jus-

tice Charles P. Daly, before whom, during his judicial career, beginning in 1846, and not ending until the stupid and illogical age limit removed him in 1885, George Wood many times argued) "early came from the clearness of thought and lucidity of his language even in compressed statements." Therein he even equalled Marshall and Webster according to the traditions. Substantially, always, whenever Wood had finished his preliminary statement of a case he had already impliedly argued it fully.

When he exchanged his law office in New Jersey for another in New York City he formed a connection with young Attorney Lewis B. Woodruff, who, in time, learned to model his own professional ways upon those of his senior partner; which became very evident when Woodruff afterwards successively became puisne judge of the New York Common Pleas and Superior Court, and finally Federal circuit judge.

Nowadays at the New York bar fledgling attorneys rush conceitedly into *banco* and argue their own appeals, even in legal regions into which experienced lawyers fear to tread: but at the era of Wood's practice the average attorney sent his briefs to some senior whose very personality and prestige added weight to his weakest point before the Appellate or Chancery Court. Wood's practice always mainly depended upon outside briefs: and not so much upon cases originating with his personal clients. He believed in division of labor and left the primary verifying of cases cited against him, or the search for decisions illustrating his own points, to the industry of the interested attorneys. His mind was so clear that he could simultaneously carry in his brain the gist of many contemporaneous arguments entrusted to him. Mental confusion he never knew, not even its suburbs. Time and again would he go from court room to court room, versatilely arguing on the same day cases of diverse considerations and opposite legal principles. His brain was a very kaleidoscope, which at every new turn showed different combinations, yet each one harmonious as to color.

His legal novitiate in New Jersey had been with Richard Stockton, son of the signer of the Declaration of Independence, whose legal fame was summarized in the recent GREEN BAG sketch of his legal grandson, the former attorney general of George Wood's native State. This preceptor, referring to his pupil's after-career, when the two crossed rhetoric swords in one case, *pro* and *con*, often humorously quoted, as applicable to himself the old quatrain —

> "To teach his grandson draughts
> His leisure he'd employ:
> Until at last the old man
> Was beaten by the boy."

Nor was Stockton the master ever at all jealous of his pupil, but seemed by his manner and speech to take pride in him. Those familiar with Stockton detected in Wood's legal beginnings much ensampling of the former's ways. Stockton was a cool and never perturbed lawyer, but kept his temper and alertness for the "passing show" in court rooms as steadily as a pilot keeps his ship on its proper course; so Wood was never off his guard nor lacking in resources. Often when a judge would interrupt his argument with questions that might well embarrass or break continuity of thought and speech, Wood would put on his smile of equanimity and say, "Yes, your honor, I expect to come to that point presently"; meanwhile in duality of brain, Wood would be cogitating over the new point and preparing an answer. Whether from caution or overprudence he was never an *ad captandum* lawyer nor a yielder to inconsiderate impulse. Perhaps often he carried such a disposition too far, since alertness for the sudden occasion is often a serviceable quality for the lawyer, and especially at *nisi prius*. But George Wood's forte was not before a jury, and when he

appeared in a trial it was rather as adviser to the proceedings than active participant. His store of learning was so well understood that I have known judges, while holding court and seeing him an awaiting spectator, address him from the bench as *amicus curiae* for an opinion on a passing question. And he was always ready to allow his reservoir of learning to be freely tapped by young lawyers, to which class he was ever kind. Two colleges of his adopted State, Union and Hamilton, showed appreciation of his learning by both successively crowning him with the laurels of the LL.D. degree, but his modesty never allowed him to suffix the mystic letters to his name.

While George Wood was at the New Jersey bar he enjoyed the excellent experience of being a younger man combating his elders. This always teaches self-reliance, courage, and the courtesy that accompanies respect for seniors. During his novitiate in his native State its bar never had, nor since has had, greater representative members. Theodore Frelinghuysen, the great religious lawyer, who, when afterwards elected Federal senator, was known in, Washington as the Christian senator and who left his profession and public life to become chancellor of the New York University, was then in active practice. Samuel L. Southard also, he who, as president of the Senate when President Harrison died, became acting vice-president, and who was a recognized jurist. Among Wood's senior compeers were also Aaron and Elias Ogden whose excellent traditions still linger in the State courts at Trenton; also Mahlon Dickerson and Garret D. Wall; also Van Arsdale of Newark and Isaac H. Williamson, a consummate equity lawyer; also William Pennington, the persistent hunter of sophisms; and Peter D. Vroom. The mention of all these names to the New Jersey lawyers of to-day starts to life grand traditions of famous practitioners. In the Quaker controversy already referred to, Wall and Southard represented the so-called Hicksites, and Theodore Frelinghuysen with Wood, youngest of them all, battled for the Orthodox Friends. Wood had also found opportunities for emulation when in college, where such men as he who became Bishop Meade of Virginia and he who became Judge Wayne of the Federal supreme court were his classmates. The case of Gifford *v.* Thorn, 1 Stockton 708, often referred to, gives a potent specimen of Wood's skill at legal fence and also several cases in the 1840—45 New York chancery reports, He did not disdain in making up briefs to display playful wit and at times he could indulge in impassioned declamation,

Early in 1845, in the city of New York, Mr. Wood was concerned in a *cause célèbre* before the County court, then composed of the recorder, the judges of the common pleas and the superiors, together with the mayor, and constituting an impeachment court for the trial of Police Justice Haskell, charged with official dereliction. While the latter (Wood's client), was convicted by a small majority, it was notable that the ingenious and subtle argument of Wood won to his client all the votes of the legal members of the Impeaching Tribunal, while the laymen members of the Court, clearly for political reasons, voted for conviction in order to found a vacancy for some especial pet. The same county court upon the same day by a similar kind of vote removed from the office of district attorney one of the best incumbents which that legal post ever knew in New York City, and appointed a political favorite named Matthew C. Paterson, who gave to the office the only flavor of mediocrity it has ever known. The disgust of Wood at the laymen character of his court was genuinely bitter, for he was so pure in soul, and his mind so little in touch with political wiles and so enthusiastically ethical, that even suspicion of underhanded doings with respect to holding the scales of

justice irritated his ever nice sense of honor. Knowing this, all judges regarded his statements as equal to an affidavit; and recognition of that fact aided his retainers from attornies. The presence of a judge on a bench was as sacred a spectacle to him as is to the devotee the sight of a priest at the altar. He was emphatically a worshipper at the shrine of jurisprudence, and legal principles were venerated by him as the priest venerates Biblical teachings. His life as a lawyer becomes therefore, a model for any young lawyer beginning practice.

In the first and second volumes of New York Court of Appeals reports of 1848, several cases, in the argument of which George Wood participated, can be found which illustrate the ingenuity with which he originated points and views. Adams *v.* The People in 1 N. Y. Rep. p. 174 especially furnishes such an instance. Adams was a client of Woods, living in Ohio, who had never been in New York City, but had induced and employed an innocently acting agent to take to the New York firm of Suydam Sage & Co. a warehouse receipt of a valid firm in an Ohio city which Adams forged. The agent sold the receipt to the aforesaid firm for a large sum of money, which was well covered by the collateral that the receipt represented. The money so obtained was by the innocent agent remitted to Adams, and correspondence showed his possession of it. When the fraudulent character of the receipt was discovered, the firm from whom, by the false pretences, the money was obtained, caused Adams to be indicted, and Adams by requisition was brought on from Ohio, tried and convicted. Wood applied for a stay and argued on appeal that judgment must be arrested, because the offence of Adams was not committed in the jurisdiction of the indictment and trial, for the prosecution admitted that Adams had never been in New York until brought there as a prisoner. Wood's point was a *coram non judices* and he contended with great subtlety, that whatever may have been the jurisdiction that Adams' own State had over the transaction, New York certainly had none. But able as seems his brief, and as undoubtedly his argument was, the court unanimously refused relief and decided that the jurisdiction was perfect.

The case of Brewster *v.* Stryker, 2 N. Y. 20, sustained the point made by Wood, that the law of New York would imply a formal delegation of a trust when one was in substance indicated or implied in a will. In Lot *v.* Wyckoff same volume, p. 357, he made with success an ingenious argument to show how an entail resulted in an estate of fee simple. In Couch *v.* Delaplaine, also in same volume, p. 400, he established that a claim against a foreign government for indemnity was assignable in equity. Perusal of these cases will serve to show how happy were his legal efforts in abstruse doctrines of law. And all the New York and some New Jersey reports show how much it was the fashion of attorneys to shower their apparently desperate cases on George Wood.

The annals of the law prove that its profession has in all times really honored only those of its ministers who honored it with courageous probity. All famous lawyers worthy of posthumous fame have been good and just. Lawyers of mere craft only, disciples of policy, or believers in mere means towards ends in their profession may win notoriety and ill-gotten wealth, but never respect or fame. What a chasm for instance divides a Coke from a Hale, or a Burr from a Marshall.

A very grand sight was presented at the Castle Garden of New York in the summer of 1850, when, at a mass meeting in behalf of the integrity of the Union, the young Evarts and the veteran Wood mingled their oratorical voices in behalf of the Fillmore-Clay-Webster compromises of the then pending slavery agitations, those cast-before shadows of the emancipation times of just a decade afterwards.

The late Nicholas Hill, long reporter in New York State for the highest courts, and himself a famous advocate, used to relate an interesting incident in which George Wood was an actor. A very complicated controversy was in course of argument before the Court of Errors; counsel for appellants had exhausted a whole day in arguments and the hour of closing had almost arrived, when the chief justice, leaning over the bar toward Wood, who was to follow for respondents, asked him: "How long shall you be in your argument to-morrow? — as we wish to adjust the day's calendar."

"Fifteen minutes," promptly answered Wood, with a quizzical glance at his opponent.

"Impossible," exclaimed the chief justice, "with such a complicated case as this."

"Not at all really complicated except in sophistry of my adversary," rejoined Wood, "and if you will give me the fifteen minutes now you shall have a clear calendar for the morrow."

"Out of sheer curiosity," narrated Reporter Reynolds, "the court gave the quarter hour and in that brief time Wood so compacted his argument and became so lucid that he eventually won his contention. The sarcasm applied to Polonius, in the play, of "words, words," never fitted George Wood; and thus again is he an exemplar to young lawyers for the cultivation of lucidity and compactness. Could not the science of epigrammatic statement be profitably taught at law schools? That science has increased in value of late years; as compare the judicial opinions in all reports of last year with those of a quarter century ago; or recent legal treatises with the exhaustive volumes of Justice Story.

At the time of his death George Wood resided at 45 Fifth avenue, New York City, enjoying his seventy-first year, in possession of a fair fortune. It was a sudden death and, in its quickness of despatch, saving him pain, but the event surprised and grieved the bar, who immediately met in mortuary respect. Veteran Judge Roosevelt (uncle of the present governor of New York) called to order the bar assemblage, and named ex-Chief Justice Greene C. Bronson as chairman. Justice Sutherland and Pierrpoint (the latter a later Federal attorney general) made eulogistic speeches *In Memoriam*, and were followed by William M. Evarts and William Curtis Noyes. Among some of the eulogistic remarks were these, "the most distinguished ornament of the Metropolitan bar," "a rare union of dignity, urbanity, profound learning," "noted for exact and thorough knowledge of all branches of the law," "united unequaled powers of argument to the highest sense of professional honor," "apostle of the complicated doctrine of charitable uses," "the Justinian of probate law," "notable for tenacity of purpose in vindicating principles of law," "he regarded charitable uses as questions not between man and man but between man and God," "unexcelled in simplicity, purity, and virtue," and "firm in attachment to the institutions of his country."

Mr. Evarts, then, as ever since, happy in epigram remarked, "George Wood possessed the rare art of thinking while he spoke, as if engaged in writing." His office partner, Goodman, gave tribute to his powers of abstraction and introaction by remarking that on one occasion when an important consultation was proceeding, a noisy procession passed by in the street, but he continued his line of thought and expression although not a syllable could be heard of his views, and that he appeared deeply surprised when he was asked to forbear for a few minutes and given the cause for the request. Always as he spoke was he oblivious to matters outside of judge or jury purview.

At the Reformed Dutch Church, where burial services were had, attended by an immense assemblage, the ethical side of his career received oratorical attention.

The phrases used (and above quoted) at the memorial bar meeting may well stand as epitaphs for George Wood, LL.D., the model lawyer of half a century ago.

A UNIQUE CASE.

THE following description of a case, probably unparalleled in our legal records, is taken from a number of "Atkinson's Casket" published in 1834.

One of the most extraordinary and most interesting trials of which I find any account in my note-book, took place in the Northern Circuit, very little less than fifty years ago. It is instructive in many points of view. To those who believe that they see the finger of Providence especially pointing out the murderer, and guiding, in a slow but unerring course, the footsteps of the avenger of blood, it will afford matter of deep meditation and reflection. To those who think more lightly upon such subjects; to those whom philosophy or indifference have taught to regard the passing current of events as gliding on in a smooth and unruffled channel, varied only by the leaves which the chance winds may blow into the stream, it will offer food for grave contemplation. However they may smile at the thought of Divine interposition, they will recognize in this story another proof of the wisdom of the sage of old, who said, that when the Gods had determined to destroy a man, they began by depriving him of his senses, that is, by making him act as if he had lost them. To the inexperienced in my profession it will teach a lesson of prudence, more forcible than ten thousand arguments could make it; they will learn that of which they stand deeply in need, and which scarce anything but dear-bought experience can enforce — to rest satisfied with success, without examining too nicely how it has been obtained, and never to hazard a defeat by pushing a victory too far. "*Leave well alone*" is a maxim which a wise man in every situation of life will do well to observe; but if a barrister hopes to rise to eminence and distinction, let him have it deeply engraven on the tablet of his memory.

In the year 17—, John Smith was indicted for the willful murder of Henry Thomson. The case was one of a most extraordinary nature, and the interest excited by it was almost unparalleled.— The accused was a gentleman of considerable property, residing upon his own estate, in an unfrequented part of ——shire. A person, supposed to be an entire stranger to him, had, late in a summer's day, requested and obtained shelter and hospitality for the night. He had, it was supposed, after taking some slight refreshments, retired to bed in perfect health requesting to be awakened at an early hour the following morning. When the servant appointed to call him entered his room for that purpose, he was found in his bed perfectly dead; and, from the appearance of the body, it was obvious that he had been so for many hours. There was not the slightest mark of violence on his person, and the countenance retained the same expression which it had borne during his life. Great consternation was, of course, excited by this discovery, and inquiries were immediately made, first, as to who the stranger was — and, secondly, as to how he met with his death. Both were unsuccessful. As to the former, no information could be obtained — no clue discovered to lead to the knowledge either of his name, his person,

or his occupation. He had arrived on horseback, and was seen passing through a neighboring village about an hour before he reached the house where his existence was so mysteriously terminated, but could be traced no farther. Beyond this, all was conjecture.

With respect to the death, as little could be learned as of the dead man; it was, it is true, sudden—awfully sudden; but there was no reason, that alone excepted, to suppose that it was caused by the hand of man, rather than by the hand of God. A coroner's jury was of course, summoned; and after an investigation, in which little more could be proved than that which I have here stated, a verdict was returned to the effect that the deceased *died by the visitation of God.* Days and weeks passed on, and little further was known. In the meantime rumor had not been idle; suspicions, vague, indeed, and undefined, but of a dark and fearful character were at first whispered, and afterwards boldly expressed. The precise object of these suspicions was not clearly indicated; some implicated one person, some another; but they all pointed to Smith, the master of the house, as concerned in the death of the stranger. As usual in such cases, circumstances totally unconnected with the transaction in question, matters many years antecedent, and relating to other persons, as well as other times, were used as auxiliary to the present charge. The character of Smith, in early life, had been exposed to much observation. While his father was yet alive, he had left his native country, involved in debt, known to have been guilty of great irregularities, and suspected of being not over-scrupulous as to the mode of obtaining those supplies of money of which he was continually in want, and which he seemed somewhat inexplicably to procure.

Ten years and more had elapsed since his return; and the events of his youth had been forgotten by many, and to many were entirely unknown; but, on this occasion, they were revived, and, probably, with considerable additions.

Two months after the death of the stranger, a gentleman arrived at the place, impressed with the belief that he was his brother, and seeking for information either to confirm or refute his suspicions. The horse and the clothes of the unfortunate man still remained, and were instantly recognized; one other test there was, though it was uncertain whether that would lead to any positive conclusion: the examination of the body. The test was tried; and although decomposition had gone on rapidly, yet enough remained to identify the body; which the brother did, most satisfactorily. As soon as it was known that there was a person authorized by relationship to the deceased to inquire into the cause of his death, and, if it should appear to have been otherwise than natural, to take steps for bringing to justice those who had been concerned in it, the reports which had been previously floating idly about, and circulated without having any distinct object, were collected into one channel, and poured into his ear. What those reports were, and what they amounted to, it is not necessary here to mention; suffice it to say, that the brother laid before the magistrates of the district such evidence as induced them to commit Mr. Smith to gaol, to take his trial for the willful murder of Henry Thomson. As it was deemed essential to the attainment of justice to keep secret the examination of the witnesses who were produced before the magistrates, all the information of which the public were in possession before the trial took place was that which I have here narrated.

Lord Mansfield's charge to the grand jury upon the subject of this murder had excited a good deal of attention. He had recommended them, if they entertained reasonable doubts of the sufficiency of the evidence to ensure a conviction, to throw out

the Bill; explaining to them most justly and clearly that, in the event of their doing so, if any additional evidence should, at a future time, be discovered, the prisoner could again be apprehended and tried for the offense; whereas, if they found a true Bill, and, from deficiency of proof, he was now acquitted on his trial, he could never again be molested, even though the testimony, against him should be morally as clear as light. The grand jury after, as was supposed, very considerable discussion among themselves, and, as was rumored, by a majority of only one, returned a true Bill.

Never shall I forget the appearance of anxiety exhibited upon every countenance on the entrance of the judge into court. In an instant the most profound silence prevailed; and interest, intense and impassioned, though subdued, seemed to wait upon every word and every look, as if divided between expectation and doubt, whether something might not even yet interfere to prevent the extraordinary trial from taking place. Nothing, however, occurred; and the stillness was broken by the mellow and silvery voice of Lord Mansfield—"Let John Smith be placed at the bar." The order was obeyed; and, as the prisoner entered the dock, he met on every side the eager and anxious eyes of a countless multitude bent in piercing scrutiny upon his face,—and well did he endure that scrutiny. A momentary suffusion covered his cheeks, but it was only momentary, and less than might have been expected from an indifferent person, who found himself on a sudden "the observed of all observers." He bowed respectfully to the court; and then folding his arms, seemed to wait until he should be called upon to commence his part in that drama in which he was to perform so conspicuous a character. I find it difficult to describe the effect produced on my mind by his personal appearance; yet his features were most remarkable, and are indelibly impressed on my memory. He was apparently between forty and fifty years of age; his hair, grown gray, either from toil or care or age, indicated an approach to the latter period; while the strength and uprightness of his figure, the haughty coldness of his look; and an eye that spoke of fire, and pride, and passion, ill concealed, would have led conjecture to fix on the former. His countenance at the first glance, appeared to be that which we are accustomed to associate with deeds of high and noble daring; but a second and more attentive examination of the face and brow was less satisfactory. There was, indeed, strongly marked, the intellect to conceive and devise schemes of high import; but I fancy that I could trace, in addition to it, caution to conceal the deep design, a power to penetrate the motives of others, and to personate a character at variance with his own, and a cunning that indicated constant watchfulness and circumspection. Firmness there was to persevere to the last; but that was equivocal; and I could not help persuading myself that it was not of that character which would prompt to deeds of virtuous enterprise, or to "seek the bubble reputation at the cannon's mouth"; but that it was rather allied to that quality which would "let no compunctious visitings of Nature shake his fell purpose," whatever it might be. The result of this investigation into his character, such as it was, was obviously unfavorable; and yet there were moments when I thought I had meted out to him a hard measure of justice, and when I was tempted to accuse myself of prejudice in the opinion I had formed of him; and particularly when he was asked by the clerk of the arraigns the usual question, "Are you guilty, or not guilty?" as he drew his form up to his fullest height, and the fetters clanked upon his legs, as he answered with unfaltering tongue and unblenching cheek, "Not guilty," my heart smote me for having involuntarily interpreted

against him every sign that was doubtful.

The counsel for the prosecution opened his case to the jury in a manner that indicated very little expectation of a conviction. He began by imploring them to divest their minds of all that they had heard before they came into the box; he entreated them to attend to the evidence, and judge from that alone. He stated that, in the course of his experience, which was very great, he had never met with a case involved in deeper mystery than that upon which he was then addressing them. The prisoner at the bar was a man moving in a respectable station in society, and maintaining a fair character. He was, to all appearance, in the possession of considerable property, and was above the ordinary temptations to commit so foul a crime. With respect to the property of the deceased, it was strongly suspected that he had either been robbed of or in some inexplicable manner made away with, gold and jewels to a very large amount; yet, in candor, he was bound to admit that no portion of it, however trifling, could be traced to the prisoner. As to any motive of malice or revenge, none could by possibility be assigned; for the prisoner and the deceased were, as far as could be ascertained, total strangers to each other.—Still there were most extraordinary circumstances connected with his death, pregnant with suspicion at least, and imperiously demanding explanation; and it was justice, no less to the accused than to the public, that the case should undergo judicial investigation. The deceased Henry Thomson was a jeweller, residing in London, wealthy, and in considerable business; and, as was the custom of his time, in the habit of personally conducting his principal transactions with the foreign merchants with whom he traded. He had travelled much in the course of his business in Germany and Holland; and it was to meet at Hull a trader of the latter nation, of whom he was to make a large purchase, that he had left London a month before his death.—It would be proved by the landlord of the inn where he had resided, that he and his correspondent had been there; and a wealthy jeweller of the town, well acquainted with both parties, had seen Mr. Thomson after the departure of the Dutchman; and could speak positively to there being then, in his possession jewels of large value, and gold, and certain bills of exchange, the parties to which he could describe. This was on the morning of Thomson's departure from Hull, on his return to London, and was on the day but one preceding that on which he arrived at the house of the prisoner. What had become of him in the interval could not be ascertained; nor was the prisoner's house situated in the road which he ought to have taken. No reliance, however, could be placed on that circumstance; for it was not at all uncommon for persons who travelled with property about them, to leave the direct road even for a considerable distance, in order to secure themselves as effectually as possible from the robbers by whom the remote parts of the country were greatly infested. He had not been seen from the time of his leaving Hull till he reached the village next adjoining Smith's house, and through which he passed without even a momentary halt. He was seen to alight at Smith's gate, and the next morning was discovered dead in his bed. He now came to the most extraordinary part of the case. It would be proved, beyond the possibility of a doubt that the deceased died by *poison*—poison of a most subtle nature, most active in its operation, and possessing the wonderful and dreadful quality of leaving no external mark or token by which its presence could be detected. The ingredients of which it was composed were of so sedative a nature, that, instead of the body on which it had been used exhibiting any contortions, or marks of suffering, it left upon the features nothing but the calm and placid quiet

of repose. Its effects, and indeed its very existence were but recently known in this country, though it had for some time been used in other nations of Europe; and it was supposed to be a discovery of the German chemists, and to be produced by a powerful distillation of the seed of the wild cherry tree, so abundant in the Black Forest.

But the fact being ascertained, that the cause of the death was poison, left open the much more momentous question, by whom was it administered? It could hardly be supposed to be by the deceased himself! There was nothing to induce such a suspicion; and there was this important circumstance, which of itself almost negatived its possibility, that no phial, or vessel of any kind, had been discovered, in which the poison could have been contained. Was it then the prisoner who administered it? Before he asked them to come to that conclusion, it would be necessary to state more distinctly what his evidence was. The prisoner's family consisted only of himself, a housekeeper, and one man-servant. The man-servant slept in an out-house adjoining the stable, and did so on the night of Thomson's death. The prisoner slept at one end of the house and the housekeeper at the other, and the deceased had been put in a room adjoining the housekeeper's. It would be proved, by a person who happened to be passing by the house on the night in question, about three hours after midnight, that he had been induced to remain and watch, from having his attention excited by the circumstance, then very unusual, of a light moving about the house at that late hour. That person would state, most positively, that he could distinctly see a figure, holding a light, go from the room in which the prisoner slept, to the housekeeper's room, and the light disappeared for a minute. Whether the two persons went into Thomson's room he could not see, as the window of that room looked another way; but in about a minute they returned, passing quite along the house to Smith's room again; and in about five minutes the light was extinguished, and he saw it no more.

Such was the evidence upon which the magistrates had committed Smith; and singularly enough, since his committal, the housekeeper had been missing, nor could any trace of her be discovered. Within the last week, the witness who saw the light had been more particularly examined; and, in order to refresh his memory, he had been placed, at dark, in the very spot where he had stood on that night, and another person was placed with him. The whole scene, as he had described it, was acted over again; but it was utterly impossible, from the cause above mentioned, to ascertain, when the light disappeared, whether the parties had gone into Thomson's room. As if, however, to throw still deeper mystery over this extraordinary transaction, the witness persisted in adding a new feature to his former statement; that, after the persons had returned with the light into Smith's room, and before it was extinguished, he had twice perceived some dark object to intervene between the light and the window, almost as large as the surface of the window itself, and which he described by saying it appeared as if a door had been placed before the light. Now, in Smith's room, there was nothing which could account for this appearance; his bed was in a different part; and there was neither cupboard nor press in the room, which, but for the bed, was entirely empty, the room in which he dressed being at a distance beyond it. He would state only one fact more (said the learned counsel) and he had done his duty: it would then be for the jury to do theirs. Within a few days there had been found, in the prisoner's house, the stopper of a small bottle of a very singular description; it was apparently not of English manufacture, and was described, by the medical men, as

being of a description used by chemists to preserve those liquids which are most likely to lose their virtue by exposure to the air. To whom it belonged, or to what use it had been applied, there was no evidence to show.

Such was the address of the counsel for the prosecution; and during its delivery I had earnestly watched the countenance of the prisoner, who had listened to it with deep attention. Twice only did I perceive that it produced in him the slightest emotion. When the disappearance of his housekeeper was mentioned, a smile, as of scorn, passed over his lip; and the notice of the discovery of the stopper obviously excited an interest, and, I thought, an apprehension; but it quickly subsided. I need not detail the evidence that was given for the prosecution; it amounted, in substance, to that which the counsel stated, nor was it varied in any particular. The stopper was produced, and proved to have been found in the house; but no attempt was made to trace it to the prisoner's possession, or even to his knowledge. When the case was closed, the judge, addressing the counsel for the prosecution, said he thought there was hardly sufficient evidence to call upon the prisoner for his defense; and if the jury were of the same opinion, they would at once stop the case. Upon this observation from the judge, the jury turned round for a moment, and then intimated their acquiescence in his lordship's view of the evidence. The counsel folded up their briefs, and a verdict of acquittal was about to be taken, when the prisoner addressed the court. He stated, that having been accused of so foul a crime as murder, and having had his character assailed by suspicions of the most afflicting nature, that character could never be cleared by his acquittal, upon the ground that the evidence against him was inconclusive, without giving him an opportunity of stating his own case, and calling a witness to counteract the impression that had been raised against him, by explaining those circumstances which at present appeared doubtful. He urged the learned judge, to permit him to state his case to the jury, and to call his housekeeper, with so much earnestness, and was seconded so strongly by his counsel, that Lord Mansfield, though very much against his inclination, and contrary to his usual habit, gave way, and yielded to the fatal request.

The prisoner then addressed the jury, and entreated their patience for a short time. He repeated to them that he never could feel satisfied to be acquitted merely because the evidence was not conclusive, and pledged himself, in a very short time, by the few observations he should make, and the witness whom he should call, to obtain their verdict upon much higher grounds, upon the impossibility of his being guilty of the dreadful crime. With respect to the insinuations which had been thrown out against him, he thought one observation would dispose of them. Assuming it to be true that the deceased died from the effect of poison, of which he called God to witness that he had never even heard either the name or the existence until this day, was not every probability in favor of his innocence? He was a perfect stranger, not known to have in his possession a single article of value, who might either have lost, or been robbed of, that property which he was said to have had at Hull. What so probable as that he should, in a moment of despair at his loss, have destroyed himself? The fatal drug was stated to have been familiar in those countries in which Mr. Thomson had travelled, while to himself it was utterly unknown. Above all, he implored the jury to remember that, although the eye of malice had watched every proceeding of his since the fatal accident, and though the most minute search had been made into every part of his premises, no vestige had been discovered of the most trifling article belonging to the deceased,

nor had even a rumor been circulated that poison of any kind had been ever in his possession. Of the stopper which had been found, he disowned all knowledge; he declared, most solemnly, that he had never seen it before it was produced in court; and he asked, could the fact of its being found in his house, only a few days ago, when hundreds of people had been there, produce upon an impartial mind even a momentary prejudice against him? One *fact*, and one only, had been proved, to which it was possible for him to give an answer, the fact of his having gone to the bedroom of his housekeeper on the night in question. He had been subject, for many years of his life, to sudden fits of illness; he had been seized with one on that occasion, and had gone to her to procure her assistance in lighting a fire. She had returned with him to his room for that purpose, he having waited for a minute in the passage while she put on her clothes, which would account for the momentary disappearance of the light; and after she had remained in his room for a few minutes, finding himself better, he had dismissed her, and retired again to bed, from which he had not risen when he was informed of the death of his guest. It had been said, that after his committal to prison, his housekeeper had disappeared. He avowed that, finding his enemies determined, if possible, to accomplish his ruin, he had thought it probable they might tamper with his servant; he had, therefore, kept her out of their way; but for what purpose? Not to prevent her testimony being given, for she was now under the care of his solicitor, and would instantly appear for the purpose of confirming, as far as she was concerned, the statement which he had just made.

Such was the prisoner's address, which produced a very powerful effect. It was delivered in a firm and impressive manner, and its simplicity and artlessness gave to it an appearance of truth. The housekeeper was then put into the box, and examined by the counsel for the prisoner. According to the custom, at that time almost universal, of excluding witnesses from court until their testimony was required, she had been kept at a house near at hand, and had not heard a single word of the trial. There was nothing remarkable in her manner or appearance; she might be about thirty-five or a little more; with regular though not agreeable features, and an air entirely free from embarrassment. She repeated, almost in the prisoner's own words, the story that he had told of his having called her up, and her having accompanied him to his room, adding that, after leaving him, she had retired to her own room, and been awakened by the man-servant in the morning, with an account of the traveler's death. She had now to undergo a cross-examination; and I may as well state here, that which, though not known to me till afterwards, will assist the reader in understanding the following scene:—The counsel for the prosecution had, in his own mind, attached considerable importance to the circumstance mentioned by the witness who saw the light, that while the prisoner and the housekeeper were in the room of the former, something like a door had intervened between the candle and the window, which was totally irreconcilable with the appearance of the room when examined; and he had half-persuaded himself, that there most be a secret closet which had escaped the search of the officers of justice, the opening of which would account for the appearance alluded to, and the existence of which might discover the property which had so mysteriously disappeared. His object, therefore, was to obtain from the housekeeper (the only person except the prisoner who could give any clue to this) such information as he could get, without alarming her by any direct inquiry on the subject, which, as she could not help seeing its importance, could have led her at once to a positive denial. He knew, moreover, that as

she had not been in court, she could not know how much or how little the inquiry had already brought to light; and by himself treating the matter as immaterial, he might lead her to consider it so also, and by that means draw forth all that she knew. After some few unimportant questions, he asked her, in a tone and manner calculated rather to awaken confidence than to excite distrust:—

"During the time you were in Mr. Smith's room, you stated that the candle stood on the table, in the center of the room?" —"Yes."

"Was the closet, or cupboard, or whatever you call it, opened *once* or *twice* while it stood there?—A pause; no answer.

"I will call it to your recollection; after Mr. Smith had taken the medicine out of the closet, did he shut the door, or did it remain open?"—"He shut it."

"Then it was opened again, for the purpose of replacing the bottle, was it?"—"It was."

"Do you recollect how long it was open the last time?"—"Not above a minute."

"The door, when open, would be exactly between the light and the window, would it not?"—"It would."

"I forget whether you said the closet was on the right or left hand side of the window."—"The left."

"Would the door of the closet make any noise in opening?"—"None."

"Can you speak positively to that fact? Have you ever opened it yourself, or only seen Mr. Smith open it?"—"I never opened it myself."

"Did you never keep the key?"—"Never."

"Who did?"—"Mr. Smith always."

At this moment the witness chanced to turn her eyes towards the spot where the prisoner stood, and the effect was almost electrical. A cold damp sweat stood upon his brow, and his face had lost all its color; he appeared a living image of death. She no sooner saw him than she shrieked and fainted. The consequences of her answers flashed across her mind. She had been so thoroughly deceived by the manner of the advocate, and by the little importance he had seemed to attach to her statements, that she had been led on by one question to another, till she had told him all he wanted to know. A medical man was immediately directed to attend her; and during the interval occasioned by this interruption to the proceedings, the solicitor for the prosecution left the court. In a short time the gentleman who had attended the witness returned into court, and stated that it was impossible that she could at present resume her place in the box; and suggested that it would be much better to allow her to wait for an hour or two. It was now about twelve in the day; and Lord Mansfield, having directed that the jury should be accommodated with a room where they could be kept by themselves, adjourned the court for two hours. The prisoner was taken back to gaol, and the witness to an apartment in the gaoler's house; and strict orders were given that she should be allowed to communicate with no one, except in the presence and hearing of the physician. It was between four and five o'clock when the judge resumed his seat upon the bench, the prisoner his station at the bar, and the housekeeper hers in the witness-box; the court in the interval had remained crowded with the spectators, scarce one of whom had left his place, lest during his absence it should be seized by some one else.

The cross-examining counsel then addressed the witness—"I have very few more questions to ask of you; but beware that you answer them truly, for your own life hangs upon a thread.

"Do you know this stopper?"—"I do."

"To whom does it belong?"—"To Mr. Smith."

"When did you see it last?"—"On the night of Mr. Thomson's death."

At this moment the solicitor for the prosecution entered the court, bringing with him, upon a tray, a watch, two money-bags, a jewel-case, a pocketbook, and a bottle of the same manufacture as the stopper, and having a cork in it; some other articles there were in it, not material to my story. The tray was placed on the table in sight of the prisoner and the witness; and from that moment not a doubt remained in the mind of any man of the guilt of the prisoner. A few words will bring my tale to its close. The house where the murder had been committed was between nine and ten miles distant. The solicitor, as soon as the cross-examination of the housekeeper had discovered the existence of the closet, and its situation, had set off on horseback, with two sheriff's officers, and, after pulling down part of the wall of the house, had detected this important place of concealment. Their search was well rewarded: the whole of the property belonging to Mr. Thomson was found there, amounting, in value, to some thousand pounds; and to leave no room for doubt, a bottle was discovered, which the medical men instantly pronounced to contain the very identical poison which had caused the death of the unfortunate Thomson. The result was too obvious to need explanation.

The case presents the, perhaps, unparalleled instance of a man accused of murder, the evidence against whom was so slight as to induce the judge and jury to concur in a verdict of acquittal; but who, persisting in calling a witness to prove his innocence, was, upon the testimony of that very witness, *convicted and executed.*

THE MOST NOTABLE TRIAL IN MODERN HISTORY.

By John De Morgan.

THE most notable trial in modern history is undoubtedly that of Charles the First of England. Not only was it important in its bearing on English history but it emphasized, for all time and all nations, the important axiom that "the people are the origin of all just power."

Kings had been assassinated by indignant subjects; monarchs had been compelled to abdicate and go into exile; revolutions had changed dynasties, and dethroned kings who had reigned by virtue of descent, but up to the time of Charles no people had dared to declare that a king could be made amenable to law and be charged, before a lawfully constituted court, with crimes against the people over whom he ruled.

In the early stages of the revolution there was no thought of deposing the king. Even the extreme Republicans only asked that the monarch should rule through the Houses of Parliament and be subject to the laws enacted by the representatives of the people. Had Charles given up his pretence of divine right and consented to be a Constitutional monarch, Cromwell, Ireton, Fairfax, Bradshaw and many other Republicans would have emigrated to the plantations of Massachusetts, and Charles would have died king of England.

But when Charles rejected the propositions made him and imprudently said to the commissioners, "You cannot do without me; you cannot settle the nation without my assistance," parliament agreed with the army that a crisis had arrived which would have to be settled in an extraordinary manner. Charles was the barrier across the highway to liberty, he was the foe of progress, the enemy of political and religious freedom, and must be removed. Civil war was ruining the country, the forces of the king on the one hand, and of the parliament on the other, met and fought with a courage almost unprecedented. The Puritans rallied round the standard of the Huntingdon brewer, Oliver Cromwell, and, with the cry of, "For God and the People," rushed into battle with the ungodly soldiers of the king, whose watchwords were, "For God and the King."

Charles was a prisoner in the power of the army, but even then was defiant and urged his soldiers to fight for his rights and to show no quarter to the Cromwellians.

Charles, as a prisoner of war, committed acts which would have justified the most extreme measures, but Cromwell resisted the temptation and refused to allow his prisoner to be tried by court martial.

The House of Commons passed a resolution, "That by the fundamental law of the land it is treason for the King of England for the time being to levy war against the parliament and kingdom," but although the resolution was in accordance with the unwritten constitution of the kingdom, the Lords rejected the resolution without a dissentient voice, and adjourned for ten days to prevent the Commons from taking further action.

The Lower House, however, was not to be restrained and a second resolution was passed which was revolutionary in its character. It declared that "the people are the origin of all just power," and that the "House of Commons, being chosen by and representing the people, are the supreme power in the nation; that whatsoever is enacted or declared law by the Commons in Parliament hath the force of

law, and the people are concluded thereby, though the consent of the King and the Peers be not had thereto." On the same day the commons passed an ordinance for creating a High Court of Justice for trying the king and proceeding to sentence against him.

So that every shade of opinion should be represented on the commission appointed to try the king, the commons decreed that one hundred and thirty-five persons should be called, and that any twenty of them should have power to act.

This extraordinary tribunal was composed of three hereditary peers — Lords Grey, Lisle and Mounson; four aldermen of the city of London; twenty-two baronets and knights; three generals and thirty-four colonels; the twelve judges of the High Court (who, however, declined to serve, on the ground that a king could not be tried by his subjects); three serjeants-at-law, and representative members of various municipalities and the House of Commons, John Bradshaw, serjeant-at-law, contrary to his earnest desire, and his objection to the title given him, was named lord president of the court, Mr. Aske, Dr. Dorislaus, Mr. Steele (attorney), and Mr. Cook (solicitor), were appointed counsel for the kingdom of England, to prepare and prosecute the charge against the king.

John Bradshaw was well fitted for the position of president of such a tribunal. He was bold and courageous, deeply imbued with religious principles and moreover held firmly the opinion that kings and peasants alike should be amenable to the law. He had been appointed by the commons, chief justice of Chester and was one of the most brilliant of the lawyers who espoused the cause of the people. Milton says of Bradshaw, "He brought to the study of the law an enlightened capacity, a lofty spirit, and spotless manners, obnoxious to none; so that he filled that high and unexampled office, rendered the more dangerous by the threats and daggers of private assassins with a firmness, a gravity, a dignity and presence of mind, as if he had been designed and created by the Deity expressly for this work, which God in his wonderful providence had appointed to be done in this nation, and by so much eclipsed the glory of all former tyrannicides, by how much it is more humane, more just, and more majestic, to try a tyrant than to slay him untried."

On the 9th of January, 1849, pursuant to the order of the commissioners, proclamation was solemnly made by Edward Dendy, serjeant-at-arms, in Westminster Hall, "he riding into the middle of the hall, with the mace on his shoulder, when the Court of Chancery was sitting at a general seal," and also at the Old Exchange and Cheapside, announcing the trial. Drums were beating and trumpets sounding, the streets were thronged with spectators, but no deeds of violence or lawlessness occurred.

The trial was an extraordinary one, and special precautions had to be taken to protect the court in its work, as well as to prevent any riotous attempt to rescue the royal prisoner.

The site chosen was the united courts of King's Bench and Chancery, at the south end of Westminster Hall, the partition which divided the courts being taken down. Ample space was provided for a large concourse of people to be present at the trial, for the commissioners desired that everything should be as public as possible.

The court assembled on the 20th of January; the royal sword of state was borne before Bradshaw, who was also preceded by a mace and attended by the ushers and officers of the court. Bradshaw, in a scarlet robe and covered by his broad-brimmed hat, placed himself in a crimson velvet chair in the center of the court, with a desk and velvet cushion before him; Say and Lisle, serjeants-at-law, on either side of

KING CHARLES THE FIRST

AS HE SAT BEFORE THE HIGH COURT OF JUSTICE

him, and the clerks of the court sitting below him at a table covered with a rich Turkey carpet, on which rested the sword and mace. The rest of the courts, with their hats on, "and dressed," says Rushworth, "in their best habits," took their seats on the side benches. When the king entered he was taken to a crimson velvet chair, facing Bradshaw. He showed neither the least emotion nor the slightest respect to the tribunal which was to declare his innocence or guilt.

The lord president announced the court open, and told the king that the commission had been appointed by the commons of England to inquire into the acts of the king and fix the responsibility for the shedding of innocent blood.

When Cook, the solicitor for the commonwealth, rose to read the indictment, Charles laid his staff on his shoulder and ordered him to refrain from such a crime against his king. The court commanded Cook to proceed, and told the king that if he had anything to say after the charge had been read, the court would hear him.

The charge, the first ever framed against a king, was an indictment for the offense of treason in "levying war" against the sovereign people. The prosecution was not in the name of the king, but in that of "the people of England." It was admitted that Charles was king of England, trusted with "a limited right to govern according to the laws, and by his trust and oath being obliged to use his power for the good of his people and for the preservation of their liberties; yet, out of wicked design and to uphold in himself unlimited and tyrannical power, and to overthrow the rights and liberties of his people, and to take away the foundation thereof, for the accomplishment of his designs, treacherously and wickedly levied war against the parliament and the people represented therein, particularly . . ." here followed a list of battles fought between the royalists and parliamentarians, "by which unnatural war much innocent blood of the free people of this nation had been spilt, families undone, the public treasury wasted and exhausted, trade decayed, and parts of the land spoiled even to desolation. All of which wicked designs and wars were carried on for the advancement of a personal interest of will and power, and a pretended prerogative to himself and his family, against the liberty and peace of the nation, by and for whom he was entrusted as aforesaid."

The king smiled several times during the reading of the charge, but when the prosecutor asked that the king should be adjudged guilty of murder and treason, he became excited and raised his cane angrily. A silver crown which formed the head of the cane dropped off, and Charles sank down in his chair, muttering, "It is all over! All is lost!" He looked on the accident as an evil omen.

Being asked what he had to say in reference to the charge he had heard read, Charles denied the authority of the court, and asserted that only God could call him to an accounting, for he was king "by God's will." Waving his hand above his head, he shouted, "Let me see a legal authority warranted by the word of God, the Scriptures, and I will answer."

The lord president remained cool, and said that if the king refused to answer the charge the court would adjourn and consider the course of procedure. Charles again called on his judges to produce authority which should "satisfy God and then the country." Upon being told that the commons had created the tribunal and that the people were the sovereign rulers of the country and that the king held power from them, he angrily denounced such principles as blasphemous, and maintained that no court could have any jurisdiction, because a man could only be tried by his peers and the king had no peer.

In his summing up, the lord president thus answered this assertion of the king:

OLIVER CROMWELL.

"For you to set yourself and those who adhere unto you against the highest court of justice, that is not law, sir, as the law is your superior; so, truly, sir, there is something that is superior to the law, and that is the parent or author of the law, the people of England. . . . Sir, it is true that some of your side have said, 'Rex non habet parem in regno.' This court will say the same: while king, that you have not your peer in some sense, for you are *major singulis;* but they will aver again that you are *minor universis.* And the same author tells you that 'non debet esse major eo in regno suo in exhibitione juris, minimus autem esse debet in judicio suscipiendo.' This we know to be law, 'Rex habet superiorem, Deum et legem, etiam et curiam'; so says the same author. And truly, sir, he makes bold to go a little further: 'Debent ei ponere frœnum,' they ought to bridle him. 'Justitiæ fruendi causa reges constituti sunt.' This we learn: the end of having kings or any other governors, it is for the enjoying of justice; that is the end. Now, sir, if so be the king will go contrary to that end of his government, he must understand that he is but an officer in trust, and he ought to discharge that trust, and they are to take order for the punishment of such an offending governor."

The king continued to delay the proceedings by refusing to answer the charge or to plead. He was secretly instructed by that able jurist, Sir Mathew Hale, then a serjeant-at-law. In every way Charles tried to goad the president to anger but only once did Bradshaw show any strong feeling and then he exclaimed warmly: "Men's intentions were best known by their actions, and that Charles Stuart's meaning was written in bloody characters throughout the whole kingdom."

Witnesses from all parts of the kingdom testified against the king, proving that he sold judges' places for £5,000 or £10,000, and then ordered judges to deliver opinions in his favor, that he granted judges' patents during pleasure instead of during good behavior; that he had used the army and militia for his own purposes and against the will of parliament; that he had dissolved parliaments illegally; pardoned murderers "whom the Lord says shall not be pardoned"; and that he had made war upon innocent persons so that he might injure the cause of the parliament.

After a patient trial the court adjourned and after careful consideration of the evidence found the prisoner guilty as charged.

The clerk read the sentence. It recited the act of the commons establishing the court, and the charge exhibited before it against the king; his Majesty's refusal to answer, or to admit the court's jurisdiction; that the court had therefore given judgment against him for his contumacy, but, "for further and clearer satisfaction, had examined witnesses on oath touching the charge"; and it alleged that, "on mature deliberation of the premises, and consideration had of the notoriety of the matters of fact charged on the prisoner, the court was in conscience satisfied that the said Charles Stuart was guilty of levying war against the parliament and people, and by the general course of his government, counsels and practices before and since the parliament began, the court was fully satisfied that he was guilty of the wicked designs and endeavors in the charge set forth; and that he had been, and was, the occasioner, author, and continuer of the said unnatural, cruel, and bloody wars, and therein guilty of high treason, and of the murders, rapines, burnings, spoils, desolations, damages, and mischiefs to this nation acted and committed in the said war, etc." And the sentence concluded: "For all of which treasons and crimes this court doth adjudge that he, the said Charles Stuart, as a tyrant, traitor, murderer and public enemy to the good people of this nation, shall be put to death, by severing his head from his body."

JOHN BRADSHAW,

President of the high Court of Justice

The Lord President declared that the sentence was the resolution of the whole court, to which all the commissioners expressed their assent by standing up.

The sentence was pronounced on Saturday the 27th of January, and on the following Monday the commissioners drew up and engrossed the warrant for his execution. The warrant, which is unique in the annals of jurisprudence was as follows:—

"At the High Court of Justice for the trying and judging of Charles Stuart, King of England, January 29, 1649.

"Whereas, Charles Stuart, King of England, is, and standeth convicted, attainted, and condemned of high treason and other high crimes; and sentence upon Saturday last was pronounced against him, by this Court, to be put to death, by the severing of his head from his body, of which sentence execution yet remaineth to be done: these are, therefore to will and require you to see the said sentence executed, in the open street before Whitehall, upon the morrow, being the thirtieth day of this instant month of January, between the hours of ten in the morning and five in the afternoon of the same day, with full effect: and for so doing, this shall be your sufficient warrant. And these are to require all officers, soldiers, and others, the good people of this nation of England, to be assisting you in this service.

"Given under our hands and seals."

Then followed the signatures of fifty-nine commissioners.

The execution was carried out and the people had proved that there was a power stronger than the "divine right of kings." One of the judges, Thomas Scott, wrote in justification of the sentence and execution: "So long as the king was above ground in view, there were daily revoltings among the army, and risings in all places; creating us all mischief, more than a thousand kings do good. It was impossible to continue him alive. I wish all had heard the grounds of our resolutions. We did not assassinate, or do it in a corner. We did it in the face of God and all men."

Of the counsel for the commonwealth Dr. Dorislaus was sent as minister to Holland where he was cruelly murdered by some Scotch adherents of the Duke of Montrose. Cook was appointed Chief Justice in Ireland, but was executed as a regicide in 1660. Bradshaw died a natural death and was buried in great pomp in Westminster Abbey, but at the restoration his body was exhumed, with those of Cromwell and Ireton, and exposed on a gibbet at Tyburn, and then thrown into a pit.

So thorough a loyalist as the late Lord Beaconsfield defended the execution of Charles, and in his "Revolutionary Epic," says:—

"Glory to the soil
That struck the oppressor down
Not as a steed, jaded, flings off its burden,
But with aim noble as human rights."

And though official England will not recognize the Protectorate, or Commonwealth of Cromwell, declaring that Charles II. commenced to reign on the day of his father's execution, parliament has so far endorsed the action of the parliamentarians by erecting a statue, in the Hall of the Houses of Parliament, to Oliver Cromwell.

KEY TO ENGRAVING OF "TRIAL OF THE KING"

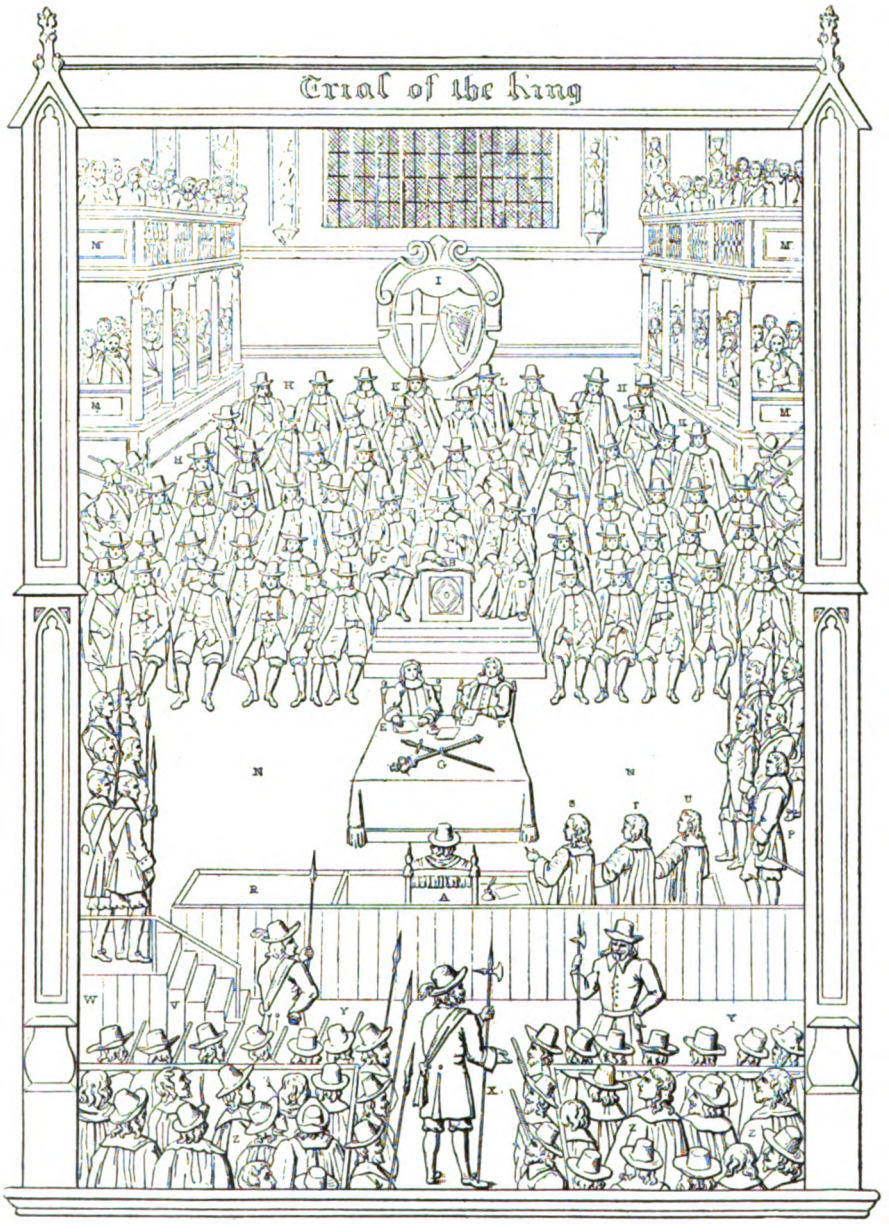
PRINTED ON PAGE 315.

A. The king sitting in a large elbow-chair, covered with crimson velvet, with gold fringe and nails, and a velvet cushion, in a distinct apartment, directly over against the Lord President between the space allotted for the Counsel of the Commonwealth standing on the right hand of the king, and the like vacant space leading from the head of the stairs to the king's apartment aforesaid.

B. The Lord President Bradshaw sitting in an elbow chair, having a large desk fixed before him, covered with a velvet pall, and a large velvet cushion thereupon.

C. { John Lisle / **D.** { William Say } sitting on the { right / left } hand of the Lord President. These two being appointed to be his Lordship's assistants, and being with the President and all of the long robe, sate in their gowns; the rest of the Commissioners in their usual habits, as gentlemen and souldiers.

E. Andrew Broughton,
F. John Phelps. } the two clerks appointed to attend the court, being seated at the feet of the Lord President, under the covert of his desk.



FROM AN ENGRAVING PUBLISHED THE YEAR OF THE TRIAL, 1649.

G. The table placed before the said clerks, whereupon lay the Commonwealth's mace and sword of justice.

H. The scale of benches (which were covered with scarlet bays, and the foot-steps matted) reaching up from the floor of the Court within five or six feet of the very glazing of the southwest window of Westminster Hall, whereon sate the rest of the Commissioners.

I. The achievement of the Commonwealth of England in direct view of the king.

K. { Oliver Cromwell / **L.** { Henry Martin } sitting on the { right / left } side of the escutchen, or shield, as the supporters of the Commonwealth.

M. The galleries and scaffolds on either side of the court thronged with spectators.

N. The floor of the court, matted and kept clear and open (as here represented) by the guards on either side, no person being permitted to abide between the King, the Counsel and the Court, but the known Officers and Messengers appointed to attend the Court.

O. A passage (lined with souldiers on both sides), leading from the Court of Wards into the High Court of Justice, and through which the Commissioners coming from the Painted Chamber made their entry into said Court.

P. The place where the moving guard with partizans (who, together with the Serjeant-at-arms, and a person carrying the Sword of state or justice, always came along with the Commissioners from the Exchequer Chamber into the Court), stood.

Q. The place where the moving guards with partizans (which always attended the King, from Sir Robert Cotton's House up into the said Court, and back thither again), stood.

R. The passage leading from the stair head to the distinct apartment appointed for the king, as aforesaid.

S. The partition where the Counsel of the Commonwealth, viz.

T, U. Cooke, Dorislaus, and Aske, stood alone on the right hand of the King, as he was sitting.

V. The stairs by which the King ascended up into the Court out of Westminister Hall.

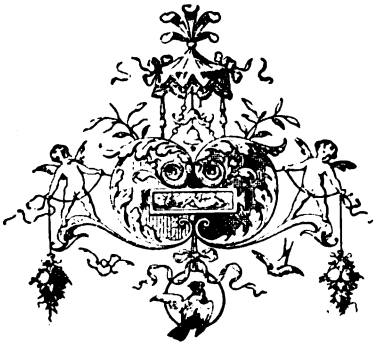
W. The passage leading into Westminister Hall, from Sir Robert Cotton's House, where his Majesty was kept under strong guards in readiness when the Court should from time to time order him to be brought up.

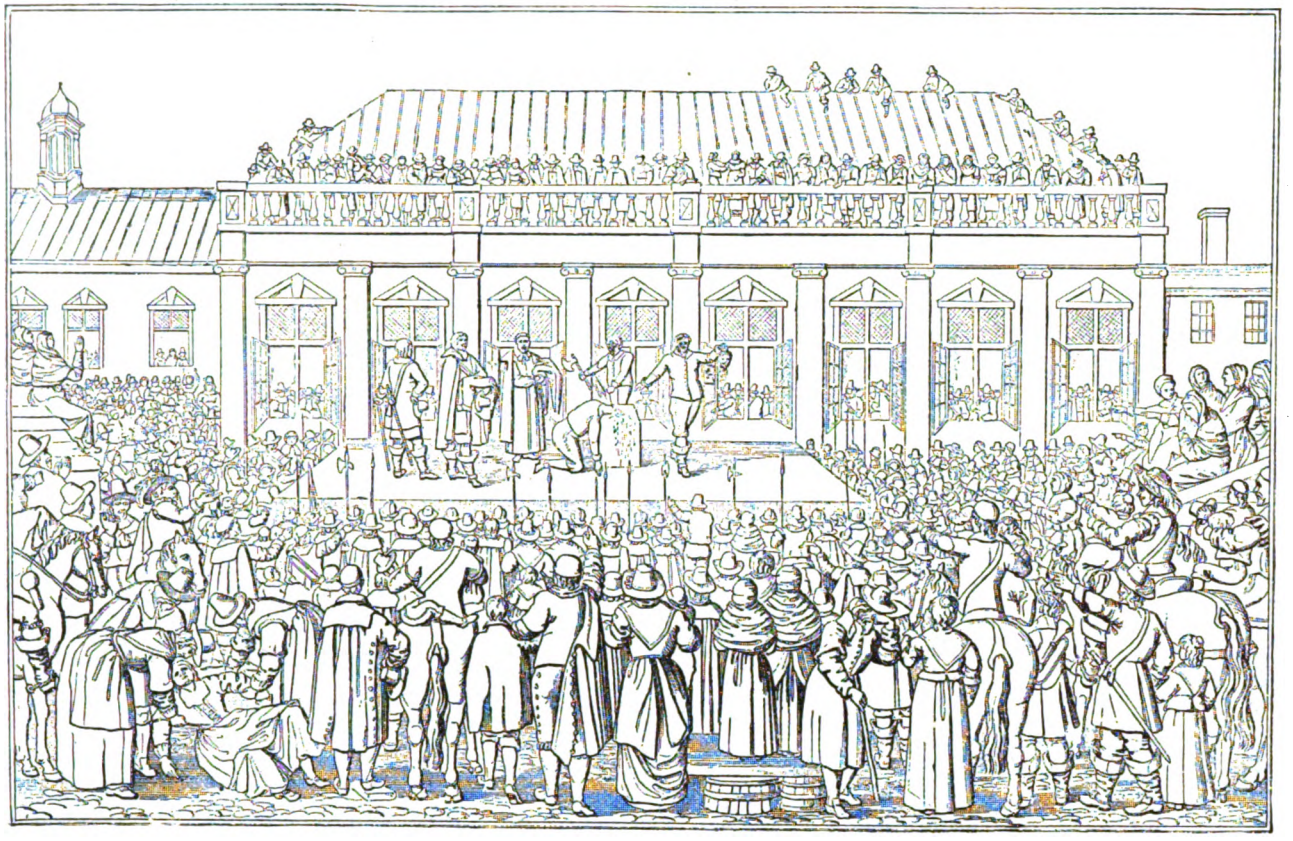
X. A large free passage leading from Westminster Hall Gate, straight through the said Hall, within twelve or fourteen feet of the bottom of this Court.

Y. Another such passage (going cross the upper end of the last mentioned passage) reaching and extending itself from one side of said Hall to the other.

Both these passages were strongly rayled to keep the multitude (who, when the Court was set, was freely permitted to fill the Hall, between the rayls and the wall) from breaking in upon the souldiers, who were planted all along within the rayls, to observe and awe the multitude and secure the Court.

Z. The thronging multitudes between the rayls and the Hall walls. The officers walking up and down in the free passages (between the souldiers standing within the rayls) ready to give the necessary orders and commands upon all occasions.





EXECUTION OF CHARLES I.

FROM AN OLD DUTCH ENGRAVING

PERSONAL RECOLLECTIONS OF ENGLISH LAW COURTS.

II.

By Baxter Borret.

THE COURTS OF THE COMMON LAW IN THE SIXTIES.

IN those days the Thames embankment had not been commenced; the quickest way of getting from the Temple to the old Courts then standing at the side of historic Westminster Hall, was by steamboat; and great lawyers of the day could be seen on board these hansoms of the river. At that time one of the judges of the three common law courts, the Queen's Bench, the Common Pleas, and the Exchequer, attended at three o'clock in the afternoon of each day at Judges Chambers, Rolls Gardens, off Serjeants Inn, Chancery Lane, to hear summons. Such a bear garden as the place was, the Stock Exchange is nothing to it; office boys shouting, and elderly chamber clerks pushing and fighting; confusion on every side; the judge's clerk guarding the door of the judge's room, and admitting only the elect to the august presence. Once admitted, you could see the judge sitting clothed like an ordinary mortal, disposing of important questions of pleadings or practice, one after another with marvellous rapidity. Hither came the old pleaders to argue questions of pleading before the very men who but few years before had been their pupils. Here have I seen old Chitty, Dodgson and Welch, whose chambers were the nursery of many a judge, past and present.

Of all the judges, Baron Martin got through his chamber work the quickest; he made very short work of artificial pleadings, and was ruthless in cutting down fishing and irrelevant interrogations. Baron Martin was hasty, but seldom wrong in the long run. He was an Irishman, and many were the "bulls" he perpetrated; the best of all was in the Liverpool Assize Court, when he had to complain of too much noise. "If people want to talk in court, they must go outside." And once again, sentencing a man for forgery, "If you had been convicted of this crime before me, thirty years ago, you would have been hanged tomorrow."

When I first knew Westminster Hall in 1860, the shining light was Sir Alexander Cockburn. I do not say he was then the greatest of the judges, though he afterwards became such. The growth of a great judge is gradual. Many brilliant advocates make but second-rate judges. Sir W. Bovill was an excellent advocate and a most successful leader before special juries of city merchants; as a judge he was a failure. The late Lord Coleridge, blessed with every grace of voice and manner, and with every natural gift which goes to make an eloquent advocate, and a successful leader, was a dismal failure as a judge. I remember Coleridge making his début as an advocate in the early sixties. It was in the notorious inquiry *de lunatico re* Wyndham, heard before Sam Warren, the author of "Ten Thousand a Year." Coleridge was briefed on behalf of the vestal (?) who had induced Wyndham to marry her; and a striking speech he made. Sir Hugh Cairns appeared for the alleged lunatic Wyndham (a most uncongenial task for a man of his high personal character it must have been) and to the astonishment of every

one succeeded in persuading the commissioner that Wyndham was not insane, in the teeth of strong evidence to the contrary and of the advocacy of Montague Chambers who appeared for the relatives. Poor Sam Warren, he wrote an excellent novel, but as a barrister he never made a name in the courts; his personal vanity made him the subject of many capital stories. Here is one: Old Montague Chambers met him one day. "Warren, are you dining with the Chancellor to-night?" "No, Chambers, I am sorry I have had to put him off. I had a prior engagement to dine with the Duke of ———." "Oh, Warren, you are surely making a great mistake. A rising young barrister like you to put off a Lord Chancellor's invitation to dinner with an excuse! — you do not know what you may be losing; however, I will do this for you: I will tell the Chancellor I met you and that you told me how deeply you regretted you could not be with us to-night." "No, don't do that, Chambers, I have written to his lordship and he will quite understand." "Now, Warren, I am a much older man than you; take my advice and let me put it all right for you." "No, Chambers, I beg you will say nothing to his lordship about it; the fact is, to be quite candid with you, I have not been invited." "No more have I old fellow," said Chambers. Warren also wrote a short book called "Now and Then," whereupon some wag wrote this epigram:

"If Warren, the ablest yet vainest of men,
Were as glib with his tongue as he is with his pen,
He would see his way clear
To ten thousand a year,
Instead of a brief now and then."

But I am wandering from Westminster Hall. Cockburn presided over the court of Queen's Bench with great dignity. It was a great treat to hear him deliver a judgment. His voice was the sweetest, his language the choicest, his reasoning the closest I ever listened to. Beside him sat Blackburn, then recently promoted, up to then almost unknown; with a voice like a jackdaw in the agonies of strangulation; he too after a few years turned out a most excellent judge. On the other side sat Crompton a very able judge, and later on Mellor, Lush and Shee sat on the same bench; a somewhat curious collection so far as regarded their theology. Cockburn, I think, belonged to the Church of England, Blackburn was a Presbyterian, Crompton a Unitarian, Mellor an Independent, Lush a Baptist, and Shee a Roman Catholic. Luckily they had not to sit to decide questions of church doctrine; and yet I feel confident that had they been called upon to do so, their judgments would have commanded as much as those of Lord Penzance in later years. One of Cockburn's latest literary productions was a somewhat racy pamphlet in which he amply justified the clergy of the High Church party for their feeling of irritation at the intolerant treatment they received from Lord Penzance in the Arches Court. Lord Penzance brought this pamphlet down on his head by some petulant remarks he made in his own court, complaining of Cockburn's presumption in not accepting as final one of his decisions on some matter of ritual.

At the head of the old court of Common Pleas sat my beau ideal of a judge, Sir William Erle. Courteous to all, most of all to young juniors; calm and dignified at all times, I should think no judge was ever more highly respected and loved; enemies he had none. Beside him sat Willes, a judge steeped to the lips in black-letter law, now and then startling the court with a quotation from "Bracton de legibus," or citing a case from one of the Year Books, giving even the very page from memory. Here also sat Sir E. Vaughn Williams, Crouder and Byles, making an excellent court of sound lawyers, whose judgments are recorded and quoted with reverence. In those days the serjeants who were not Queens Counsel appeared in the Common Pleas in the blue stuff gowns, like seaside bathing dresses, and were al-

ways distinguished by the coif or black patch in the middle of their wigs; the origin of which I think no man really knows; for though several writers have imagined they did, like the false witnesses of old their testimony did not agree. The late Baron Pollock was I think, the last of the serjeants; all judges of the common law courts before the judicature acts became *virtute officii* members of Serjeants Inn, and gave each of their brethren a gold ring with a motto engraved. When Serjeant Simon was appointed, the motto suggested for him by some wag was "Simon, Simon, Satan hath desired to have thee." The serjeants were always addressed by the bench as "Brother." The best known amongst them in the sixties were Shee, Parry and Ballantine. Before we leave the common pleas, I must tell you a story of Sir William Erle, too good to be lost. He was an original member of the judicature commission, and sat on the commission after he had retired from the bench. Later on the scope of the inquiries of the commissioners was extended to an inquiry into the working of the county courts. One day Erle came into the committee room and said, "I was anxious to see for myself the actual working of these courts, so I have spent the whole day in one of the Metropolitan county courts; I sat in the body of the court, and no one recognized me; I assure you I spent a most instructive day." I have heard of the great organist and composer Dr. S. S. Waley once on a holiday, strolling into the parlor of a country village organist, and asking to have a music lesson, by way of a joke. Conceive the late Lord Herschell, or Lord James of Hereford, sitting for the sake of instruction in a country county court. Bovill succeeded Erle, but died very soon after; and Coleridge succeeded Bovill, afterwards going to the Queen's bench on Cockburn's death.

Then lastly there was the old court of Exchequer, presided over by Chief Baron Pollock, the father of untold generations. He and Baron Platt once went together to Liverpool to hold the Assizes, and a statement appeared in the local newspapers, and therefore of course must have been true, that those two learned judges had fifty-four children between them. The old Chief Baron married three wives, and his son, the late lamented Baron Pollock followed his father's example in this respect. Does the habit run in the family? I do not remember the old Chief Baron in his best days; he was getting very old and his powers were waning in the sixties. He would often sit with his eyes shut, and those who knew no better imagined he slept; but he was all there, and any rash counsel misquoting a reported judgment, or drawing on his imagination for his laws found the old judge very wide awake. He was a great judge to the last, and Martin and Bramwell and Wilde sitting with him made a strong court. Wilde, though he sat for a short time only in the Exchequer, had held high rank at the bar as leader of the northern circuit; and when he succeeded Cresswell in the probate and divorce court he made a most excellent judge and he earned the peerage which gave him the title of Lord Penzance. But it was an ill day for the church when he was made dean of the Arches court, a post for which he had no training, or natural qualification. I see he has just now resigned the office.

In the sixties the judicial committee of the Privy council heard appeals from the Admiralty and Ecclesiastical courts, sitting in an upper chamber of the big building facing Whitehall below the horse guards; the court was approached from Downing street. Here I have seen the greatest lawyers of old days, Lord Chelmsford, whose knowledge of sailing, picked up when he was a midshipman, was invaluable to the court in Admiralty appeals; Lord Kingsdown, good old Sir John Taylor Coleridge the biographer of Keble, and Lord Wensleydale whose praise is in the gospels of Mecron and Welsby; all great lawyers, but all of them

(except Chelmsford) lamentably all at sea where pretty questions of sailing were involved. It was in this court that Lord Westbury appeared one day in a yachting jacket, to sit amongst lords spiritual and temporal to decide a question of church doctrine or ritual; evoking the remark from one right reverend member of the court that he had no idea that a chancery suit could be so short.

And in the most august tribunal of all, the gilded chamber of the lords my own eyes have seen in the flesh three great men whose names are in the records of history, Lord Lyndhurst, Lord St. Leonards, and Lord Brougham. There were giants in those days. Will any one writing hereafter, reminiscenses of the nineties say the same; or has the race of giants died out? We have still with us (I had written Herschell, alas, now no more!) Lords McNaughten, Davey and Russell, who may even yet live to prove that the race is not extinct.

Who were the leaders of the common law bar in the sixties? First and foremost, Sir Fitzroy Kelly, then getting old and feeble, Sir William Atherton, an able lawyer, but ponderous, a favorite object of Bethell's satire. When Bethell was raised to the woolsack, and some one suggested Roundell Palmer being made attorney-general over the head of Sir W. Atherton, Bethell's remark was, "The suggestion presupposes an object which is non-existent. I have never yet discovered that Sir W. Atherton has any head over which Mr. Roundell Palmer could by any possibility be placed." Then there was Mr. Edwin James, Q.C. and M.P. for Marylebone; a man of unattractive presence, but a very able advocate, who got into an enormous practice in the criminal courts and at *nisi prius*, and was within one step of the solicitor generalship; but he lost himself in some financial trouble or other and was compelled to leave the bar; he settled in New York, but never made his way there; returned to England, and died in obscurity. Sir Robert Collier got the solicitor generalship instead, of whom there is not much to be said, except that later on his promotion to the Court of Appeal caused a scandal which (with others) brought down the Liberal government. In the early sixties appeared some letters to the "Times," signed "Historicus," written by Harcourt, now Sir William, the champion of militant Protestantism; they were able letters, dealing with questions of international law, and interesting at that time, as the American States war was then in full fling. Great expectations were formed of his future career at the bar; but, though he has made a great name for himself in other places, the law courts have seen little of him at any time, or he of them, except in crown cases. The favorite leader in those days was undoubtedly Bovill, *facile princeps* amongst advocates, who ought to have made a better judge, but death cut him off before his time.

It is surprising how many judges die off soon after their promotion to the bench. Bovill, Honyman, Quain, Holker, Thesiger, all died soon after leaving the bar. Is the quiet of the bench too great a change from the bustling activity of the bar for the constitution to stand? In old days the law officers of the crown were often kept at the House of Commons till the small hours of the morning were growing larger. A former clerk of Bethell's has told me that Bethell not infrequently sat in his room at the House till daybreak, then walked home to Mayfair, continued his work, breakfasted, and walked to Lincoln's Inn, without going to bed. Yet in these degenerate days the workingman is advised by his leaders to strike for a working day of eight hours. The life of a leading counsel when on circuit in the sixties must have been very trying; etiquette forbade briefs to be delivered before he reached the assize town, and a leader would perhaps be briefed on one side or the other in every action on the test for trial.

How they got time to read their papers no one could guess. A story is told of Bovill being specially retained in an action at the Liverpool assizes. Always popular among his brethren, the men of the northern circuit determined to give him a special dinner. The junior of the circuit had the duty thrown on him of seeing to the great man's comfortable entertainment, and was assured, by one who knew, that he need not trouble himself, that Bovill would eat or drink anything and everything that was set before him; which came to pass. Nothing was passed by untasted. Last of all, the great leader rose, and in a few words thanked his hosts warmly for the excellent dinner they had given him, but prayed their indulgence, for he had a consultation at 10 P.M., at the Adelphi, and had not opened his papers; and then, in answer to the inquiry of the junior whether he would not have a b. and s. or a cup of coffee, he was horrified out of his wits at being asked for a bottle of stout; after which and upon which the great man retired to read his papers and give a consultation. I have read somewhere in a life of Lord Eldon, that he and his brother, Lord Stowell (to my mind the greater lawyer of the two), habitually dined together at one of the old taverns one night of every week, and that the waiter always knew his duty, namely, to lay down six bottles of port for the two great lawyers. Verily there were giants in those days.

Then there was Serjeant Parry, one of the last of the order of the coif, and one of the last of the old masters of eloquent advocacy. At that time appeared "Alice in Wonderland." I do not know whose hand it was that sketched the illustrations to that immortal work, but I have a strong idea that he studied Serjeant Parry for his picture of the Mock Turtle. Then there was Mr. Grove, whose knowledge of chemistry and of science in general caused him to be rushed for in patent cases. He first achieved fame in 1857, in the trial of William Palmer, the prisoner of Rugeley. He lived to patent an excellent coffee-pot and to make a first-rate judge.

And "shall gentle Coleridge here unnoticed pass?" I have spoken of him before amongst the judges; but before the end of the sixties he held a leading place among successful and favorite advocates. Perhaps the case which, most of all, brought him to the front, was the Tichborne case, in which Hawkins was with him. It is well known that Hawkins was retained in that case with the intention that he should cross-examine the claimant; for in cross-examination he had no rival; but Coleridge, as leader, claimed the fat scoundrel as his lawful prey, and then commenced the style of questioning, "Would you be surprised to hear," which came to be in every man's mouth for some time, but was discouraged by the bench in later cases. If you will turn over the old files of Punch you will see a small sketch representing Coleridge getting into a hansom, and cabby looking down through the top door, "Would you be surprised to hear I am engaged?" The way Hawkins turned poor Mr. Baigent inside out in that case, still lingers in my memory.[1] One recollection I have of Hawkins as a leader in the sixties: the scene is the bail court, the judge is Lush, a very pious man, the case is an action for libelling a swindling insurance company bearing a pious name, as it might be "The Young Men's Christian Assurance Association Limited." Denman is leading for the plaintiff company, and is just finishing the examination in chief of the pious secretary of the company. "If I am rightly instructed, your office is conducted on strictly religious principles?" "Yes, sir, I am glad to say it is." "I believe you commence and end each day's work with prayer?" "Yes, sir, we do." "I have no further questions to ask." Up jumps

[1] Coleridge's handling of this cross-examination evoked from Lord Westbury the remark: "One impostor, at least, will be exposed."

Hawkins to cross-examine. "Dear me, that is very satisfactory. I only regret, my lord, and gentlemen of the jury, that we cannot adopt the same good custom in our courts." Then turning to the secretary, "Do you read the prayers?" "Yes, sir, I do." "I presume you adopt the usual formula, 'Let us pray'?" "Yes, sir." "Then you spell pray with an *e*, do you not? *Prey*." And there was Serjeant Ballantine, at whose feet Mr. I. L. Toole sat and studied the part of Serjeant Buzfuz, sending Ballantine a ticket for the first night. Ballantine had the gift of fixing a witness with one eye, while he winked at the jury with the other. I do not know which was the greater master of the art of cross-examination, Hawkins or Ballantine, but the latter was the more consummate actor.

One more name, so bright yet so sad, Sir John Karslake; handsome Jack, the finest figure and the handsomest face at the bar. I speak lovingly of his great personal kindness to myself at the very height of his career. I had briefed him in a case at the Guildhall, and as I was only very young at the time, and the case was of great importance to me, he had given me his promise that he would open it himself. He deserted a House of Lords case to keep his promise, and opened my case in a speech of forty minutes, to such excellent purpose that after his opening the enemy hauled down their flag and agreed to a verdict. I never saw him again till I met him one day not long after in Regent's Park, stone-blind, led by the hand by a small boy, and I am not ashamed to confess that the piteous sight completely unmanned me. He had left town in the best of health to spend his long vacation in Scotland; a sudden cold, caught on the mountains as he was deerstalking or shooting, flew to his eyes and left him totally blind. He had attained the top rung of the ladder, only one step more to the woolsack, when there fell on his devoted head the terrible total eclipse. For some months he struggled on, hoping against hope, friendly hands leading him into his place in the house, and giving all the help that affection could give; but there are cases in which the grim old reaper with his sickle keen is the truest friend; and he came in mercy to bear poor Jack into the presence of Him who on earth gave sight to the blind. Dear, kindly, handsome Jack! no one who ever knew you has forgotten you.

That Guildhall case of mine reminds me of another brilliant meteor which first flashed across the legal firmament at the end of the sixties, I. P. Benjamin. He was my junior in the case, which case concerned a Southerner who had given me instructions to retain Benjamin. I had to take him on the inquiry to assess the damages. It was one of the first cases he handled in England, and he gave me a very useful lesson at the preliminary conference. After discussing with me the line he intended to adopt, he said: "There is one thing I want you to be particular about. I have my own way of cross-examining a witness, and you must be careful on no account to interrupt me. For instance, the other side will be bound to call S. as their witness, and to support their case he will have to lie. I want him to lie, I shall help him to lie. Now, he is a Yankee, and a much 'cuter' fellow than you; you must not let him see by your face that you know he is lying, or he will dry up too soon for my purposes." I was glad he gave me the hint. S. began by lying, timidly at first, then more positively, then more circumstantially, being adroitly helped thereto by Benjamin, till he was fixed tight, and could not lie himself back again. Then, and not till then, down came the bolt which shut him in the trap, and delivered him into our hands. In a very short time Benjamin rose to a high place at the bar, and must have made a large fortune, with nothing but his own genius to aid him. He had the reputation of being the best whist player at the bar. There were two other men who

came rapidly to the front during the sixties, and lived to sit on the bench of the court of appeals in chancery, but died all too soon, Sir John Holker, and young Thesiger. The latter, if I am not mistaken, held his first brief in one of the actions arising out of the celebrated Roupell forgeries.

But now you must go back with me to another part of Westminster courts not often visited except by the initiated, in an odd corner of the old building, at the top of some crooked stairs. Here, after the admiralty and ecclesiastical courts (formerly the closely preserved coverts of the old doctors of civil law, for which consult the records of David Copperfield) were opened to the general bar, thanks to Lord Westbury, sat a very venerable judge, Sir Stephen Lushington, who, if he would, could have told you many things worth hearing, for he had been counsel to Queen Caroline, and to Lady Byron, and had practiced before Lord Stowell; a man of fine presence and kindly manner, and, if Dickens drew a correct picture of Doctors Commons, one can only marvel how so great a judge could have been nurtured in such an atmosphere. I have brought you upstairs to this court to introduce you to one man who held his own in the admiralty court through the sixties without peer or rival, Mr. Brett, known later as Lord Esher. The only two of the D.C.L.'s who competed with him were Dr. Deane and, though more rarely, Sir Robert Phillimore; the others found a more congenial sphere in the new court of probate and divorce, where sat Sir Cresswell Cresswell the first judge ordinary; who earned the reputation of being the least courteous judge on the bench. I think if Brett's old fee books could be unearthed it would be found that the most lucrative part of his practice was made in the admiralty court, and I think he liked it the best. There never was any man who could handle a nautical witness better, and make him swear the blue-light was the red one than Brett could; but then Brett had learned the craft of sailing in the course of a voyage to the Mediterranean, and knew as much about it as any of the elder brethren of the Trinity House, who sat on the bench to await the judge (was it not proposed that the judge of the divorce court should have the assistance of elder sisters?) and Brett could always detect a sailor lying. For cool circumstantial lying give me the nautical witness, be his nationality what it may. In that court too a tall, bony, long-nosed man, Milward had a large practice, of whom it is on record that in one case of a collision somewhere off the Isle of Dogs, where witness after witness had sworn that Bill Hokes was keeping a bright lookout all the time, Milward, without anything before him in his brief, elicited on cross-examination that the collision happened the day following the prize-fight between Sayers and Heenan, that the hands on board had got a newspaper off Gravesend, that all hands were in the forecastle hearing the account of the fight read by the only man on board who could read, and that man was Bill Stokes. Let no man call hopeless any admiralty case which depends on the evidence of nautical witnesses.

Four excellent men now come to my memory as leading juniors in the sixties, all well-known in the old Guildhall courts as masters of mercantile and shipping law. Mellish, Honyman, Watkin Williams and I. C. Matthew, of whom the last named, only, is alive now. Mellish was the greatest lawyer of the four, and made an admirable Lord Justice of Appeal in Chancery; he was a terrible sufferer from gout, and his face was often racked with pain as he sat on the bench. Honyman was the brilliant wit of the bar; wherever he was there was sure to be laughter. Watkin Williams' sudden death came as a shock to his friends, and they were many. And at the end of the sixties Charles Russell was beginning his great career as a leader; up till then known as one of the ablest juniors on the northern

circuit, and another man who was then just beginning to be talked about, "young Webster," has now bloomed out into a majesty's attorney general, so called because his father, a distinguished patent lawyer, was then living. And now I have come to the last name on my list, and it is a great name, though he was but a small man in the sixties, Henry James; in those days his chief hunting-ground was the Mayor's court, in which court appearing as a most industrious and pertinacious advocate, alone (*i. e.*, without a leader), he acquired experience in handling witnesses, and confidence in addressing juries, and so paved his way for greater things later on. I hope I may live to see him Lord Chancellor yet. He is now Lord James of Hereford. By his wise legislation, bribery and corruption at parliamentary and municipal elections have taken their place among the lost arts, and the old electioneering agents find their occupation gone. He is now seeking to disestablish and disendow the historic money-lender.

Your "old fogey" must now close his reminiscences lest he should be called garrulous and prosy, but as even the Ingoldsby legends invariably closed with a moral, may I add a moral to the end of these notes. The secret of success in life is to be ready to kick the ball when it comes to your feet. Let young men who are ambitious of success at the bar, take a lesson from Lord James of Hereford, and not neglect any chance of gaining experience and confidence, even though it may come at first in the shape of small fees on county court briefs. With a more efficient Chancellor on the woolsack, we shall yet live to see the county courts take their right place as local branches of the high court, and as nurseries for rising legal talent. I will go further and say that our future judges of the high court ought to be selected mainly (perhaps not exclusively) from those who have showed their fitness for the office by some years' service on the bench of the county courts. Nowadays a man who accepts a county court judgeship is looked upon as shelved, and at best the offer is made to those who have fallen out of the running at the bar. This should not be. The best man at the bar should be encouraged to take county court judgeships in important centres, with the understanding that it is a step towards the bench of the high court. A strong judge attracts a strong bar; a strong court attracts good business, and becomes a blessing to barristers, solicitors and clients.

CALHOUN AS A LAWYER AND STATESMAN.

By Walter L. Miller of the South Carolina Bar.

III.

ONE of the most able, eloquent, and interesting of all the speeches ever made by Mr. Calhoun was that in reply to Mr. Clay on the Sub-Treasury Bill. In reply to the charge that he had deserted his party and gone over to the administration, he became exceedingly animated, and in the most scathing terms criticised the conduct of Mr. Clay. Among other things he said: "Leave it to time to disclose my motive for going over! I, who have changed no opinion, abandoned no principle, and deserted no party; I, who have stood still and maintained my ground against every difficulty, to be told that it is left to time to disclose my motive! The imputation sinks to the earth, with the groundless charge on which it rests. I stamp it, with scorn, in the dust. I pick up the dart, which fell harmless at my feet. I hurl it back. What the senator charges on me unjustly, *he has actually done.* He went over on a memorable occasion, and did not leave it to time to disclose his motive." He referred here to the election of Mr. Adams and to the acceptance of a place in his cabinet by Mr. Clay, and it was a home thrust. His speech on this occasion has been likened to the famous oration *De Corona* by Demosthenes when vindicating himself from the charges made against him by Æschines. His appearance on this occasion and the impression which he made has been vividly described as follows: "The keen fulgent eyes of the speaker shot lightnings at every glance, his hair stood on end, large drops of sweat rested on his brow, and every feature and muscle were alive with animation. And while this burning flood of indignation was rolling in a deluge from his lips, the audience were so completely enchained that perfect silence was preserved, and a pin might have been heard to drop in any part of the chamber; and when he declared, with a gesture suited to his words, that he hurled back the dart which had been thrown against him, the eyes of all were involuntarily turned to witness the effect of the blow." It was not often that Mr. Calhoun became so thoroughly aroused as he was on this occasion. He felt that his character and motives had been impeached, and, besides that, they had revived an old charge against him, on which he had always been sensitive, — that he was impractical, with too much of genius and too little of common sense.

In an article in the "North American Review," ex-President Jefferson Davis gives us the following interesting account of his manner and conduct in the Senate: "As a senator he was a model of courtesy. He politely listened to each one who spoke, neither reading nor writing when in his seat, and, as long as his health permitted, was punctual and constant in his attendance. His correspondence was conducted by rising at dawn and writing before breakfast. Issues growing out of the public lands within the States occupied much of the time of Congress, and, for this and more important reasons, he proposed, on certain conditions, to surrender the public lands to the new States in which they lay. This was but another exhibition of his far-reaching patriotism and wisdom, as shown in his arguments for the measure."

Always earnest, often intense in debate, he was never rhetorical, seldom sought the aid of illustration, simile, or quotation, but, concisely and in logical sequence, stated his

views like one demonstrating a problem, the truth of which was so clear to his mind that he did not doubt its acceptance by all who listened to the proof. Perhaps he was too little of a party man to believe, as the English parliamentarian did, that "opinions might be, but votes were never changed by a speech."

Mr. Calhoun's last appearance in the Senate chamber was touching. The Compromise Bill of 1850 was under discussion. It was in accordance with the fitness of things that the last speech of the great champion of slavery should have made upon that subject, which more than any other had engaged his thoughts for many years, slavery. He was, however, too weak to deliver it; so it was read by his colleague, Judge Butler (others say Senator Mason). It will be interesting to Carolinians to know that Mr. Calhoun left the Senate chamber, for the last time, leaning on the arm of Judge W. H. Wallace, then a young man, in Washington with his father. Mr. Calhoun died with the harness on. He was still a member of the Senate and was in Washington in attendance upon his duties, when the sad event occurred. He was prepared for the summons when it came. To a friend, who spoke of the time and manner in which it was best to meet death, he remarked: "I have but little concern about either; I desire to die in the discharge of my duty: I have an unshaken reliance upon the providence of God." In one of his fainting spells in the lobby of the Senate, he said to Mr. Rhett: "Ah! Mr. Rhett, my career is nearly done. The great battle must be fought by you younger men." To this Mr. Rhett replied: "I hope not, sir, for never was your life more precious, or your counsels more needed for the guidance and salvation of the South." He answered — "*There*, indeed, is my only regret at going — the South — the poor South!" and his eyes filled with tears. I have read somewhere that in his last days Mr. Calhoun longed for one hour more in the Senate. Had his wish been gratified, what golden words of counsel would he have given! After his death, his body lay in state in the capitol and thousands of people looked upon his face for the last time. Splendid eulogies were pronounced upon him by his distinguished fellow-statesmen, Clay, Benton, Webster, and others. Committees consisting of distinguished members of Congress accompanied his remains to his native State and all along the route great crowds gathered to do him honor. He was buried at Charleston, the beautiful city by the sea, the metropolis of the commonwealth he loved so dearly and had served so faithfully. The funeral obsequies were very imposing and magnificent tributes were paid to him, not only there, but in Columbia, and in other places in the State. A fund was started to erect a monument in his honor, but it would in all probability have been lost during the war, had it not been for "the venerable and beloved Carolina matron who, amid all the perils of war and the storms of battle, carried, concealed on her person, the sacred fund which was dedicated to the erection of this monument." After the war, through the efforts of the women of Carolina, the subscription was completed and a splendid monument erected in Charleston in honor of Mr. Calhoun. On the 28th of April, 1887, the monument was unveiled and a great oration delivered by the Hon. L. Q. C. Lamar. Nor must I fail to mention the work entitled "Carolina's Tribute to Calhoun," so ably edited by Col. John P. Thomas, the polished writer and accomplished scholar.

During the latter years of his life, Mr. Calhoun resided at Fort Hill, near Pendleton, South Carolina. Many of the wealthy and aristocratic planters of the low country owned handsome residences in and around Pendleton and there they spent their summers. The social element of the place was therefore, far above the average and an exchange of hospitalities was quite fashionable.

Mr. Calhoun was a favorite guest on these occasions, and, unbending himself as he could easily do, proved himself a charming conversationalist and delightful companion. Oftentimes distinguished strangers from a distance would be present and upon them Mr. Calhoun made the happiest impression. His own home was an exceedingly hospitable one, and visitors received a cordial welcome. Mr. Calhoun did not affect an aristocratic style and bearing, — he was too great a man to become puffed up with pride of place and position. He was never haughty and arrogant in his demeanor. Whether in the company of the wealthy planters from the low country or mingling with the plain farmers of the neighborhood, he maintained his easy, natural manner, always conducting himself as became a well-bred gentleman.

Mr. D. U. Sloan, who knew him well and was a companion and schoolmate of his children says: "Mr. Calhoun was ever pleased to receive and entertain his neighbor farmers and discuss with them the agricultural interests of the country, and it made no difference whether they wore broadcloth or homespun jeans, all received the same kindness and attention. His most earnest friends were his nearest neighbors, and those who were best acquainted with his spotless character." A gentleman, who met him here on one occasion, tells me that he was impressed with his plain, unaffected manner. Another man, who visited Washington while Mr. Calhoun was in the Senate, said that after being in the company of some of the more pompous congressmen with their lordly air and dignified bearing, it was a relief and like breathing a new atmosphere to go into the presence of Mr. Calhoun, so easy and natural was his style and such a contrast did his manner present. Says a writer: "At every period of his life, his manners, when in company with his inferiors in age or standing, were extremely agreeable, even fascinating. We have heard a well-known editor, who began life as a 'page' in the Senate chamber, say that there was no senator whom the pages took such delight in serving as Mr. Calhoun. 'Why?' — 'Because he was so democratic.' 'How democratic?' — 'He was as polite to a page as to the president of the Senate, and as considerate of his feelings.' We have heard another member of the press, whose first employment was to report the speeches of Clay, Webster, and Calhoun, bear similar testimony to the frank, engaging courtesy of his intercourse with the corps of reporters. It is fair, therefore, to conclude that his early popularity at home was due as much to his character and manners as to his father's name and the influence of his relatives."

Miss Martineau, in her "Retrospect of Western Travel," has given us a beautiful pen-picture of some of the eminent men, whom she saw during her stay in Washington, among whom were Clay, Webster, and Calhoun. So fresh, so vivid, so entertaining is it, that I feel sure the reader will thank me for presenting it as a whole; though Miss Martineau, being an abolitionist and somewhat prejudiced, hardly does Mr. Calhoun justice. It is as follows: "Mr. Clay, sitting upright on the sofa, with a snuff-box in his hand, would discourse for many an hour in his even, soft, deliberate tone, on any one of the great subjects of American policy which we might happen to start, always amazing us with the moderation of estimate and speech which so impetuous a nature has been able to attain. Mr. Webster, leaning back at his ease, cracking jokes, shaking the sofa with burst after burst of laughter, or smoothly discoursing to the perfect felicity of the logical parts of one's constitution, would illuminate an evening now and then. Mr. Calhoun, the cast-iron man, who looks as if he had never been born and could never be extinguished, would come in sometimes to keep our understandings on a painful stretch for a short while, and leave us to take to pieces his close, rapid, theoretical, illustrated talk, and see what we could make of it."

Ex-President Davis describes Mr. Calhoun socially as follows: "In 1845, as a member of the House of Representatives, I frequently visited Mr. Calhoun, who was then a senator, at his residence. His conversation was always instructive and peculiarly attractive. The great question of the day was on giving notice to Great Britain of a termination of the joint occupation of Oregon. He and his colleague, the brilliant orator McDuffie, did not fully concur, as I had occasion to learn, being one of several in a private conversation. There was great excitement in the country, and there was believed to be imminent danger of a war with Britain."

The Presbyterian reader will be pleased to learn that Mr. Calhoun greatly admired Dr. James H. Thornwell, who, as a pulpit-orator, erudite scholar, and profound theologian, was the peer of any on the American continent. Indeed, Dr. J. Marion Sims, in his delightful autobiography, tells us that Mr. Calhoun regarded Thornwell as the coming man of the South, and had picked him out as his own successor. It is gratifying to know that Dr. Thornwell reciprocated this appreciation in full measure, having himself for Calhoun the greatest esteem and admiration.

Mr. Calhoun was brought up under Presbyterian influences and, though in later life he, with his family usually attended the Episcopal church at Pendleton, still it is thought that he retained throughout his life the Presbyterian ideas, which he had imbibed in his youth.

When he attended church, he seems to have given close attention to the words of the preacher. Dr. Pinckney, in last year's July number of "Lippincott's Magazine," gives an interesting incident illustrating this fact. As I remember it, it came under his own observation. It seems that on a particular Sabbath, the Episcopal clergyman at Pendleton had preached on the importance of attendance upon divine worship. The doctor, then a boy, had noticed that Mr. Calhoun sat with his eyes closed, apparently taking a nap during most of the sermon. On their way home from church, he and his father overtook Mr. Calhoun. His father remarked to the former that their preacher had given them a fine sermon that day. Now, thought young Pinckney, Mr. Calhoun has been caught napping again. Very much to his surprise, however, after assenting to his father's comment, Mr. Calhoun rehearsed the four points in favor of attendance upon public worship which the preacher had made, and then went on to say that he might have added a fifth, namely, the social benefit. He amplified this point by saying that, if two persons were estranged, they could hardly sit in their pews, Sabbath after Sabbath, hearing the same sermons, singing the same songs, and listening to the same prayers, without their hearts becoming softened and their feeling a disposition to become reconciled. Dr. Pinckney easily solved the matter afterwards, when he learned that Mr. Calhoun, while presiding over the Senate, often closed his eyes and yet paid the strictest attention to what was going on.

Mr. Calhoun believed in an overruling Providence, who controls all things and governs all creatures and all their actions. He was a firm believer in the great cardinal doctrines of the Christian religion. I have already quoted what he said to a friend in his last days: "I have an unshaken reliance upon the providence of God." Indeed the great truths of religion became part and parcel of his mental and moral make-up, were imbedded in his life, and permeated his speeches and writings. That Mr. Lamar was so impressed I infer from what he says of him in his Charleston oration.

Mr. Lamar says: "Nothing in the works of theological writers can be found stronger than his repeated assertion of the superintendence of Divine Providence over the government of man. He also firmly believed that the voice of a great people uttered for the benefit of the whole community through organs so constituted as to suppress the voice of selfish factions and interests, and to ex-

press the sentiment of the entire community, was, without impiety, the voice of God." Then, again, as we have already seen, he was accustomed from early youth to attend church, and kept up this habit throughout his life, not simply being present, but listening closely to the words of the preacher.

Oliver Dyer says: "He impressed me as being deeply, but unobtrusively religious, and was so morally clean and spiritually pure, that it was a pleasure to have one's soul get close to his soul — a feeling that I never had for any other man."

When he died, we find that memorial services were held in Charleston, Columbia, and other places in the State, and eloquent sermons were preached by such men as Thornwell, Miles, Palmer, Coit, Barnwell, Whyte, and others, who embraced the occasion to comment upon his great life, and to hold him up as an exemplar for the youth of the State.

Dr. Thornwell in his sermon before the students of the South Carolina College, spoke of him in the highest terms, as follows: "That bell which summoned us to prayer seems to have kept time with his expiring breath — and before we had gathered ourselves in this hall, or assumed the devout posture of worshippers, South Carolina's honored son, and one of America's distinguished statesmen, was numbered with the dead."

Rev. Mr. Miles, in his memorial discourse, which he preached in St. Philip's Church in Charleston, pictured before his hearers the ideal statesman, — setting forth the qualities which should characterize him and the principles which should inspire his life and control his conduct. He emphasized the importance of religious principles in these words: "Reverencing those virtues in the Divine Being, who is at once their fountain and perfection, he is filled with their full dignity, and imbued with a sense of dependence upon God — recognizing Him as the Arbiter of Nations, who establishes and destroys — possessing a solemn consciousness of accountability to a Judge of unerring equity — he is immeasurably elevated above the corrupt influence of the seducing demagogue, the temptations of faction, the forgetfulness of duty, and the lure of false ambition. Shall we ever behold the living embodiment of such a statesman? The univeral voice of the commonwealth — the homage which we are now paying to an illustrious name — the revered dust which lies before us — all proclaim that the character is real! that the man has passed forever from among us."

These were all Carolina preachers, who lived in the same State with Mr. Calhoun: most of them, perhaps all, knew him personally, and certainly all of them knew him by reputation. The higher, therefore, is the tribute.

A kinsman of Mr. Calhoun, residing in this city, says that the latter had the highest respect for the church and for ministers of the gospel — that he would not allow the members of his family to criticise in an unkind way preachers, it mattered not to what church they belonged nor how ignorant, and that, on one occasion, he threatened to send one of his boys away from the table for criticising a preacher too freely. That Mr. Calhoun never made a personal profession of faith in Christ, I believe, is true and is to be regretted: but that he believed in the great truths of religion, the testimony is clear. I have presented Mr. Calhoun's ideas on this subject fully for several reasons. In the first place, it is an interesting phase of his life; in the second place, — and these last two reasons show its pertinence to my theme — a man's religious belief throws light on his public life and character; and in the third place, because I do not think that any man can become a great statesman, in the highest and best sense of that term, without believing in the great, cardinal principles of Christianity.

Col. Henry D. Capers, in an article on "Old Pendleton," gives us an interesting description of Mr. Calhoun's last residence

at Fort Hill as it appears at present. I will quote from it: "I have often visited the historic homestead of Mr. Calhoun at 'Fort Hill,' within an easy ride of Bellewood. I first saw the tall columns of the old colonial building, wherein the great man labored and loved, when he was at home, in my boyhood. The impression then was such as a child would receive from the environments of an attractive home in the country. Within the past few months, I have rested at 'Fort Hill,' again, and while I recall with pleasing recollection the form and features of the great man who came to his front door to welcome my father, I find much more to engage my mind, that would interest a person of mature years in the reflections suggested, as I walk through the silent halls of the old mansion, or, seated in the statesman's office chair, I find myself surrounded by the mute but eloquent expressions in his remarkable genius. The building is well preserved and forms an interesting and handsome feature of the campus about Clemson college, whose extensive grounds form a part of Mr. Calhoun's former estate. In it are preserved, as treasured relics, paintings and valuable bric-a-brac, the personal belongings of the great man. In front of the seat I occupy is a handsomely carved center table of rosewood, whose top is a slab of the richest Egyptian marble, sent to Mr. Calhoun as a present from the sovereign who then ruled in the land of the Pharaohs. Upon this table you may find autograph letters from the most eminent statesmen and scholars, poets, philosophers and divines from all parts of the enlightened world. Near a full-length portrait of the great Carolinian, which, I am informed, was placed in his library after his death by loving hands, is a most expressive likeness of Henry Clay. I am assured that this likeness was among the few reminders of greatness which for many years Mr. Calhoun kept near to his writing desk. While there is associated with all of these things much to attract the attention of the visitor, I found my mind more engaged with thoughts suggested by the labors and the public history of the one who had left them all, in the years gone by, for a higher and a more just tribunal than he has or will ever receive on this earth." I may add that among the paintings he refers to were some by the old masters, one particularly by Rubens. I visited Fort Hill several years ago, previous to the erection of Clemson College. If I remember aright, there were two beautiful oil paintings in the parlor, one of Mrs. Calhoun and the other of her daughter, Mrs. Clemson. In front of the house was a beautiful lawn covered with blue grass. Mr. Clemson was living at the time and kindly showed my father and myself through it. After he had carried us through the house and called our attention to the various relics, which he seemed to do with a great deal of pleasure, he finally took out of a family Bible a letter from his wife to himself, and, exhibiting it to us, said that he prized it above all else. I read it, and, among other things, I remember it stated that Mr. Calhoun's spirit had appeared to her, and that it said she was to tell Mr. Clemson that, if he wanted to come over on that side of the river where the good people were, he must be a good man.

Through the generosity of Mr. Clemson these grounds and Mr. Calhoun's residence now belong to the State, and Clemson College, with its handsome buildings, modern agricultural equipments, and splendid farm, is doing a good work in the cause of education and is well patronized by our people. The old Calhoun mansion, however, with its interesting relics, is still preserved and is always pointed out to visitors.

At this stage in my article, I desire to notice some of the criticisms, that have been passed upon Mr. Calhoun. And in the first place, I would remark that it is a little strange that Mr. Calhoun, almost alone of all our great men, should have been singled out as a target for criticism. We hear very

little said in disparagement of Washington. It is true that our more modern historians tell us that the pretty story of Washington and the hatchet, which we learned in our childhood, is only a myth, and that, while it may serve "to paint a moral," yet it never really occurred. Occasionally, too, we are reminded that this same great man, in common with his fellows, had his faults, — that he was high-tempered and, when he got mad, used stronger expletives than a proper code of morals would permit. But that is about all we hear in disparagement of him. It is true also that we are told that Clay, too, was at times profane, and that in his day he was one of the boys in his sporting proclivities. But these charges were all brought against him in his lifetime and in the years immediately following his death, when the facts were fresh and, if untrue, could easily have been refuted. It is true also that Webster has been criticised for allowing his aspirations for the presidency to soften his course towards the South and to modify, to some extent, his position on the leading questions of the day. But this criticism is usually made in a somewhat tender and even apologetic strain. In the main, however, these three, and the most of our other great men, still occupy their exalted place in the temple of fame, and there has been but little disposition to pull them down. In the case of Mr. Calhoun, we find it different. Why is this true? Is it because of that principle in human nature which must find a scapegoat for every cause which does not come out triumphant, and because the South having failed in its great struggle, Mr. Calhoun, as the master-spirit, must atone for what some regard as its sins? Is it because some writers, when they happen to come from the section aspersed, like to pose as so broad and liberal-minded, that they can criticise freely their own heroes, and are tempted to go farther than the facts warrant, when outsiders flatter them and buy their books? I know that it is well to be charitable and not too quickly to question the motives of others; but, sometimes, when I read these criticisms I can't help thinking that their authors are trying to please what they conceive to be northern sentiment, — that they are pandering to what they believe to be Northern prejudices for a purpose, to win the favor of Northern publishers and to sell their books. That they may accomplish their purpose to a certain extent, I can well believe. There are extremists in the North who still gloat over the downfall of the South, just as there are hot-headed, prejudiced men in the South who can see nothing good north of Mason and Dixon's line. But I believe that the great majority of the Northern people are disposed to be fair and right. I believe that the best element of people throughout our common country, both North and South, desire the truth, — and the truth only. Hon. J. L. M. Curry, in an able address on John C. Calhoun, before the University of Chicago, said that he was emboldened to speak freely by the assurance of President Harper that that university was for the investigation of truth and challenged the boldest discussion. This sentiment, so creditable both to President Harper and the University of Chicago, I believe finds a responsive chord in every section of the American Union. I believe it was true even before the war with Spain; certainly it is true now.

In the second place, I desire to dispose of a question that may be raised. Do we object to criticism of Mr. Calhoun? Are we so tender that we can't hear anything in disparagement of him without losing our temper? As an answer we adopt Mr. Calhoun's own favorite expression, "Not at all, — not at all." We have no objection to fair and impartial criticism. We have no objection to the closest scrutiny of his every act. His life can well stand it all. Mrs. Spurgeon, in consenting to reveal to the public the romantic and tender side of her distinguished husband's life, tells us that Mr. Spurgeon

once said to her: "You may write my life across the sky: I have nothing to conceal." This sentiment and these words may well be predicated of Mr. Calhoun. He, too, like the grand preacher, Spurgeon, could well have said: "You may write my life across the sky; I have nothing to conceal." I agree cordially with Dr. James H. Carlisle, the venerable president of Wofford College, when he says: "I think it but right to bring these men fairly and fully before us, light and shade — their strength and weakness. We do not take pleasure in drawing 'their frailties from their dark abode,' but the lessons of their lives, as models and warnings, may be more profitable. By a singular coincidence, soon after reading your letter yesterday, I read this sentence, in a new book: 'It was not, on the whole, an unpleasant discovery, when the American people found out that Washington had a vigorous vocabulary.'"

But what we do object to is unfair criticism, — what we do object to is that in presenting us what purports to be a true portraiture, we have, instead, what may well pass for a caricature. What we do object to is damning a man with faint praise.

In the short compass of this article, I can only notice two or three of the many criticisms that have been passed upon Mr. Calhoun. Without further preliminary, I will proceed to consider the comments of Dr. Von Holst, who has written the life of John C. Calhoun, in the American Statesmen series. I am frank to admit that it is a well-written book, — fresh, interesting, and suggestive from beginning to end. It gives to Mr. Calhoun a prominent place in the history of his country and it ascribes to him many excellent qualities. But, nevertheless and in spite of these good features, there runs through the entire work a vein of unfair comment and unjust criticism, so that one rises from its perusal feeling that Mr. Calhoun has been unkindly treated and unfairly dealt with. It falls too completely within the sphere of objectionable criticism outlined above, — it exhibits a want of sympathy with its subject and it presents a distorted and perverted view of the great Carolinian. Throughout the entire work it is easy enough to see that its author is biased and prejudiced against his subject. And yet were he to read these lines, I have no doubt that he would sit back in his easy chair and, with a placid and self-satisfied manner, remark that he had anticipated just such treatment at the hands of some of his reviewers, and, to show you that this was the case, he would quietly turn to his book and, reading from the second page the sentences which I shall immediately quote, he would ask you to note what he thought the effect of the passage would be on the great majority of his readers: "In spite of his grand career, South Carolina's greatest son has had a more hapless fate than any other of the illustrious men in the history of the United States. With few exceptions it is probable that the readers of these pages will consider this a strange or even an absurd assertion, and thereby themselves will furnish another proof of its truth."

And, because of my interest in a fellow-Southerner and my sympathy for him, I am sorry to say that Professor Trent of Sewanee University, in his chapter on Mr. Calhoun in his book entitled "Southern Statesmen of the Old Régime," follows entirely too closely in Mr. Von Holst's footsteps. Indeed, to a very considerable extent so far as it goes, its style of treatment of its subject and the conclusions reached are about the same as those of Mr. Von Holst. And it is but fair, too, to Mr. Trent to say that he wields a graceful pen and presents a subject in an entertaining and attractive style. He is at times quite complimentary to Mr. Calhoun and attributes to him many high qualities. The entire article, however, is critical in style, and in the treatment of its subject is disparaging in its general tone and character. I notice too, that its author refers to Mr. Von Holst's book in terms of approval and in the

most complimentary language. The following will serve as a sample: "The mention of Dr. Von Holst, however, reminds me that I may as well say at the outset of this attempt to estimate Calhoun and his work, that I shall be able to add little or nothing to the admirable account of the great statesman's career which the scholarly professor has contributed to the well-known American Statesmen series." How, in justness to his subject, he could fail to add a qualifying clause — a single note of dissent, — I can't well see. He speaks of Mr. Calhoun as a "fanatic" and refers to his leadership as being both "fanatical and doctrinaire." In a sentence, which I will now quote, he is harsher still, applying the term "sinister" to his reputation: "It was his position as vice-president, half in and half out of the political arena, that furnished both opportunity and incentive for the development of his metaphysical views on the nature of constitutional government, and for that analysis of the problem presented by slavery which is now his chief claim to a sinister reputation." And then on another page, we find Mr. Calhoun's constitutional theory described as a "shadowy maze." In his pages, we find: "Calhoun, as secretary of state under Tyler, is more a demon helmsman, somehow translated from the 'Ancient Mariner' to the Constitutional History of the United States, than the successor of Jefferson and Madison."

With one other parting quotation, I will close: "Yes; John Caldwell Calhoun, in the seventeen years that elapsed between his debate with Webster on the Force Bill and his death, wrought his country and his section infinite woe, but he did it blindly; he did it, intending all the while to effect only peace and reconciliation. He failed; but so did Webster and Clay fail, and so will any man fail who does not distinguish right from wrong." Mr. Von Holst over again! I wish the reader to bear in mind some of these quotations and appellations. I shall quote from some other writers before I have finished and then, I will ask the reader to look upon this picture and then upon that. Terms and expressions equally extreme, uncomplimentary, and uncalled for, as those referred to above as found in Mr. Trent's article, are interlarded all through Mr. Von Holst's book. I am told that Professor Trent is a Virginian and an alumnus of the University of Virginia. So much the worst for that. There may be some excuse for Von Holst. He is a foreigner, ignorant of our institutions, and out of sympathy and touch with our ideas and people. But for Mr. Trent, a Southerner and a Virginian!

Dr. John A. Broadus, in his interesting biography of Dr. James P. Boyce, in commenting on the "Life of William Gilmore Simms" by Professor Trent says: "It is an interesting book, but the author seems curiously incapable of understanding the Carolina people of that day." Adopting Dr. Broadus's charitable expression, we would say that Professor Trent seems curiously incapable of understanding the great Carolina statesman of the Old Régime. It is a relief, and it is a contrast too, to turn from the pages of such critics as Von Holst and his imitators to the glowing tribute paid to Calhoun by Senator Hoar, the veteran statesman from Massachusetts, in his splendid oration delivered in Charleston, South Carolina, in December last. Among other beautiful things he said: "Mr. Winthrop compared the death of Calhoun to the blotting out of the constellation of the Southern Cross from the sky. Mr. Calhoun was educated at Yale College, in New England, where President Dwight predicted his future greatness in his boyhood. It is one of the pleasant traditions of my own family that he was a constant and favorite guest in the house of my grandmother, in my mother's childhood, and formed a friendship with her family which he never forgot."

One of the mistakes that Mr. Calhoun made was that he did not mix enough with the people. I do not mean to intimate that

he held himself above them, for such was not the case. But he was not thrown enough among them. He himself tells us that he was almost a stranger five miles away from his home. While he was in attendance upon his public duties at Washington, as a matter of course he was thrown principally into the company of politicians and men in public life, necessarily seeing but little of the rank and file of the people. Then, when he came home, he was either in his study or he was mingling socially with the aristocratic element that repaired to Pendleton to spend the summer. Except the few farmers, who resided near him, the masses of the people, even of his own State, saw but little of him. In this respect, he was not like Henry Clay, who knew nearly everybody and could call by name a great many of his fellow-citizens. If Mr. Calhoun had been more intimately associated with the people, he would have been a broader and more useful man.

Nor did he travel as much as he should have done. Travel is itself a part of a liberal education. If Mr. Calhoun had visited about in different parts of the Union more, it would have been better for him in every way. It was unfortunate that he never went abroad. It seems that he had two offers of a diplomatic place abroad, — one at the Court of St. James and the other to Paris — and that he declined them both. Either of them would have been an admirable place for him and would have added greatly to his knowledge of men and affairs. How can a statesman be fully competent to discuss the great questions of the day, and especially those which effect other nations as well as his own, when he rarely goes outside of his own State? Newspapers and books cannot supply the deficiency. In fact, Mr. Calhoun seemed to realize this himself and to have regretted it. Nothing takes the place of wide travel and an extensive knowledge of men and things.

Nor do I believe that Mr. Calhoun's reading was sufficiently wide and varied in character. I know that he read a great deal along certain lines, but was not his reading intensive rather than extensive? Why, it is even said that he never made but one quotation from the classics and that was *Timeo Danaos et dona ferentes*. Dr. Curry tells us that he can recall only one line of poetical quotation in all his productions, "Truth crushed to earth will rise again." Now, when we remember that he was a graduate of Yale, and that he was a student of history, a writer, and a man in public life for a long series of years, there is but one explanation for this paucity of quotations from the classics and the great writers of literature, namely, the fact that he did not devote much attention to those subjects. And right here he made a mistake. Familiarity along these lines would have liberalized his own mind, widened his usefulness, ornamented his speeches, and made him a much more attractive and interesting man socially.

Mr. Calhoun was a peculiar man in one respect particularly. He seems to have spent a great deal of time in solitary thought. We find this characterizing him when a mere farmer-boy and it adhered to him not only while he was in college but throughout his life. President Davis refers to it as follows: "Wide as was his knowledge, great as was his foresight, reaching toward the domain of prophecy, his opinions were little derived from books or from conversation. Data he gathered on every hand, but the conclusions were the elaborations of his brain — as much his own as is honey not of the leaf, but of the bag of the bee." And several other writers also refer to it. One of them, however, suggests that it would be rather dangerous for young men generally to adopt that policy. Most of us need books and the friction which comes from contact with others to whet our mental appetite and bring us to the highest state of culture. That Mr. Calhoun was an accomplished orator goes without saying. Oliver Dyer tells us that, though he did not equal either Clay or Web-

ster, in securing the attention of his audience, yet that he was always interesting and attracted even more attention than Benton. Dr. Pinckney, who heard all three speak, says that Clay was born an orator, but that Calhoun and Webster were made orators. All concede, however, that the gift of oratory belonged in a high degree to Mr. Calhoun. What was the explanation of his power outside of his high character? for, of course, that was the indispensable basis. Some will say that it was his logical thought, and others, that it was his deep earnestness. And both will be right as far as they go. There was another important element, namely, his language. I know that he is criticised, and justly, too, for being too severely plain in his style — as lacking in ornament, imagery, and classical flavor. But, admitting all this to be true, I maintain that the plain, simple language that Mr. Calhoun used was one of the elements of his power as a speaker and writer. We quickly tire of what is called fine writing. It will do for dress and state occasions, but we soon get enough of it. It is his plain, simple language that adds so much to the effect of Mr. Bryan's speeches and gives him such a hold upon the people. It was the rugged simplicity of his English, as well as his depth of thought and the liberality of his views, that gave so much power to Mr. Tillman's speech on imperialism; and added so much to his reputation as a speaker. It is his simplicity of style, — it is because he drinks so freely from the "well of English undefiled" — that is the great charm about the speeches of President McKinley, and it is to this also, in a large degree, he is indebted for his wide popularity with the people. The splendid speech he made at Boston beautifully illustrates this thought. I am sure I will be pardoned for quoting one sentence from its peroration as he reaches a climax in his oratory: "Always perils and always after them safety; always darkness and clouds, but always shining through them the light and sunshine; always cost and sacrifice, but always after them the fruition of liberty and education and civilization."

Mr. Calhoun's speeches make good reading even at the present day, while, on the other hand, those of his great rival, Mr. Clay, are rarely read by any one. Miss Martineau describes Mr. Calhoun's appearance in the Senate and his style of speaking as follows: "Mr. Calhoun's countenance first fixed my attention; the splendid eye, the straight forehead, surmounted by a load of stiff, upright, dark hair, the stern brow, the inflexible mouth, — it is one of the most remarkable heads in the country."

It has been said by another that a word is a living thing. Certain it is that a word is a power. Did it ever occur to you that there are certain words, expressions, and appellations, that by common consent have been appropriated and applied to some men so exclusively, that when we repeat them, we think of them and of them only? Speak forth the words, champion of slavery, the advocate of State-rights, the great Carolinian, the great nullifier, and instantly there stands before you the tall, slender form of Calhoun, with his brilliant black eye, and with his hair brushed back and falling about his temples; — and then you think of his nervous, impetuous style of oratory, his rapid enunciation, his intense earnestness, his incisive logic, and his splendid vindication of the rights of the States. Speak forth the words, the Father of the American System, the author of the Missouri Compromise, the Great Pacificator, and again a tall, slender form appears before you, and you have Henry Clay, with his clear gray eyes, fine complexion, nervous temperament, — and looking upon him, you recall his graceful style, his brilliant flights of oratory, his lofty ambition, his wonderful popularity, his eloquent plea for the South American Republics, and his noble efforts in behalf of national peace and harmony. And now call out the words the god-like Daniel, the Expounder of the

Constitution; — and you have before you Daniel Webster, with his tall, commanding form, deep cavernous eyes, massive brow, and rugged face, — and as you look upon him, you think of his kingly manner, majestic appearance, splendid eloquence, keen logic, broad statesman-like views, and intense love of country. And now as these three men stand before you, you think of "the Great Debate," and before you close the panoramic view, you encircle around them the double appellations which can appropriately describe these three, and these three only, "the Great Triumvirate" and "the Immortal Trio, Clay, Calhoun and Webster." One important lesson which we derive from the study of the lives of these great men is that even the noblest and best of men sometimes do and say things which they regret afterwards, and, that it matters not how sorely we are tempted, nor how great the provocation, "the remainder of wrath" we should restrain. The reader will remember that Mr. Calhoun, when, as he thought, his motives had been impugned and his personal character assailed by Mr. Clay, retaliated by casting in his teeth the charge of bargain and corruption, a keen home thrust. Mr. Clay retorted on the spot by administering to Mr. Calhoun a sharp, stinging rebuke: "Shaking his long, bony finger at Calhoun, he exclaimed, in tones of passionate resentment: 'Mr. President, he my master! I would not own him for a slave!'" As the result of this altercation both of these men became estranged from each other and did not speak for years. In 1842, however, Mr. Clay made what was thought at the time to be his farewell address to the Senate which affected to tears every one who heard it. In the course of his remarks, he took occasion to apologize to his brother senators for any discourteous and unkind remarks which he may have made in the heat of debate. The warm, generous heart of Mr. Calhoun responded at once to the magnanimity of soul manifested by the former; so Mr. Calhoun arose from his seat, crossed the Senate chamber to where Mr. Clay was sitting, and extended to the latter his hand in token of friendship. The beautiful amity, now so happily reëstablished, was never again broken and after Mr. Calhoun's death one of the most touching, and indeed one of the highest tributes paid to him was that of Mr. Clay, containing among other things these words: "I was his senior, Mr. President, in years — in nothing else." It is well known, too, that Jackson and Calhoun during the latter part of their lives entertained toward each other the deepest feeling of resentment and hatred, and yet after Mr. Jackson's death, when time had healed the breach and softened his heart, we find Mr. Calhoun, in reply to a question as to what kind of a man Jackson was, saying: "General Jackson was a great man."

THE VANDALISM OF CIVILIZATION.—"THE NEW INN."

CIVILIZATION is fast removing ancient, historic landmarks and a charge of vandalism could easily be proved against the authorities in modern London. If a street is too narrow, or traffic congested, at once the order goes forth that the nuisance must be abated. New streets are cut through historic localities and houses which have been famous are ruthlessly torn down. Sentiment has to give way to latter-day materialism, history-makers must give place to modern utilitarians.

In London a new street is being made from the Strand to Holborn and among the buildings destroyed is that one dear to the legal heart, known as "New Inn." The New Inn retained, to the very last, its ancient customs. Every night from ten to sunrise, modified in the last few years to the hours of ten P.M. to one A.M., the watchman, dressed in the old-fashioned style, called out the hours, concluding with the words "All's well."

The Inns of Chancery differ from the Inns of Court, for while the Inns of Court were voluntary societies which had, and still retain, the exclusive right of calling persons to the English bar, the Inns of Chancery were the nurseries of the lawyers, and were attached to the Inns of Court. It was considered indispensable that a student should spend one or two years at one of these Inns in order to learn the forms of writs which are issued from the High Court of Chancery to the courts of Common Law.

Fortescue, writing in 1464 says: "There belong to the law, ten lesser Inns, which are called Inns of Chancery, in each of which are one hundred students at the least. After they have made some progress here they are admitted to the Inns of Court." Gradually the Inns of Chancery ceased to be schools of law and fell into the hands of the attorneys, who closed them against students for the bar, and in time turned them into places of convivial pleasure. The origin of these Inns was undoubtedly the need for providing boarding-houses for students. The Inner Temple had three of these Inns, Clement's, Clifford's, and Lyon's, called after the first masters who received the scholars to board and lodge them; Lincoln's Inn had one, called after Dr. Thavies; the Gray's Inn had two, Barnard's and Staple Inn.

New Inn was originally a tavern and was called "Our Lady's Inne." From its door jamb there hung a signboard on which was painted a picture of the Virgin Mary. In the reign of Edward IV, Sir John Fineux, Lord Chief Justice, hired "Our Lady's Inne" for the use of those students of the law, "who were lodged in the little old Bailey, in a house called St. George's Inn, near the upper end of St. George's lane, and reputed to be the most ancient Inn of Chancery." St. George's Inn was considered unsafe on account of its age, and was ordered to be pulled down. When the students took possession of Our Lady's Inn the sign was taken down and in its place the words, "The Newe Inne," were "painted on a neat panel." A sundial was placed on the outer wall over which was the motto "Time and Tide tarry for no man."

When the Protector Somerset built Somerset House in the Strand in 1549, he pulled down the "Strand Inn," and the Middle Temple enlarged the New Inn in order to accommodate the dispossessed students of the Strand. When Sir John Fineux hired the Inn he agreed that the Middle Temple should pay a rent of £6 ($30) as tenants at

will, "for more cannot be gotten of them; and much less will they be put from it."

The fare provided was simple, but not so plain as that at the Oxford Inn. No plates were provided, the scholars using thick slices of bread in lieu of them. Pocket knives were the only ones used and the students had to drink out of wooden cups. Later, however, more style was put on and plates, knives and spoons were provided. Perhaps this was the result of the visits paid by the judges, who got into a habit of "slipping in with their black silk gowns and powdered wigs" to breakfast.

Sir Thomas Moore studied at New Inn prior to entering Lincoln's Inn. When he lost the chancellorship of the kingdom and had but a very small income he thought of his student days and remarked to his friends: "It shall not be best to fall to the lowest fare first, we will not therefore descend to Oxford fare, nor to the fare of New Inn, but we will begin with Lincoln's Inn diet, where many a right worshipful, and of good years, do live full well. Which if we find not ourselves the first year able to maintain, step down to New Inn fare, wherewith many an honest man is well contented." The gifted author of "Utopia" was not allowed to enjoy the fare of either Inn, for he was thrown into the Tower, where he remained thirteen months. When he was placed on trial it was said that "no such culprit had stood at any European bar for a thousand years." He died at the hands of the executioner, July 6, 1535. In the words of Addison: "The innocent mirth which had been so conspicuous in his life did not forsake him to the last." When he left his cell he turned to a friend who was offering sympathy and said: "I pray you see me safe up the scaffold, and as for my coming down let me shift for myself." When he laid his head on the block, he desired the executioner to wait until he had removed his beard, "for that had never offended his highness."

Sir Edward Coke, whose book "Coke on Littleton" is known to every educated laymen as well as being a text-book for law students, was one of the historic celebrities of New Inn. Coke used to carry about with him an enormous fan, the handle of which was an excellent weapon in case of attack, though it was sometimes used as a corrective in the homes, for Dugdale mentions the "fans with long handles — with which the gentlemen of those days slasht their daughters when they were perfect women." Coke was notorious for his matrimonial troubles, and through his second wife was connected with the strange legend of Bleeding Heart-yard, off Hatton Garden. Lady Hatton, Coke's second wife, was said to have made a contract with the devil, and the legend tells how his satanic majesty entered her house in Cross street, and seized her, bearing her bodily away. It was said that he "dashed her against the pump and tore her heart out of her bosom with his iron claws." For many years the people believed in the legend, and the place was called "Bleeding Heart-yard." A horseshoe was nailed on the door of the house to keep witches and demons away. For several generations the house was pointed out and the room shown with a great amount of wholesome awe, and when scoffers doubted the truth of the legend they were shown the pump on which was an indentation said to have been made by the head of the victim, and for still further corroboration, a dark red spot was pointed out on the other side of the square as being the exact spot where her heart was found, and the historian says that "neither grass nor flowers would grow there, but the soil remained red to this day."

At the time of the Restoration of the Stuart dynasty, the body of Oliver Cromwell was taken from its grave and carried, with all his effects, to Tyburn and there burned; a student of New Inn managed to hide a bust of the Protector which had been modeled from life, and later presented it to the library of New Inn, in which place it has remained until the ruthless destroyer came

to raze the Inn to the ground in the interest of a new street, made according to modern requirements.

In a few years more all the ancient landmarks will have been destroyed and only the written page of history will keep alive the memory of that great past, when from barbarism there emerged a mighty civilization, which swept away all old things and created a new and better order. Yet while we rejoice at the march of civilization we cannot help regretting the removal of these relics of the past.

THE BARONS OF THE EXCHEQUER.

TO realize the origin of that old Court of Exchequer, which sat at Westminster, we must picture to ourselves the king as Chief Lord of the Realm, surrounded by his barons and great officers of state. The baronage attending on his royal person made, as Madox tells us, a considerable part of the court. They were his homagers. They held their baronies of him, and were his "men" as to life, limb, and earthly honor.

Three times every year, on the great festivals of the church, the king assumed a special state. He sat upon his throne at Easter, at Winchester; at Whitsun, at Westminster; at Christmas at Gloucester; wearing his crown and "girt with many a baron bold," conspicuous among them his seven great officers of state, the justiciar, the constable, the marshal, the high steward, the chamberlain, the chancellor, and the treasurer. This august assemblage — the flower of the realm and the prototype of our modern Privy Council — was known as the king's council, and with them the king consulted of war and peace, of the administration of justice, of finance, of all the many matters of statecraft and government, and from this royal court or council sprang, by that process of differentiation of functions and division of labor in which the philosophy of Mr. Herbert Spencer finds the law of social progress, all or most of the machinery of government — legislative, judicial, executive — as we have it to-day; the High Court of Parliament, the Cabinet, and the Courts of Law and Equity. Naturally one of the most pressing topics on which the king held counsel with his barons was that of replenishing the royal treasury, but by degrees this problem of revenue was delegated — as needs must be with such a complicated subject — to what we should call a finance committee of the Royal Council presided over by the king in person, ultimately by the lord treasurer, the chancellor of the exchequer, and three other barons. It is in this body that we discover the origin of the time-honored Court of Exchequer — nay, more, it is to the activity of this finance committee in the king's interest that we really owe the institution of the itinerant justices which form such a special feature of our legal system, and which has done so much to give to that system solidity and uniformity. The king's revenues were derived chiefly from the royal demesnes, from the Danegelt or land tax, from the fines of local courts, and the feudal aids from baronial estates; and the itinerant justice's chief business at first was to collect these revenues, to make assizes, to fix amercements, and generally enforce and uphold the fiscal rights of the Crown. These fiscal visitations led to the judicial visitations — the judges' circuits. Twice every year this group of financial experts, under the name of Barons of the Exchequer, sat round

the exchequer table at the Palace of Westminster, received the royal revenue, audited the sheriffs' accounts, and administered incidental justice. Mark, it was still in the time of the first Henry, "the King's Court," but "at Exchequer" — that was the phrase — *Curia Regis ad Scaccarium.* This word "exchequer" (*Scaccarium*) was derived from the chequered cloth figured with squares like a chessboard which was wont to be laid on the table in the court, and which seems to have assisted our ancestors "in the counting of money" according to the way which was used in those times. This and other details of this primitive and picturesque court, the constitution of the Exchequer Board, its course of proceeding, its treatment of the king's debtors, its writs, its rolls, its chessboard and counters, its tallies, its scale, its melting-pot — all these will be found expounded in the "Dialogues de Scaccarie," of Richard Fitzneale, sometime a master of the board, and versed in all its mysteries. Need we wonder that, what between the king, vexed with eternal want of pence, the distresses of his debtors, and an unfailing supply of local disputes, the board of exchequer barons came soon to have a "multiplicity of business"; yet it was continually drawing more and more matter within the sphere of its jurisdiction, and it is "pretty to observe," as Mr. Pepys would say, how the board amplified its jurisdiction until it came to be converted into a Court of Common Law of coordinate jurisdiction with the King's Bench and the Common Pleas, taking cognizance of all but real actions, and invested with an equitable as well as criminal jurisdiction. It was in this wise. The barons allowed all the king's debtors, and farmers, and all accountants of the Exchequer to sue all manner of persons in their court, on the plea that by reason of the wrong done to the plaintiff by the defendant, he was unable to discharge his debts to the king. It was a sort of garnishee proceeding in favor of the king, and this privilege was ultimately extended to all the lieges, on the extravagant fiction that they were the king's debtors *in posse*, if not *in esse*. But we must not quarrel with a fiction which gave us that grand old court which, unchanged for nearly six hundred years, dealt out an even-handed justice to all manner of men without fear or favor, and which, it should not be forgotten, exhibited the first ideal fusion of law and equity. The flowing tide of legal reform which marked the commencement of this century first swept away in 1841 its equitable jurisdiction, and then the judicature acts merged its illustrious traditions and its unique honors in the dead level of the one-judge system. But what a record that old Court of Exchequer holds or held! what a splendid galaxy of legal genius has adorned its bench! the good and great Sir Matthew Hale — *clarum et venerabile nomen;* Comyns, to whom we owe that work of monumental industry and research, "Comyns' Digest"; the erudite Gilbert, famous no less for the variety and depth of learning in his legal treatises than for his mathematical and literary accomplishments; the humane and discriminating Sir Archibald Macdonald; Sir James Eyre, memorable for the fine impartiality with which he presided at the famous trial of Horne Tooke; Lord Abinger, the greatest verdict-winner of his age; the courteous and judicial-minded Rolfe, afterwards Lord Cranworth; Parke, the great black-letter lawyer of this century; Sir Frederick Pollock; the founder of the "Mucian gens" of England; the versatile Kelly; the genial and acute Bramwell; these are names which will keep the memory of the Court of Exchequer green so long as English lawyers value what is greatest and best in their legal traditions. — *Irish Law Times and Solicitors' Journal.*

LONDON LEGAL LETTER.

LONDON, June 1, 1899.

THE presence of Mr. Choate as the guest of the Hardwicke Society at its recent annual dinner was the first appearance of the distinguished American ambassador among English lawyers. The Hardwicke Society is composed exclusively of barristers and law students who are members of the various inns of court. Its object is to provide an opportunity for the coming fledglings to try their wings in debate. Named after the elder Earl of Hardwicke, who was not only successively Solicitor-General, Chief Justice and Lord Chancellor, but who was also a profound lawyer, the society keeps up some of the best traditions of the past.

The fact that Mr. Choate, almost immediately upon his arrival, accepted an invitation to be the guest of the society, gave to the dinner this year an unusual importance, and the banqueting hall was uncomfortably crowded. The general feeling seemed to be one of curiosity to see Mr. Choate, the individual, and not merely to pay respect to him as the representative of his country. His fame as the leader of the American bar had long preceded him to this country, and his skill as an advocate was generally known and recognized. Then, too, the dinner afforded an opportunity of comparing, not merely his presence, but his manner of speaking with that of some of the foremost orators of the English bar.

Mr. Choate sat on the right of the chairman, on whose left was the Lord Chief Justice, while near at hand were Lord Macnaghten, Mr. Justice Matthew, Lord Justice Romer, Mr. Justice Darling, and, besides these representatives of the bench, Sir Edward Clarke, who is beyond question the foremost as well as the most skillful advocate at the English bar, and many other Queen's Counsel and rising juniors. In so notable a company it is no exaggeration to say that Mr. Choate was, by general consent, the most notable in appearance. His commanding figure, well-poised head, clean-shaven face, clear eye and graceful attitude when speaking, distinguished him as being very close to the ideal most young lawyers in this country have set up as their imaginary standard. And in what he said, and in his manner of saying it, the ambassador confirmed the good impression he had made by his appearance. He was preceded by Mr. Justice Matthew, who made an excellent speech. Referring to the presence of the distinguished representative of the American bar, he said he came from a happy land where the bar enjoyed perpetual youth — there were no seniors. No man there was tempted to sacrifice his prospects by taking silk. He thought there were many points of resemblance between the lawyers of the two countries. There was the same passion for making laws which were not intelligible; there was the same veneration for the common law that everybody was trying to set aside; there was the same intense desire to make regulations for procedure and multiply perplexing formalities.

The Lord Chief Justice, in proposing "The American Bench and Bar," intimated that he thought he would be forgiven if, instead of repeating what he had so frequently said upon other occasions since his return from America in praise of the American bench and bar, he should now say something about their demerits. These, he thought, were that in the great majority of cases there was no fixity of tenure to the judges; that the smallness of the salaries made the exceptions rare where the best men at the

bar would seek judicial office, or accept it if offered; that the judges were too often elected, and, finally, that there was too profuse an output of published legal decisions. Referring to the selection of judges by election, he admitted that a judge was not less a worthy judge because he was popular, but looking to the fact that it was not possible for a constituency to be as good a judge of the right man to select for a given work in a particular department as those intimately acquainted with the character of the work and the men from whom the selection was to be made, popular election could not, on the whole, be satisfactory. And the reason, mainly, was that in the case of popular election there was no sense of individual responsibility, whereas in the case of a selection, even by such weak and erring persons as Lords Chancellors, there was the sense of individual responsibility, checked and controlled by strong, healthy public opinion. As to the multiplicity of law-books, he said that in England there was a library of some thousand volumes, mostly reports, and he thought half of them could be burned without any very serious injury accruing; but fortunately the output of law reports was now reduced to seven or eight a year. On the other hand in America they had the Federal reports and the State reports in each State, so that there were between three hundred and four hundred volumes a year. He suggested to Mr. Choate that the international accord now happily existing between the two countries should be celebrated by grand bonfires of law-books, to which every English lawyer would be glad to make contribution.

Mr. Choate, in responding to the "American Bench and Bar," amused his auditors at the start by stating that he spoke for ninety thousand professional brethren. These American lawyers were all barristers, all attorneys, and all solicitors. Every one of them was entitled to go into the highest courts in the land, and plead any case entrusted to him. In the history of the country these men had displayed a truly chivalric and public spirit. They had not only been the defenders of liberty, but they had been the defenders of those great constitutional safeguards in which the rights of liberty, of life, and of property were all secured to the people. Success at the bar in the United States depended upon the same conditions as in England. He had known personally nearly all the eminent leaders of the profession in America for the last twenty years. No two of them agreed in personal qualities, but they all had one faculty in common upon which success turned — a grim tenacity of purpose which carried them through from the beginning to the very end of life at the sacrifice of whatever was necessary, except honor and character, to achieve success, and it was that which enabled each of them to reach his goal. He agreed to the uselessness of so many reports of judicial opinions, and in regard to the change from an elected to an appointed judiciary, he had often contended for the same doctrine which the Lord Chief Justice advocated, but that fight had been fought out with the people of America fifty years ago, and the battle was ended. No matter what observers might think of the defects of the system, he was confident that justice was administered in America to the satisfaction of the people, and it was brought to their doors, for law was cheap. He closed a dignified and entertaining address by an eloquent tribute to the character and power of the Supreme Court of the United States.

It too often happens that the manner in which judges exercise their authority is considered harsh and arbitrary, and it is therefor a pleasure to record what must be considered a thoughtful, kindly, and touching act on the part of one of them. Mr. Justice Bucknill, the last judge appointed, when on circuit in the Midlands, sentenced a young girl to three months' imprisonment for concealing the birth of her child. Before

leaving the town he sent the following letter to the girl's father: —

"Sir, — I am the judge who sentenced your daughter on Saturday to three months' imprisonment for the concealment of birth of her recently born child, and I have been to the jail to-day to see her and talk to her, and I have told her that I am writing to you.

"She seemed very sorry for the past, and I want you to tell me that when she comes out of prison you and her mother will forgive her and take her back and try to help her to make a new start.

"I know how angry you must have felt with her, but at the same time it would be a very great delight to me to know from you that you and her mother will overlook the past, and will not be any longer angry with her, so that she may be encouraged to make a new beginning by your help."

The late Lord Herschell's professional success at the bar cannot better be measured than by the contents of his will. He had no fortune to start with, and made his money by the practice of his profession. The gross value of his personal estate has been proved at the equivalent of $765,680. This excludes his real property, which is very valuable. The figures are notable, as they represent the distinguished lawyer's work at the bar, and while this sum may not be the aggregate of the fees marked upon his briefs, for those were doubtless well-merited, it comes nearer to expressing the value of his worth to his clients than is often the case. Few lawyers in this country, especially barristers, have the opportunity of participating in the ventures of their clients which so frequently makes the fortune of the American lawyer.

STUFF GOWN.

The Green Bag.

PUBLISHED MONTHLY, AT $4.00 PER ANNUM. SINGLE NUMBERS, 50 CENTS.

Communications in regard to the contents of the Magazine should be addressed to the Editor, HORACE W. FULLER, 344 Tremont Building, Boston, Mass.

The Editor will be glad to receive contributions of articles of moderate length upon subjects of interest to the profession; also anything in the way of legal antiquities or curiosities, facetiæ, anecdotes, etc.

LEGAL ANTIQUITIES

IN an English newspaper of the date of January 16, 1797, appears the following:

"John Hetherington, haberdasher, of the Strand, was arraigned before the Lord Mayor yesterday on a charge of breach of the peace and inciting riot, and was required to give bond in the sum of 500 pounds. It was in evidence that Mr. Hetherington, who is well connected, appeared upon the public highway, wearing upon his head what he called a silk hat (which was offered in evidence), a tall structure having a shiny lustre, and calculated to frighten timid people. As a matter of fact, the officers of the Crown stated that several women fainted at the unusual sight, while children screamed, dogs yelped, and a young son of Cordwainer Thomas, who was returning from a chandler's shop, was thrown down by the crowd which had collected, and had his right arm broken. For these reasons the defendant was seized by the guards and taken before the Lord Mayor. In extenuation of his crime defendant claimed he had not violated any law of the kingdom, but was merely exercising a right to appear in a headdress of his own design — a right not denied to any Englishman."

Another paper of the same date (January 16, 1797), in commenting on Mr. Hetherington's appearance, said:

"In these days of enlightment it must be considered an advance in dress reform, and one which is bound, sooner or later, to stamp its character upon the entire community. The new hat is destined to work a revolution in headgear, and we think the officers of the Crown erred in placing the defendant under arrest."

FACETIÆ.

A WESTERN exchange said, "Ignorance of the law excuses no one." A Rochester paper commenting on the same, said, "If it were a crime to be ignorant of the law, we know several members of the Rochester bar who would be in jail."

SOME time back one of the judges, whose salaries were, by the act, to be paid out of the fees, seeing that the whole amount was absorbed by the chief, observed to an associate on the bench:

"Upon my word, R——, I begin to think that our appointment is all a matter of moonshine."

"I hope it may be so," replied R——, "for then we shall soon see the first quarter."

The same humorous judge had listened to a long argument on a particular case in which the counsel rested much upon a certain act of Parliament. His opponent replied:

"You need not rely on *that* act, for its teeth have been drawn by so many decisions against it that it is worth nothing."

Still the council argued on, and insisted on its authority; after listening to which for a good hour, his lordship drily remarked:

"I do believe all the teeth of this act have been drawn, for there is nothing left but the jaw."

"YOU know Schneider, the bottler, who recently became a magistrate?" "Yes." "Well, he discharged a prisoner yesterday who was charged with stealing a dozen bottles of beer." "So?" "Yes; Schneider said that wasn't enough to make a case."

IT was in a Duluth court, and the witness was a Swede who, perhaps, was not so stupid as he seemed to be.

The cross-examining attorney was a smart

young man, whose object was to disconcert the witness and discredit the testimony.

"What did you say your name was?" was the first question.

"Yahn" — very deliberately — "Peterson."

"John Peterson, eh? Old man Peter's son, I suppose. Well, John, where do you live?"

"Where Ah live? In Dulut'."

"Now Peterson, answer this question carefully. Are you a married man?

"Ah tank so. Ah was married."

"So you think because you got married you are a married man do you? That's funny. Now, tell the gentlemen of this exceptionally intelligent jury who you married."

"Who Ah married? Ah married a woman."

"See here, sir! Don't you know any better than to trifle with this court? What do you mean, sir? You married a woman? Of course you married a woman. Did you ever hear of any one marrying a man?"

"Yes. Mah sister did."

THERE are times when a lawyer regrets the use of an illustration which a moment before has appeared especially felicitous. "The argument of my learned and brilliant brother," said the counsel for the plaintiff in a suit for damages from a street car corporation, "is like the snow now falling outside — it is scattered here, there and everywhere." "All I can say," remarked the opposing counsel when his opportunity came, "is that I think the gentleman who likened my argument to the snow now falling outside, may have neglected to observe one little point to which I flatter myself the similarity extends — it has covered all the ground in a very short time."

NOTES.

THE law of wills and inheritance is cited by Isaac F. Russell, in a paper on the Vendetta, as perhaps exhibiting more than any other body of justice doctrine the influence of kinship in legal evolution. In point of historical development intestate inheritance precedes testamentary succession. The conception of a will as a means of disinheriting children and devolving an estate in accordance with the excessive partiality, fleeting caprice, or malignant temper of the testator, is a conception of our modern times, and was not familiar to the jurisprudence of primitive antiquity. In fact, ancient law regarded a will as a means of perpetuating the family in a succeeding generation by nominating a new chief on whom the headship was to be devolved. Little power of free testamentary alienation was recognized. The patriarch was more like a trustee or steward of common possessions belonging to the family than an original proprietor. He could not do as he saw fit with what seemed to be his. Often a son, on coming of age, could compel his father to make a partition of the family holdings, as suggested by Jesus' parable of the prodigal son.

NEVER, perhaps, in an Irish or an English court was a more startling conversation heard than the one that took place last week between Chief Baron Palles and Mr. Campbell, Q. C., M. P. The action was for damages for personal injuries sustained through the alleged negligence of a railway company. At a certain stage of the case, the chief baron announced that he would adjourn the hearing to enable the plaintiff to produce a map of the locality where the accident occurred. The conversation referred to was as follows: — Mr. Campbell objected to such an adjournment, as the case for the plaintiff had closed, and he asked his Lordship to take a note of the objection. His Lordship: "Indeed, I will not. There is a certain discretion allowed to the judge, and a worm must turn some time." Mr. Campbell: "Well, I saw in to-day's papers where a judge in America has been shot by a lawyer for refusing to comply with a request." His Lordship: "Let them try it on here. In America, however, a judge has a great advantage, for he sits with a revolver in each hand." — *The Law Times.*

A NOVELTY in the way of a jail on wheels passed over the Missouri, Kansas & Texas road recently. It is coach No. 10, remodelled and heavily barred with iron on the interior, making it impossible for its inmates to escape. It is sent to the Indian Territory to be used in carrying United States prisoners to the penitentiary.

SIR JOHN SCOTT, lately judicial adviser to the Khedive, in an address which he delivered in London the other day, gave an interesting account of the revolution which has been effected, under British occupancy, in the administration of Egyptian law courts. When, in 1890, he undertook the job of reforming existent abuses, matters were in a terrible condition. The judges were ignorant, servile and venal, mere political parasites, and law and justice were equally disregarded. Of the appellate judges at Cairo, one had been a station-master, another the doorkeeper of a prime minister. With such judges, and a hopelessly corrupt and blackmailing police, there was small hope for any prisoner who had neither money nor influence. When, however, Sir John retired in 1896, a wonderful change had been wrought by his efforts. The notoriously incompetent judges have been deposed, and no man can now get on the bench without a legal diploma. The law, both civil and criminal, is enforced with vigor and impartiality, and even the pashas are made to feel the authority of the courts which they formerly regarded merely as convenient agencies for the enforcement of their own nefarious schemes. A cousin of the Khedive, who shot at another prince, now wears a convict uniform, and the son of the richest man in all Egypt is also in penal servitude for robbery. Another Egyptian magnate has just been sent to jail for forgery, to his intensé astonishment and disgust.

THERE recently died in London a man who was known as Fred II, the king of pickpockets. He used to operate mainly on race-tracks, and was well known on the turf, in France as well as in England. He left behind him a few stories of his marvellous dexterity as a thief ; that was all. One day he made a bet that he would pick the pocket of the Prince of Wales. The feat seemed absolutely impossible, because most of the prince's friends knew the man well enough to prevent his coming near the royal person. But the matter proved simple to the king of pickpockets. He won his bet and returned the pocketbook intact. This pickpocket took particular delight in filching the watches and pocketbooks of police officers and magistrates. At that time he was always dressed in the latest fashion and was prosperous. But one day he made a failure in his attempt to relieve Baron Hirsch, the great philanthropist, of his purse, and the ridicule that followed him haunted him to his grave. Many curiosity-seekers attended his funeral, but afterward found that the professional pickpockets of London had relieved them of all their valuables, which was the thieves' tribute to their dead king. This wholesale theft was the rogue's last legacy to the living.

SOMETIMES, without doubt, American and British judges, who are held to a close accountability to the letter of a law which may have in it no justice for a particular case, may well sigh for the latitude of an Oriental cadi. Sometimes, moreover, they may rightfully bend the administration of the law in the direction of absolute justice.

An English paper, for instance, records a peculiar decision in the suit of a usurer against a poor woman. The man had lent the woman money in such a way that it was to be paid in instalments, and with monthly usurious interest. The woman was unable to pay the amount due.

The judge satisfied himself that the woman was honest and honorable, and that what she had already paid in instalments would cover the original loan and a reasonable interest.

"Will you accept five pounds in discharge?" asked the judge of the plaintiff. "You will then have had ten per cent. on the loan."

The plaintiff would accept nothing less than the full amount to which the law entitled him.

"Then," said the judge, "although I cannot invalidate the agreement, I can make an order which, I think, will fit the case. I give judgment for the full amount, to be paid at the rate of sixpence a month."

This was the "instalment system" with a vengeance, for at this rate of payment the usurer would be seventy-five years in getting his money.

CURRENT EVENTS.

MALAY is almost a grammarless tongue. It has no proper article, and its substantives may serve equally well as verbs, being singular or plural and entirely genderless. However, adjectives and a process of reduplication often indicate number, and gender words are added to nouns to make sex allusions plain. Whatever there is of declension is

prepositional as in English, and possessives are formed by putting the adjectives after the noun as in Italian. Nouns are primitive and derivative, the derivations being formed by suffixes or prefixes, or both, and one's mastery of the language may be gauged by the idiomatic way in which he handles these *Anhängsel.* Adjectives are uninflected. — *Appleton's Popular Science Monthly.*

SEVEN hundred of the three thousand miles of Japanese railways are owned by the government. All trains run at a speed of twenty miles an hour. Recently one hundred American locomotives were ordered. The freight cars are of five to eight tons' capacity. The large American freight cars are to be introduced.

DIPSOMANIACS in Sweden, when put under restraint, are fed almost entirely on bread steeped in wine. In less than a fortnight they loathe the very look and smell of liquor, and when liberated generally become total abstainers. In Russia similar treatment is followed with good results.

GERMAN science announces that everything needed to make a man weigh one hundred and fifty pounds can be found in the whites and yolks of twelve hundred hen's eggs. Reduced to a fluid, the average man would yield ninety-eight cubic metres of illuminating gas and hydrogen enough to fill a balloon capable of lifting 155 pounds. The normal human body has in it the iron needed to make seven large nails, the fat for fourteen pounds of candles, the carbon for sixty-five gross of crayons, and phosphorus enough for 820,000 matches. Out of it can be obtained besides twenty coffee-spoons of salt, fifty lumps of sugar and forty-two litres of water.

TERRA-COTTA sleepers are in use on Japanese railways. The increased cost is compensated for by the greater resistance to decay.

"PALL MALL" (pronounced pel mel), comes from Paile Maile, an ancient game supposed to have been played on the present site of Pall Mall by Norman monks, by whom it was introduced into England. The observant Pepys, in his famous Diary, makes mention of it thus: "April 2, 1661. Into St. James' Park, where I saw the Duke of York playing at Pelemele, the first time that I ever saw the sport."

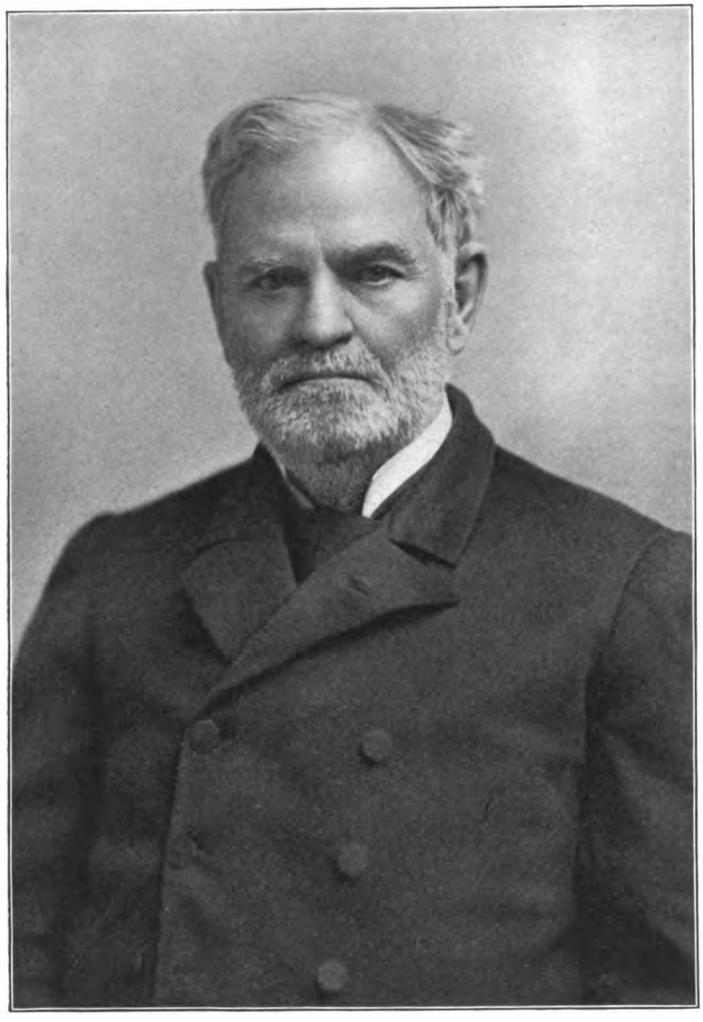
THE thickest coal seam in the world has been found at Cyferfontain, South Africa. It is 200 feet thick.

LITERARY NOTES.

SCRIBNER'S MAGAZINE for June opens with a richly illustrated article by Cecilia Waern who describes the wonderful advance in art made by her fellow-countrymen, under the title of "The Modern Group of Scandinavian Painters." A typical fight in the Philippines is described by an eye-witness, under the title of "The Battle of the Blockhouses," which is a most complete and stirring account of that curious campaign. The number is very strong in short stories. William Allen White, the Kansas editor, writes a tale of western political life. He calls it "A Victory for the People." Another story by a new writer is "A Burial by Friendless Post" by Robert Shackleton. Henry James contributes a short story in the field in which he won his first successes, entitled "Europe." Joel Chand'er Harris contributes another "Aunt Minervy Ann" story.

THE first chapters of Miss Johnston's brilliant historical romance "To Have and to Hold" form a most attractive opening for the June ATLANTIC. Like her previous novel, "Prisoners of Hope," the scene of the story is laid in early colonial Virginia. The foundation of the plot rests upon the well-known instance of the sending a shipload of young women from England to the colony soon after its founding for the purpose of furnishing wives to the colonists. In Japan and the Philippines, Arthur May Knapp analyzes the salient features of Japanese character and policy. Frank Gaylord Cook, in "Politics and the Judiciary," treats the history of judgeships in this country; showing how the method of creation has changed in many States from an appointive to an elective system. From personal investigation and experience, Herbert Pelham Williams discusses the outlook in Cuba. Gilbert Parkers's brilliant Egyptian tale, "The Man at the Wheel," and other fiction, and a lively symposium of the Contributors' Club complete the number.

THE complete novel in the June issue of LIPPINCOTT'S is entitled "Green Withes," by Jeanette H. Walworth. This is a tale of strong human interest, touching, as it does, on one of the vital questions of to-day. A truly delightful article on "The Summer's Birds," by Dr. Charles C. Abbott, will be found entertaining, as well as useful in country walks this summer. "Chemistry in the Kitchen," by Albert G. Evans; "The Samoan Feast of Pilaui," by Owen Hall; and "Fires in Metalliferous Mines," by John E. Bennett, are all excellent and timely papers. Shorter fiction is well represented by Dora Read Goodale in "The Opera-Glass," and by Rollo Ogden in "A Scientific Reader." Theodore Gallagher contributes a story of life in a miner's camp, called "Father McGrath," and Alice Miriam Roundy writes of "King McDougal's Kitten."



William A. Richardson

The Green Bag.

VOL. XI. No. 8. BOSTON. AUGUST, 1899.

WILLIAM ADAMS RICHARDSON.

BY EDMUND S. SPALDING.

FEW books have been given to the world so publicly, and yet so privately, as "A Sketch of the Life and Public Services of William Adams Richardson by Frank Warren Hackett." Privately printed, Washington, 1898.

After the death of Chief Justice Richardson, October 19, 1896, a letter was found among his papers, bearing no date, but addressed to Frank Warren Hackett, requesting him to write his life, to be printed privately, to be given to friends and to various public libraries. He and Mr. Hackett had been professional and personal friends for nearly thirty years, and the biography shows thorough knowledge and ability for the work.

William Adams Richardson was born in the quiet country town of Tyngsborough, in the northern part of Massachusetts, November, 2, 1821. His descent is traced from a line of strong and worthy English ancestors.

His grandfather, William Merchant Richardson, who lived in Portsmouth, N. H., was chosen chief justice of New Hampshire, a position ably filled until his death, a period of twenty-two years. His father, the third son of Judge W. M. Richardson, Daniel Richardson, settled in Tyngsborough, in the practice of law, and had two sons, both of whom adopted the same profession. William Adams Richardson, the younger son, was graduated from Harvard College in 1843. He was considered a faithful and industrious, rather than a brilliant scholar. He was admitted to the Suffolk bar, July 8, 1846.

He went to Lowell and entered into partnership with his brother, Daniel S. Richardson, already well and favorably known at the bar. He devoted himself more to the solid work and careful investigations of his profession than to any prominence as an advocate.

In 1855 Mr. Richardson compiled a volume upon the banking laws of Massachusetts. He was never neglectful of the claims of any client, but he found great interest in the prompt and methodical arrangement of all legal subjects. Unexpectedly there came to him an opportunity for this kind of congenial work when Governor Gardner appointed him one of three commissioners to consolidate and rearrange the Massachusetts statutes, retaining everything essential, but omitting every tautological expression. He bent his whole mind to this labor, and upon himself and George S. Sanger devolved the labor of editing and superintending the printing of the new form. It is related of Mr. Richardson that one day at the State House, Judge Parker, who was chairman of the board of commissioners, put into his hand a chapter drawn up informally, and asked him if he could put it into better shape. He took it home to Lowell, where he then lived, sat up all night, and recast it into three pages, which were printed just as he had written them.

It is remarkable that this taste for what

would have been generally considered severe and tedious labor, requiring legal skill and patient study, should have been formed in his younger days, and have always continued.

For a period of twenty-two years, he edited and superintended annually a volume of Massachusetts statutes. He subsequently watched the course of legislation in Congress, and had a thorough knowledge of Federal statute laws. The annotations made in his note-book grew into a large and valuable volume. Owing to his methodical and persistent labor, the bar can now consult supplements of the revised statutes of the United States, from 1874 to 1895. The plan he adopted has become the settled policy of the publications of Congress. In 1856, Governor Gardner appointed Mr. Richardson to the office of judge of probate for Middlesex county. This choice was exceptionally fortunate in the skill and dispatch of business evinced in the office. Among other improvements, finding that the fourteen counties of the State had different probate blanks, Judge Richardson had a meeting of the other judges, and an appropriate and uniform blank was proposed and adopted by the supreme court. When the probate court and the court of insolvency were subsequently merged in one, Judge Richardson was chosen judge of Middlesex. In 1860 he removed his law office to Boston, and his home to Cambridge; here he might be found for nearly ten years in thorough application to business. Gov. George S. Boutwell was chosen by President Grant, secretary of the United States treasury. The office of assistant secretary was offered to Judge Richardson. At the earnest entreaty of Governor Boutwell, who had known him long and well, he accepted the position. Meanwhile Governor Claflin had offered him the appointment to the bench of the superior court of the state of Massachusetts. With extreme reluctance, he declined the honor at home to go to Washington. Secretary Boutwell afterward said of their joint experience for three and a half years, "he contributed largely to whatever of success was attained during my administration of the treasury department."

It is well known, that the chief responsibility of this administration was the reduction of the public debt left by the late Civil War.

To make the measures adopted successful, required great business enterprise, knowledge, and tact; and these qualities the assistant secretary had in great degree. At home and abroad he effected the change of bonds into money at millions of value. When he first went to England on this mission, American securities were regarded with suspicion.

No mere blandishments would have been of any avail; still less, any exhibition of trading shrewdness. But his personal far-sightedness, and thorough uprightness of character won respect; and a change became apparent in the tone of English bankers. There came to be no further difficulty in disposing of United States bonds. Judge Richardson had regarded his residence in Washington as temporary; and a return to the former position on the bench was his preference. When Secretary Boutwell was chosen to fill Wilson's unexpired term in the senate, he resigned his position in the treasury department. William Adams Richardson was appointed by President Grant secretary of the treasury, March 17, 1873. His work in this department was always effected as quietly as possible. When the payment was made by Great Britain, of fifteen and a half millions of gold coin, in 1872, of the Geneva Tribunal, it was almost without comment; and nothing said about it by himself, until ten years later, he was requested to write the history of so important an historical event. In 1873 came a terrible panic in the business of the country, as banks, and firms of different kinds, and noted individuals went into insolvency. Over-speculation and inflated trade had brought a fearful crash. Help was solicited from the

President and secretary of the treasury. It was insisted that the reserve in the treasury should be issued to ease the money market.

The President was staying at the time for rest at Long Branch, while the secretary remained at Washington. More and more urgent appeals came over the wires for aid from the public funds. Secretary Richardson knew that there must be a limit to these loans, or the government would be seriously crippled. The credit of the country must be maintained abroad. The pressure was great on the administration, on one side not to issue any more paper money, and to stop payment on it, if necessary; and on the other, to put forth the whole reserve of hard money. The President, persuaded by counsel he thought competent, telegraphed the secretary from Long Branch, to issue a large quantity of the reserve, and buy bonds and give notes the next morning. He then started for Washington, where he found his order had not been obeyed. After consultation with the secretary he became satisfied with the reasons given for suppressed action in the matter.

Later a telegram came from Long Branch for the secretary to meet the President in New York, at Fifth Avenue Hotel. Going at once, he explained to the President that the treasury must be kept strong to afford relief, if necessary, after the panic was over; and that $12,000,000 must be the limit, if the department would be kept out of the crash. An interview had been arranged at the hotel, by noted business men who appeared there in great numbers. Many speeches were made, some of them violent, urging the President to issue at once the forty-five millions reserve. The panic must be stopped, or a larger mob than was ever known in New York would be the consequence. The President asked that the proposition should be made in writing. The men retired for consultation. In a few hours the written proposition was presented, signed by men of prominent financial responsibility. It was urged that the treasury department should advance a loan of $20,000,000 to the banks, upon the receipt of clearing-house certificates, with a promise of more money if necessary. As Mr. Hackett remarks: "Of course, as every one now perceives, there could have been but one reply given to such a request. The President could act only within the law; and there was absolutely no law that by any stretch of construction could be held to have converted the treasury department into a loan institution."

Moved by their entreaties, the President had consented that he and the secretary should meet these business men at the office of the sub-treasury the next morning, ready for all necessary action. When the room was cleared, and the door locked, Secretary Richardson told the President that the first thing to be done was for them to return to Washington. The President reminded him of the promise he had given these men to stop the panic. The secretary said, "The District of Columbia was the only constitutional seat of government; the present panic was not the work of government, and it was not the duty of government to stop it." "But," reiterated the President, "we shall be expected to-morrow morning at the office of the sub-treasury." To which the secretary replied that as soon as they were away, and no help from government was at hand, these men would be thrown upon their own self-reliance and business resources; and the mob would be dispersed.

At length the President was brought to see the practical wisdom of the suggestions. The next morning the papers announced that President Grant had gone to Long Branch and Secretary Richardson had returned to Washington. In large letters the "Tribune" declared, "The Panic Over." Thus the treasury department was saved from being embroiled in the financial strains of business circles, and the credit of the government preserved.

During his connection with the treasury,

Secretary Richardson had refused an offer, very tempting in a pecuniary point of view, to become a member of a large banking house in London. But when an opportunity presented for him to go upon the Bench of the United States' Court of Claims for life, his devotion to legal studies and practice overcame every other consideration; and he resigned the office of secretary of the treasury. His nomination as judge of the United States Court of Claims was confirmed by the Senate, June 4, 1874. Judge Richardson was then fifty-two years of age, and for twenty-two years he performed the duties of the court with signal judicial ability and sterling integrity. It is said to have been "an accession that obviously strengthened the court."

After a period of eleven years of faithful devotion to duty as judge of the court of claims, he was appointed chief justice of the court. Upon the retirement of Chief Justice Drake, President Arthur sent to the United States Senate the name of William Adams Richardson to be chief justice of the court of claims, and the nomination was confirmed January 20, 1885. This was his fifth appointment as judge for life. 1. Judge of Probate for the County of Middlesex, Mass., 1856: 2. Judge of Probate and Insolvency for the same county, 1858: 3. Judge of the Superior Court of Massachusetts, 1869 (declined): 4. Judge of the United States Court of Claims, 1874: and later, Chief Justice of that court, 1885.

He was punctuality itself. During his period of twenty-three years upon the bench in the court of claims, he never missed a day in attendance on the sessions, except during a week's confinement at home from an accident. His taste was not the modern one for games; his chief exercise was walking. He had made nineteen trips across the Atlantic, but he certainly was not idle in any of these. His biographer says, "An intense love of labor was the key-note of his character." In the summer of 1896 he had in England a slight stroke of paralysis. He returned home, where an illness of two weeks terminated his life, October 19, 1896.

In the choice of his biographer Judge Richardson showed his characteristic insight and sagacity. This book has great excellence in a department of literature open to very frequent criticism. It is well known that several persons of genius have left requests that their memoirs should not be written; and although these have generally been disregarded, the reasonableness of the command has been thereby justified! The author calls this "a fragmentary sketch," but it would not be so designated by any reader. It is a clear, consecutive narrative of a remarkable life and character, without one waste, obscure, or tedious sentence, holding sustained interest throughout. Stroke by stroke, the picture stands out in all the life-likeness of a portrait.

A copious appendix, consisting of resolutions and memorial tributes to Chief Justice Richardson by distinguished men; lists of his published works, offices held, collegiate degrees conferred, and other facts, add to the interest and value of the volume.

HISTORIC LEGAL PUZZLES.

THE laws of civilized nations, says a writer in the "San Francisco Chronicle," at times give rise to queer legal problems. Law, as defined by an old writer, is "the perfection of human reason." In a multitude of puzzling cases, however, much reasoning of a corrollary sort has been required to make the "perfect reason" of the abstract law fit a stated case.

In the entire range of the law no more puzzling question can arise than that as to the place where a criminal act is committed. The sensational Botkin murder trial furnished an instance of that sort. Law writers have quoted with approval the decision of Judge Carroll Cook holding that the fact of Mrs. Botkin's alleged victims having been poisoned in Delaware did not prevent a trial of the woman for murder in California. In the same opinion the judge held that Mrs. Botkin could not be extradited to Delaware for the reason that the accused woman never having been in Delaware could not, therefore, be treated as a "fugitive from justice" within the meaning of the extradition laws of the United States.

A special California statute rendered it possible to try Mrs. Botkin in California without leaving room for doubt as to the legality of such a proceeding. The law in question provides that "all persons who commit in whole or in part any crime in this State" shall be "liable to punishment under the laws of this State."

Under this statute, jurisdiction vested in the California courts, because of clear proof that the sending of the poisoned candies had been from this State.

The legal puzzle in the Botkin case, which a happy law rendered easy of solution, was the repetition of similar questions which in other States have given rise to strange complications. Taking the Botkin case as a text, writers on the law have been ransacking the legal archives of many courts, with the result of bringing to light much interesting lore, bearing on the old question, "If John Doe stands on one side of a stream and shoots and kills Richard Roe standing on the other side of the stream, is the crime of murder committed on the side from which John shoots, or on the side where Richard falls dead?" The question becomes one of vast importance when it happens that the stream or other line dividing murderer and victim happens to be the imaginary line which separates independent legal jurisdictions.

A most interesting problem of this sort, some years ago, engaged the attention of the courts of Georgia. A man named Simpson, standing in South Carolina, fired a pistol with felonious intent at a person who was in a boat, on water embraced within the territorial limits of Georgia. The bullets went wide of the person at whom they were aimed and splashed in the water. It was held by the courts that the defendant was guilty of an assault with intent to murder in Georgia, "Because," said the judge, "the balls did strike the water of the river in close proximity to him (the prosecuting witness) within this State, and it is therefore, certain that they took effect in Georgia."

For the purposes of the case the judge held further that the defendant, when he fired the shots, was constructively in the State of Georgia. This holding was upon a theory of the law that where one puts in force an agency for the commission of crime, he, in legal contemplation, accompanies the same to the places where it becomes effectual. The same theory applied to the Botkin case would have made the sender of the poisoned candy accompany the package to Delaware and become constructively, and for

all the purposes of the law, a resident of that State.

The Simpson case in Georgia greatly resembles a case in Tennessee. A ball fired across the State line from North Carolina took effect upon a man in Tennessee, causing death. Because of this muddled and divided jurisdiction the courts of North Carolina held that a conviction for murder in that State could not be sustained. A curious sequel followed this decision through an attempt by extradition proceedings to take the accused to Tennessee. The attempt failed, the courts holding, as did Judge Cook in the Botkin case that the defendant never having been in Tennessee, could not be a fugitive from that State.

The trial of Guiteau for the assassination of President Garfield was the occasion of a debate as to jurisdiction of the murderer. It will be recalled that Guiteau shot his victim in Washington, and that thereafter the martyred president was removed to New Jersey, where he died three months later. Counsel for Guiteau urged at his trial in Washington that the crime had not been completed in the District of Columbia and that the court was without jurisdiction. The judges overruled this contention, finding from the authorities that where a felonious blow is struck in one county and death results in another the murder is complete in the county where the blow was struck.

A number of interesting cases appear in old Federal court reports. In 1806 it was held that a statute giving the United States courts jurisdiction of murders committed on the high seas, conferred no jurisdiction where a wound was inflicted on the high seas and death resulted after land was reached. In a similar case it was held that there could be no unlawful killing on the high seas where death resulted on land. Still more strange was the application of the law in a case where a mortal blow was inflicted in Alexandria, Va., and death followed in Maryland. It was held that the court at Alexandria had no jurisdiction of the offense as a homicide, but only as an assault and battery, the murder not being complete in the first-named place.

The courts of England wrestled with a complicated question of this kind in 1784. A smuggler named George Coombes, standing on the shore, fired at and killed the master of the sloop Orestes, who was rowing toward the shore for the purpose of seizing a smuggling lugger from which Coombes had disembarked. The question was as to whether Coombes should be tried by the admiralty courts, thus fixing the crime as having been committed on the boat where the shot took effect or by the courts of common law, which had jurisdiction of the place where Coombes was standing. This knotty problem called forth an argument before "all the judges of England in the exchequer chamber." The decision rendered by this array of judges was that the admiralty courts had jurisdiction, the crime being considered as committed where the shot took effect.

The United States courts some years later dealt with a case of similar character. The defendant, a man named Davis, was master of an American whaling schooner. While his vessel was lying at anchor in a harbor of one of the South Sea Islands he took up his gun for the purpose of shooting or intimidating a member of his own crew. While so holding the weapon it was discharged, either intentionally or by accident, and the ball hit and killed a man on a neighboring schooner belonging to the inhabitants of the Society Islands. The United States courts held, in line with the English decision quoted, that the crime was not committed on the American whaler but on the Society Island schooner. It was an act, therefore, done under the territorial government of the king of the Society Islands and not within the admiralty jurisdiction of the American courts. On the trial in America it developed that Captain Davis

had actually been tried and acquitted before the South Sea monarch whose subject he had killed.

A writer, discussing the Botkin matter, has called to attention an English case of historical importance. The case is of comparatively recent happening, and has to do with the state of the law in England as regards the liability of foreigners in that country aiding or abetting in the commission of crime upon the continent of Europe. Referring to case and decision, the writer says: —

"The well-known attempt of the Italian patriot, Orsini, to assassinate the Emperor Napoleon III took place on January 14, 1858. As the emperor was about to enter the opera house in the Rue Lepelletier in Paris, on the evening of that day, several small bombs or hand grenades were thrown at his carriage. Miraculously the explosion did not injure the emperor or empress, but it resulted in the death of eight persons and wounded one hundred and forty others. The bombs were manufactured in England, whence they were sent to Orsini.

"This explosion is accredited with momentous results. It gave momentary popularity to the empire, but eventually contributed to its downfall by hastening the war in Italy between France and Austria. But its consequences in England alone concern us. It was alleged that England was harboring the confederates of the criminal men 'placed outside of common justice and under the ban of humanity,' and the English authorities were urged to act. One of Orsini's confederates, Dr. Simon Bernard, a French refugee, was arrested in London and the question arose as to the punishment which could be meted out to him under the law. There was a statute (9 George IV, chapter 21) providing for the indictment in England of any of his majesty's subjects charged with homicide 'committed on land out of the United Kingdom,' but Sir Richard Bethell, the attorney-general in the Palmerston administration, then in power, was of opinion that this gave no authority to indict aliens in England committing acts abroad. On the 8th of February, 1858, therefore, Lord Palmerston brought in the conspiracy-to-murder bill, whose defeat produced the downfall of his administration. Upon the debates on this bill such legal authorities as Lord Campbell, Lord Brougham, Lord Wensleydale, and Lord St. Leonards expressed the opinion that aliens could be prosecuted under the statute of George IV, and that a conspiracy to murder abroad, accompanied by overt acts in England, was indictable at the common law. Bernard was tried under the statute of George IV and acquitted on the evidence."

The same writer presents a strikingly anomalous condition which may arise under American statute law. He points out that if a man in Maine sends an infernal machine to a man in Texas, which causes the receiver's death, the guilty party is not liable to prosecution in the State of Maine. If, however, he invites or persuades a human being to accomplish the death of the same victim in Texas, he may be indicted and punished in the courts of Maine. In other words, the direct accomplishment of his criminal purpose is not indictable, while the indirect accomplishment of the same purpose renders him subject to punishment at the hands of the law.

THE MEDICAL EXPERT AND THE LEGAL EXAMINER.

By John C. Patterson of the Michigan Bar.

THE field of medical jurisprudence is owned and occupied as common property by the lawyer and the doctor. Here the learning and skill of the two professions meet and mingle. While each has its separate functions to perform before the courts, one cannot perform its function without the coöperation of the other. Each should therefore not only understand its own work and duties, but also the work and duties of the other. New and complicated questions are constantly arising in forensic medicine, which tax the resources of both professions, and which demand harmonious efforts to obtain the best results. The subject will be considered from the practitioner's standpoint under our present system of procedure.

In stating the essential factors of a lawsuit in the form of a syllogism, the law is the major premise, the facts are the minor premise, and the verdict or judgment is the conclusion. In medico-legal cases, as in all other cases, the lawyer must lay down the law, or major premise; the medical expert must establish the facts of medical science involved, or the minor premise; and from these premises, the conclusion or judgment follows. The lawyer, under his oath of office speaks from the bar; the doctor, under his oath as a witness, speaks from the witness stand. Without the major premise of law, and the minor premise of medical facts, the syllogism would be incomplete, and no conclusion or judgment could logically or legally follow.

On the trial, the doctor has nothing to do with the lawyer in establishing the law of the case, or major premise, while the lawyer has much to do with the doctor in drawing out the medical facts or minor premise. In the words of Greenleaf, "The lawyer's profession leads him to explore the mazes of falsehood, to detect its artifice, to pierce its thickest veil, to follow and expose its sophistries, to compare the statements of its different witnesses with severity, to discover truth and separate it from error." He must examine and cross-examine the medical witness, the same as other witnesses, and elicit the scientific facts known, and the professional opinions material to the issue, the means and opportunities of the expert for acquiring his scientific knowledge and skill, the extent and degree of the same, as well as his bias, candor and credibility, for the benefit of the court and jury, who must consider and pass upon these questions. The doctor has often cursed the lawyer for his manner and methods of examination and cross-examination; and the lawyer and judge have frequently criticised the doctor for his statements and opinions; but human nature is about the same in the doctor and the lawyer, modified, perhaps, by education, environment, and the discipline of business.

When we consider what a large part of medical authority is based only upon theory and has not been reduced to an exact science, it is not strange that medical experts differ so widely in their opinions. Often medical science itself should be criticised for its imperfections, rather than the expert witness for giving opinions based upon that science. The opinions of all expert witnesses, although the only means of proving certain facts, and absolutely necessary in the administration of justice, are, from their intrinsic nature, very unsatisfactory. "An opinion," says an authority, "is a matter about which two persons can, without absurdity, think differently."

The doctors are not the only class of pro-

fessional men who form, and under oath declare, diverse and conflicting opinions upon matters pertaining to their professions. How often do lawyers and statesmen of the most eminent ability, the profoundest learning, and of unquestioned integrity, while acting as judges of the highest courts and tribunals, under the same official responsibility and oath of office, from the same undisputed facts and authorities, arrive at and declare diverse and antagonistic opinions! From the unnumbered cases that could be cited for illustration and proof, reference will only be made to the four to five decision of the United States Supreme Court upon the income tax clause of the Wilson bill, in 1895, and to the seven to eight decision of the Electoral Commission upon the Tilden-Hayes presidential controversy in 1877. The clergy, so far as technical theology is concerned, seem to be able to agree upon only one proposition, which is, in the language of Bishop Warburton, "Orthodoxy is my doxy; heterodoxy is another man's doxy." The late Mr. Justice Miller, while considering the affidavits of a large number of eminent civil engineers upon a question of engineering, says: "The affidavits on both sides are numerous. They demonstrate what all courts and juries have so often felt, that where the question is one of opinion and not of fact, though that opinion should be founded upon scientific principles or professional skill, the inquiry is painfully unsatisfactory, and the answers strangely contradictory."

The medical profession, in forming and declaring different and conflicting opinions from the same facts and scientific premises, does not differ from the other learned professions; certainly it will not suffer by a comparison with them.

If the doctor and the lawyer understood each other better, and each remembered the relations existing between them and the part each performs in the preparation and trial of medico-legal cases, there would be less criticism expressed by the representative members of the two professions. The expert witness testifies to establish the truth. He is examined to elicit the truth, and is cross-examined to draw out the whole truth as to the matters at issue, and as to himself so far as it affects his credibility or the weight of his testimony. Not every man who is authorized to affix "Attorney-at-Law" to his name is in fact a lawyer; nor is every one who has a legal right to write "M.D." after his name a medical expert, qualified to testify upon all questions of chemistry, toxicology, histology, and the more unusual matters of medical science. The field is too broad, and the problems are too numerous and too difficult to be mastered and retained by any one man. A specialist may confine his studies to a small nook of this field, and compass the learning pertaining thereto, providing the nook is small enough. As a rule, the general practitioner, without special research and preparation, is unprepared for a rigid cross-examination upon the unusual and complicated questions of medical science by a thoroughly qualified cross-examiner, and for that reason, without careful preparation he should not assume to be an expert upon these matters. It is true, however, that the doctor can often rely upon the ignorance and lack of preparation of the lawyer, and stand the ordeal. But no lawyer who does his duty to himself, to his profession, to his client and to the cause of justice, will attempt to cross-examine a medical expert, or try a case turning upon a question of medical science, until he has carefully studied and thoroughly understands the medical principles and authorities bearing upon that question. He should become a specialist upon the matters involved. Said an eminent professor of anatomy and physiology: "The most lucid lecture I ever heard upon an anatomical subject was delivered upon the ankle joint by a lawyer before a jury, in defending a surgeon for alleged malpractice in treating a crushed ankle." The lawyer must

be a trained student and a discriminating worker, to enable him to enter the domain of another profession and master the elementary principles of science and art upon which it is founded. Many lawyers are unable to qualify themselves to prepare and try medico-legal cases for the lack of proper training and mental discipline as the foundation for their legal studies. Whenever an ignorant pretender or conceited quack narrates his brazen assumptions, his fraudulent theories and dangerous falsehoods, to court and jury, and rashly swears to matters and expresses opinions not authorized by the truths of medical science, the legal advocate is required not only to be qualified to expose the perjurer and destroy the force of his dangerous perjuries by a skillful and caustic cross-examination, but the sacred trusts imposed upon him by his client, by his professional obligation, and by the cause of justice, demand it, and nothing short of it. The medical fraud who has thus been exposed will never forgive the lawyer, and will revile the legal profession with the utmost bitterness. He will ignore the fact that he alone was responsible for his own humiliation.

"No man e'er felt the halter draw,
With good opinion of the law."

But the learned doctor, the candid investigator, and the honest medical expert, love to see the quack thus dissected, his false pretenses exposed, and his windy conceit taken out of him. A quaint philosopher has said: "Some folks know a great many things that ain't so." If an expert swears to medical matters that are "not so," or allows a narrow prejudice or a partisan bias to commit a fraud upon his mind, warp his interpretations, or mold his opinions to fit the theory of his side of the case or to sustain some preconceived notion, regardless of the truths of medical science, whether done consciously or unconsciously, he should be exposed and the dangerous effects of his false testimony destroyed by the cross-examiner. Men are not infrequently robbed of life, liberty or property by this class of testimony. The expert witness who fabricates, falsifies, or distorts the truth, can claim no special privileges or exemptions. He suffers no more and no less than any other witness in like manner offending; and he has no special grievance against the legal profession for exposing his ignorance, falsehood and empiricism.

The genuine medical expert has honesty, sincerity and love of truth and justice mixed with his learning and skill. He is diligent in his examinations, and exhaustive in his research. He is careful and conservative on the witness stand. He tells what he knows and no more. He bases his opinions upon scientific authority and experience; and for such opinions, formulated by an intellectual process, and not by caprice or passion, he is prepared to give a sound reason. He is conscious that sacred rights depend upon his professional facts and opinions, and states them with clearness and candor. He gives no scientific facts when none exist; no professional opinions when no basis therefor is known. His intelligent answers and manly deportment in court proclaim the sentiment of Lord Mansfield: "Let justice prevail though the heaven falls." *Fiat justitia ruat cœlum.*

Such a witness is prepared for a rigid cross-examination, and seldom does he complain of the cross-examiner. The competent, truthful and self-possessed expert witness can always stand the test of a searching cross-examination. Truth is like pure gold; the more it is burnished the brighter it becomes.

The medical expert should discriminate between theory and knowledge, between that part of medical authority which is based upon theory, and that part which is reduced to an exact science; but this requires a mental training and an accuracy in professional scholarship, which many do not possess; and such doctors should hesitate to assume the qualifications of an expert.

Often men have been convicted and hanged upon the testimony of incompetent experts and upon medical opinions based upon a theory accepted at the time, but which has afterwards been demonstrated to be unfounded and has been repudiated by the profession. It is estimated by high authority that the railroad companies of England and the United States were robbed of a hundred million dollars, recovered in negligent injury cases based upon Erichsen's theory of traumatic cerebro-spinal concussion, within twenty-five years after that theory was published; yet Erichsen himself, after a more exhaustive investigation, modified and rejected much of his own theory long before his death; and subsequent authorities the world over, including Charcot, Oppenheim, Page, Dana, Outten and the leading neurologists of to-day, reject that theory and assign hysteria, mental suggestion, anxieties of litigation, pecuniary greed and other causes, instead of the traumatism of Erichsen. He rean erroneous theory was utilized by avaricious claimants, unsuspecting lawyers and deluded doctors, and millions upon millions of dollars were recovered for injuries caused *not* by the accident, *not* by traumatism, *not* by the defendants in the suits, *but by the claimant himself and those around him.* Can a more stupendous fraud upon justice be conceived? Should not the medical expert be learned, cautious and conservative in giving opinions based merely upon a theory? Do not common safety and eternal justice demand that such opinions be tested by a rigid cross-examination?

The practicing physician and surgeon, in emergency cases, is compelled to act promptly, without opportunity for reflection or research; but before he testifies as an expert, he should investigate and reflect. Often the real cause for criticising the medical expert lies in his crude or defective preliminary education. Should any one, then, be allowed to undertake the study of medicine or law until he has become a trained student and has acquired a ready mental agility and a capacity to comprehend abstract principles, and logically to apply them to concrete cases? Should he not be skilled in analysis and in synthesis, and be accustomed to investigate and think for himself? The foundation for a professional education should be laid broad and deep. Professional learning cannot, like wealth, be inherited, but must be acquired by individual study and reflection. "No one is born an artificer." *Nemo nascitur artifex.* As well might one attempt to fatten a flouring mill by running wheat through it, as to attempt to educate a doctor or a lawyer by his simply reading professional books and listening to professional lectures. The student of law or medicine must not only read, listen and observe, but, if he is to become a successful practitioner, or a master, he must possess the natural abilities, and must also think, digest, assimilate, and make the lessons a part of his own professional mind. One cannot cram, and safely or successfully utilize the doctrines of the authorities unless he thoroughly comprehends them. Galen says, "The best physician is also a philosopher." Let the importance and the necessity of *thinking*, as a factor of professional education, be repeated and emphasized! "*Read, mark, learn,* and *inwardly digest,*" enjoins the Litany.

The time has been when any one who was able to read and write could enter medical college or law school, but that day is now past forever. The two professions in the future will have better preliminary discipline, better educational facilities, and better professional learning than they now possess. Formerly little attention was given to medical jurisprudence in the professional schools, but now, the leading schools of both professions furnish facilities and require thorough work in this branch of erudition. In the large universities, the disciples of Galen and the disciples of Blackstone together pursue the same course in part,

in the same lecture room, and under the same instructors, which must tend to harmonize and bring the two professions nearer to each other.

The medical expert on the trial should confine himself to the domain of medical science and skill in the exclusive capacity of a witness. He should not act also as counsel or medical prompter for the attorneys. The questions and the cross questions should be formulated and put by the trial lawyers; and as a part of their preparation of the case, they should master the medical questions involved and be qualified to intelligently examine and cross-examine the experts. This preparation requires time, study, research, reflection, and, frequently, access to the chemical and physical laboratory, and to the dissecting room. It is unprofessional for the trial attorney to go upon the witness stand and swear to matters which can be established by other evidence, and it should be so regarded as to the doctor, as it always impairs the weight of his testimony. The forensic management of the case is for the lawyer, and if he is incompetent properly to try it, let him, and not the expert witness, bear the odium. His mind, like the mind of the commanding general in battle, should compass the whole field from center to outpost. In medico-legal cases, he should have sufficient knowledge of the nature and the amount of medical evidence required to make out a case, to intelligently pass upon the scientific facts involved, and to clearly marshal them before court and jury. Many lawyers fail in this class of cases in consequence of their crude and defective preliminary education. Before the student is permitted to commence his legal studies, should he not be thoroughly trained in rhetoric, logic, psychology and kindred subjects, and be well grounded in the fundamental principles of physics, chemistry, anatomy, physiology, biology and hygiene? Should he not know enough of anatomy to be able to determine whether the *os calcis* is located in the head or heel?—enough of physiology to distinguish between the functions of the lungs and liver; and enough of chemistry to appreciate the action of an alkali upon an acid? Certainly he should have such a knowledge of these sciences as would enable him to ascertain and apply their truths to the affairs of justice. The lawyer should be qualified to intelligently determine whether the claimant has, in fact, received an injury, or is a malingerer; whether his symptoms are objective or subjective, real or simulated; whether the suit is brought for blackmail or for justice. He should also be able to distinguish between the learned doctor and the ignorant quack, between the qualified and the unqualified, between the counterfeit and the genuine expert.

The medical witness is usually called only in important criminal and civil cases, where great interests and large amounts are involved, which emphasizes the importance of accuracy and candor on his part. If a question of chemistry or toxicology is raised depending upon an analysis, he should make such analysis step, by step with the utmost care, and verify each process before he swears to the result. He should not only remember that important interests are at stake, but also that it is the duty of the cross-examiner to become a specialist upon the matters involved, and to require him to disclose what was and what was not done upon such analysis. The chemist should be certain that his chemicals and apparatus are pure and uncontaminated, lest he be deceived, and thereby deceive the court and jury, and inflict the consequence of his blunder upon an innocent party, whose life, liberty or property must pay the penalty.

The importance of knowing what materials are used in such tests was demonstrated a few years ago in an eastern State. The case depended upon the chemical question whether or not starch existed in mustard seed. A celebrated analytical chemist testi-

fied on one side that mustard seed contained over eleven per cent. of starch; and two celebrated analytical chemists testified on the other side that there was no starch in mustard seed. At the request of the first named chemist, he was given an opportunity to demonstrate the truth of his assertions. The apparatus and materials were brought into the court room, and the tests were made before court, jury and counsel. The mustard seeds were pounded and then boiled in distilled water. The solution was deposited on sheets of filtering paper. The chemical tests were applied, and the characteristic blue iodide of starch was exhibited in triumph. The experiment was repeated in various ways, and many sheets of paper were thus colored. The demonstration appeared to be conclusive. The chemists on the other side of the case were also recalled, and they made tests before the court and jury which as clearly demonstrated that there was no starch in mustard seed. The defendant's counsel said to one of the last-named experts, "Are you not satisfied with the reaction for starch exhibited by the defendant's chemist on a dozen or more sheets of paper?" The witness answered, "I am not certain, to begin with, that the paper would not have produced that reaction without the mustard." The counsel gave him some of the unused filtering paper, and asked him to make the test. The witness did so, and the same deep blue tint was the result, thus showing the illusory nature of the prior tests, and that the experiment was entirely worthless as proof of the facts at issue. Had this expert used pure filtering paper in his experiment, as well as distilled water, instead of filtering paper that had been sized in a solution of starch, he would have saved himself this humiliation. (By the way, if the "color" was the only evidence of starch, what value could there have been in the experiment as proof, if the operators and observers had been color blind?)

The general practitioner is liable at any moment to be called upon to make post-mortem examinations. Such examinations should be exhaustive, and be made with great care, and he should keep posted, and at all times thoroughly prepared to make them. The doctor should examine every vital organ, consider every vital function, and test every condition of the subject, measuring and tracing each wound, noting every bruise or lesion, and prepare himself to tell affirmatively the conditions found, and also, so far as the vital functions and organs are concerned, to tell what did not exist. He should not hesitate to refer to his medical books and charts for suggestions and assistance. In cases of suspected or possible murder or foul play, he should call in the prosecuting attorney for aid and direction. The sole end of such examinations is to ascertain the actual facts, and to discover the unbiased truth with "the cold neutrality of an impartial judge."

The medical profession has more to do in practical affairs with that mysterious relation existing between the material and the immaterial, between the mind and the body, than any other vocation. The doctor must deal with both, and he should study the mind and mental action as thoroughly as he studies the body and bodily action. He should be as constant and as close a student of psychology and mental phenomena as of neurology and pathology. There is no department of medical science in which the general practitioner is called as an expert witness more frequently than in cases involving insanity and mental competency, and he should endeavor to become an expert in fact, upon those questions.

The doctor on the witness stand should never hesitate to answer, "I do not know," if such is the fact. General Alger, while speaking of his admission to the bar, once told this story upon himself. "The examining committee," said the general, "asked me only three questions. I answered the first question the best I knew. The committee

said my answer was wrong. In answer to the other questions, I told them I did not know. The committee, being satisfied that I did not know and had answered according to the facts, assured me my answers were correct, and recommended my admission to the bar." It matters not whether this story is fiction or veritable history, it illustrates that honesty and truth can always be vindicated by answering as the facts require, and that is far more essential in the administration of justice than to guess at things not known.

The lawyer is sometimes, not without cause, accused of splitting hairs in professional matters. Cannot the medical expert also sometimes be justly charged with the same offense, especially when he testifies to the revelations of the microscope? It is asserted that human blood can be distinguished from that of some of the lower mammalia, but it seems to be a mooted question whether it can be distinguished from that of the dog or ape. The difference in the size and form of the microscopic red corpuscles of the blood seems to be the distinguishing test. Schmidt finds the diameter of human blood corpuscles to be $\frac{1}{3266}$ part of an inch, and that of the dog $\frac{1}{3629}$ part of an inch. Other observers vary these figures somewhat, but the proportion remains substantially the same. If this infinitesimal difference in the size is the distinguishing feature, is it not practically impossible for any observer, however skilled in the use of the microscope and the micrometer, to accurately measure and correctly inform court and jury which is human blood and which is not? It is very unusual if not impossible for different surveyors of skill and experience, starting from the same meander post, to run out the meander line of a dozen courses and distances around a lake, half a mile in diameter, with the same results. Often the variation amounts to several feet, and sometimes to several rods. If it is impracticable to measure such a lake with accuracy, how much more difficult must it be to measure a blood corpuscle. Is it safe to convict and execute men upon such evidence? But little reliance should be placed upon such testimony in the administration of justice, especially when we consider the variation in the power of vision, whether the observer is myopic or hyperopic, whether he sees with the acute clearness of youth, the moderation of middle life, or the dimness of age; to say nothing of the conditions of the light and air. How learned, how careful, how conservative and how candid, should be the expert witness, in discovering the secrets of chemistry and histology, and in declaring them on the witness stand! The ordinary and the most effective means of exposing the ignorance, of detecting the mistakes, and of demonstrating the perjury of an incompetent, careless or corrupt witness is by cross-examination.

Psychologically there is a great difference between witnesses, which is almost universally overlooked by the casual observer. Some witnesses are utterly devoid of the sense of the obligation of veracity; some will tell a falsehood as if they were telling the truth; others will tell the truth as if they were telling a falsehood. A large class of honest witnesses are utterly unable to discriminate between a conception of memory and a conception of imagination; between cognition and feeling; between fact and fiction; between hearsay and personal perception; between the suggestion of sympathy or prejudice and the suggestion of an actual fact or an existing truth; between the impression of a dream and the impression of an event. Because witnesses are unable to distinguish between the ideal and the real, things imagined are often unconsciously sworn to as facts remembered; what others have said, as matters actually seen; what is hoped for, as an actual fact; what is hated, as hateful; what is loved, as lovely; regardless of the real truth or existing attributes. The expert witness is not always exempt from the frailties of human-

ity. In every sensational case and mysterious murder investigation, the inevitable lunatic appears and discloses his strange story, his wild vagaries and suggestive hallucinations to increase the doubt, while Dame Rumor reels off her endless yarns of fabrication, to be tested and destroyed by the cross-examiner's work. When we consider these facts, and take into account that further fact, as Shakespeare puts it, "How the world is given to lying," can there be any question as to the utility and necessity of the cross-examiner's art? The courts *could* dispense with the bailiff, the clerk, the stenographer, and often with the jury, on the trial, without prejudice to truth and justice, but not with the cross-examiner. The surgeon uses the knife not to wound the patient, but to sever the connection, and to separate the cancerous tumor from the healthy tissue, as the means of restoring health, and prolonging life. In like manner the lawyer uses the cutting blade of cross-examination, not to hurt the witness, but to sever the connection, and to separate the festering falsehood from the sacred truth, as a means of protecting rights, and of securing justice. The pain produced in both cases is an incident, and not an end. As long as flesh and blood are liable to accident and disease, will the surgeon's knife be required to prevent suffering, restore health, and prolong life; and so long as human nature remains imperfect and deceitful, will the cross-examiner's blade be required to detect error, preserve rights, and enforce justice.

Expert witnesses are usually selected in consequence of their avowed opinions upon the questions involved, for the purpose of sustaining the contention of the party calling them. While in appearance, they speak *ex cathedra*, and are produced as authority, and are frequently accepted as such by court and jury, nevertheless, in fact, they are identified with one side of the case, and too often are interested allies to it, which has a tendency to impair the weight of all expert testimony. Such experts "being zealous partisans, their belief becomes synonymous with faith as defined by the apostle, and it too often is but the substance of things hoped for, the evidence of things not seen." But witnesses are never compelled to stultify or to perjure themselves. "No one who is ignorant of a thing is bound to give information of it; but every one is bound to know that which he gives information of." *Nemo tenetur informare qui nescit, sed quisquis scire quod informat.* The expert witness, being called and often accepted as authority upon matters not generally understood by the jury, is required by common honesty and the public welfare to know the scientific facts involved in the case, and in an impartial and judicial manner declare the truth without fear or favor.

The hypothetical question must be based upon the testimony produced on the trial. This testimony is fragmentary, variant, conflicting and often inconsistent and contradictory: nevertheless the court and jury must determine the facts from these elements. The medical expert should remember that the various facts recited in the hypothetical question are changed to include the different phases of the testimony and the various theories of the case; and that these changes, with their inherent difficulties to him, are made necessary by the testimony and the issues. He should understand that if he would creditably answer these questions, his learning must be at command, and his mind so trained as to readily comprehend the different phases of the question, and to give a complete answer. The lawyer is not responsible for the different phases of the testimony, or the various theories of the case. The medical expert is required to answer these complex questions, and give opinions upon their different features and theories, for the purpose of throwing the light of medical science upon these diverse elements of the case. In deposing to these

opinions, he should distinguish between professional knowledge and professional bigotry. He should not be wise in his own conceit, and should beware of that confidence which is born of ignorance, "For fools rush in where angels fear to tread."

The practice of medicine, in some respects, does not tend to develop the mental qualities requisite for a good expert witness. The doctor at the bedside adopts one theory, and that is his own theory of the case. He is not accustomed to have his theory questioned or controverted. Often when his opinions and theories are questioned or controverted on the witness-stand, he impulsively considers it a personal attack; his resentment is aroused; his mental equanimity is disturbed, and his feelings, not his learning and best judgment, dictate his answers until his testimony is punctured, and he is impaled upon the horn of a dilemma. The lack of self-possession, disciplined mind, accurate learning, and impartiality, humiliates many expert witnesses in court, and brings reproach upon their profession.

However much the doctor and the lawyer may complain of each other, in the department of forensic medicine the two professions cannot be divorced. While the surgeon's knife and the cross-examiner's blade may be unskillfully and improperly used, yet the abuse does not preclude their proper use. In this common field of science and art, there should be no jealousies or conflicts between the two professions. There is ample room for both. Many of the truths of legal medicine lie upon the surface, and are acquired by the casual observer, while the richer gems lie deep below, and are secured only by the most energetic disciple. The former are the inheritance of mediocrity; the latter, the insignia of eminence. There have been *too many* half-educated doctors on the witness-stand, and *too many* superficial lawyers at the bar, who, without adequate learning in this part of their professions, without the intellectual gifts, or mental discipline to comprehend the fundamental principles or to master their details and functions and apply them to the affairs of justice, and without any just conception of the heavy responsibility or the moral obligation imposed, assume to disclose scientific facts which are to them unknown, to describe functions of which they are ignorant, to impart knowledge which they do not possess, and to formulate verdicts which deprive fellow-beings of life, liberty or property. To such doctors and to such lawyers, the admonition of Junius can be repeated: "I do not give you to posterity as a pattern to imitate, but as an example to deter."

But this class of professional men are already diminishing in number, and the increasing requirements of the professional schools, the better facilities for instruction, and the higher standards for professional license must accelerate the decrease. Let the lawyer know enough about the matters of medical science at issue to enable him to intelligently formulate and put such hypothetical questions as will draw out the medical facts involved, and to enable him to know when he has received a full answer; let the doctor have sufficient intellectual discipline and medical learning to enable him to clearly comprehend the various elements involved in the question, to hold them in mind long enough to apply his medical knowledge, and mentally to formulate, and concisely express a pertinent answer to the whole question; disbar the shyster, suppress the quack, let candor, learning and intelligence inspire the examination; and criticism will be avoided, professional progress will be advanced, and the cause of justice will be served.

OLD FRENCH PRISONS.

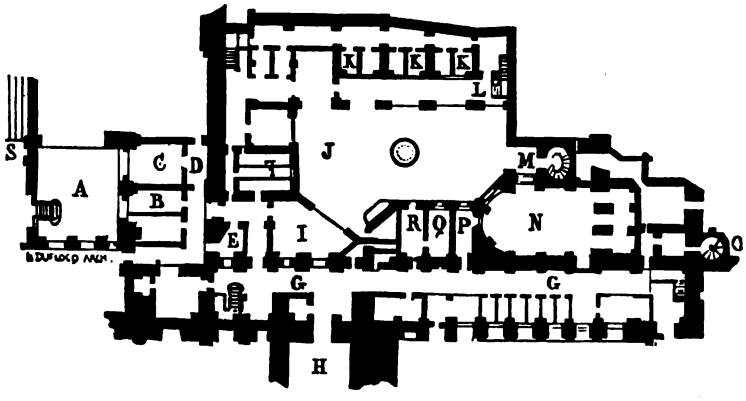
I.

THE CONCIERGERIE.

THE prisons of France were formerly considered merely as places of detention for persons accused of offenses and crimes (*custodia reorum*), and not as means of punishment. Punishment was either capital or corporal; the former consisted in death, or the galleys for life; the latter in branding, banishment, the galleys for a term, or temporary confinement in a hospital or house of correction. According to this principle, the administration of prisons would have been of little importance, if the delay of trials, the numerous appeals for the revision of judgments, arrests for debt, and, above all, arbitrary detention by *lettres de cachet*, had not too frequently rendered prisons the eternal abode of misfortune and persecution.

Under the early princes the prisons consisted of subterranean dungeons, destitute of air, light, and fire, where the bed and the pillow were of stone, and where the prisoners were at the mercy of cruel jailers.

The first amelioration of criminal legislation in France was by an ordinance, in 1670, for the reform of divers abuses. Secret trials were abolished; the accused were confronted with their accusers; judgments were revised more promptly by the upper courts; warrants for apprehension were subjected to formalities which rendered their execution



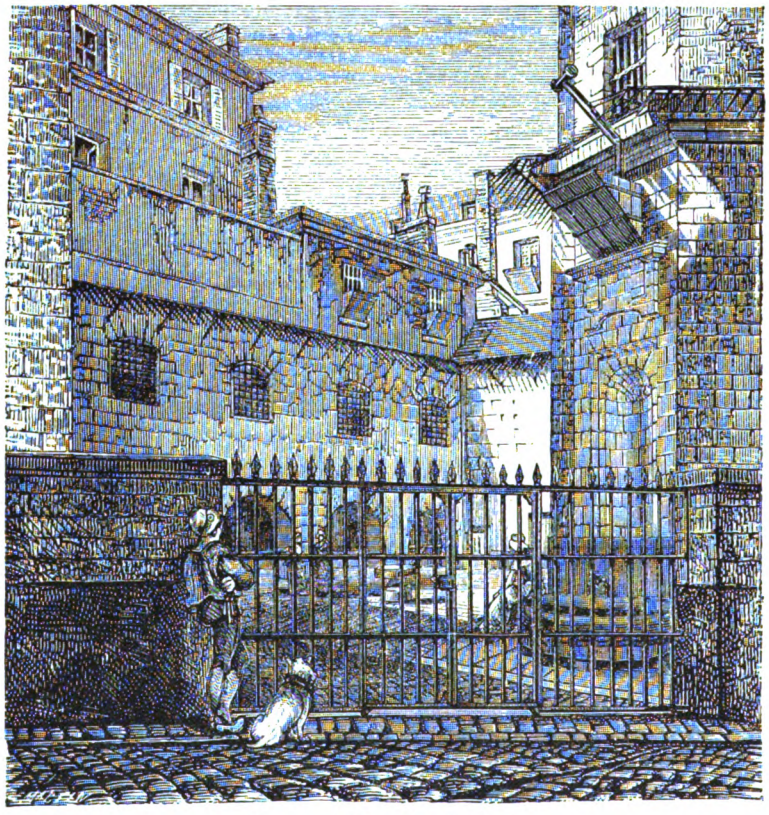
PLAN OF THE CONCIERGERIE.[1]

[1] **A.** La petite cour.
B. Le guichet.
C. Le greffe.
D. L'arrière greffe (where the condemned made their toilet).
E. Le cachot where condemned women were imprisoned while awaiting the executioner.
G. Corridor.
H. Large dark corridor now called the rue de Paris.
I. Vestibule.
J. Préau des femmes.
K. Chambres de pistole.
L. Stairway leading to chambres de pistole.
M. Small court (where the massacres of September took place).
N. Chapel where the Girondists were confined the night preceding their punishment.
O. Stairway leading from the Cachot des Girondins to the hall of the revolutionary tribunal.
P. Small cell in which Robespierre was confined.
Q. Cell of Marie Antoinette, opening into cell **R.** where the gendarmes were stationed.

less sudden and less arbitrary; the prisons of Paris were placed under the superintendence of magistrates who were bound to visit them weekly, and the houses of correction were annexed to the general hospital (*la Salpêtrière*).

In 1675, Louis XIV reduced the number of the prisons of Paris, retaining only the *Conciergerie*, the *Grand Châtelet*, the *Petit Châtelet*, the *For l'Evêque*, the prisons of *Saint Eloi*, *Saint Martin*, and *Saint Germain-des-Prés*, the *Officialité*, and the *Villeneuve-sur-Gravois*.

Notwithstanding these salutary arrangements, the prison system experienced but little improvement. At the accession of Louis XVI to the throne, the prisons of Paris consisted of the *Conciergerie*, the *Grand Châtelet*, the *Petit Châtelet*, the *For-l'Evêque*, the *Abbaye*, the *Salpêtrière*, and *Bicêtre*, all of which were in a very bad state; labor was interdicted, and the prisoners were without classification. In pursuance of an ordinance dated August 30, 1780, the Petit Châtelet and the For-l'Evêque were demolished; considerable repairs were made to the Conciergerie and the Grand Châtelet; the Hôtel de la Force was converted into a house of detention, and a magistrate was appointed to visit and superintend the prisons.



L'ANCIEN PRÉAU DES FEMMES.

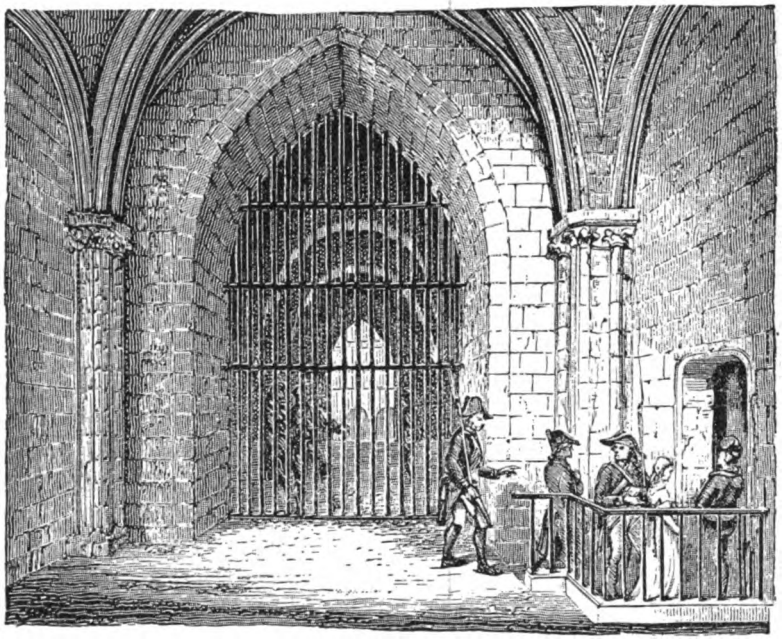
In the days when Paris had not so much as a gate to shut in the face of the invaders, the citizen raftsmen of the Seine thought it well to have a prison, and "dug a hole in the middle of their Isle." This, it seems, was the sorry beginning of the Conciergerie; but the details of that vanished epoch are scant. Palace and prison are thought to have been

constructed at about the same date; the palace, which was principally a fortress, was the residence of the kings; the Conciergerie was their dungeon.

Rebuilt in the reign of St. Louis, it was originally the porter's lodge — hence its name, Conciergerie — servant's hall, and kitchens of that monarch's palace, and some of its apartments in the early part of the present century were still known as *les cuisines de St. Louis*. In 1794, externally it was cheerful enough, for the first story was occupied by a series of fashionable shops for the sale of gloves, perfumery, ribbons, and nick-nacks. Under these shops, and indeed surrounding them on all sides, was a series of dismal dungeons in which persons convicted of treason were detained pending their sentence and its execution. In 1825, the greater part of the old prison was destroyed, and with the exception of the two picturesque towers known as Julius Caesar and Montgomerie, and the cell of Marie Antoinette, nothing of the original building remains intact. According to a very minute plan taken in 1796, the arrangement of the prison during the Reign of Terror was as follows: — The principal entry, as at present, was from the inner court-yard which opens into the Palais de Justice. A narrow Gothic doorway led to a small inner courtyard, at the far end of which was the *guichet*, or turnstile, a low door about three feet and a half high, to enter which the prisoners were obliged to bend nearly double, or even crawl on their hands and knees. Once within, they found themselves in a large and well-lighted chamber, where they were confronted by the chief jailer, Richard. Beyond his *salon* was a long dark passage, in which the women were kept until they were wanted *pour la toilette*. Sometimes they remained here a month, their food being handed to them through a narrow slit in the wall. Not a few died from the effects of the horrible stenches with which this stifling corridor was always filled; for the unfortunates were not allowed to leave it for a moment, day or night. A little to the left was a spacious cloister, surrounded by arcades, and having

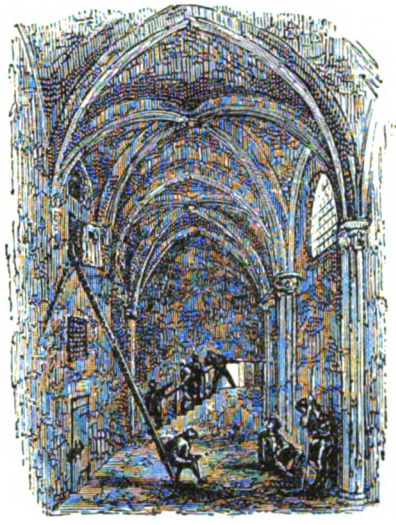
HALL OF THE GIRONDINS.

a small fountain in its centre. Here the female prisoners were permitted to take exercise, wash their clothes, and not infrequently in fine weather spend the whole day. This courtyard was separated by an iron railing from a similar one used by the men, who were free to talk with the women, and even to play cards with them, through the rails. On the right hand side was a series of rooms known as *Chambres de Pistole*. This consisted of what had originally been one vast vaulted hall, but was now converted into a sort of dormitory containing as many as fifty beds. They were called pistole because here people who wished to have a bed could do so by paying from twenty-seven to thirty livres a month; but it very often happened that the same bed was let three or four times over, owing to the fact that its latest occupant had been sent to the guillotine. There was another set of cheaper lodgings, with a litter of straw thrown on the ground, and used by those who could not pay for more luxurious accommodation. Those who slept here were popularly known as *pailleurs* and *pailleuses*. In the last years of the tyranny of Robespierre, when the tribunal was sending its daily cartloads of victims to the guillotine, from forty to fifty beds were used every night by fresh victims, who paid each fifteen livres for their sleeping accommodation. This system brought in a profitable revenue of about one thousand livres a month. A little beyond the Chambres de Pistole a narrow passage led into the apartment known as that of Héloïse and Abélard, which had a very fine vaulted ceiling, and was situated directly under the hall of the Revolutionary Tribunal, where the prisoners were judged, and served as a general passage to and from that hall.



THE CORRIDOR CALLED THE RUE DE PARIS.

Externally the Conciergerie was apparently modern, having been white-washed, and the Gothic arches of the windows bricked up, and furnished with the usual green blinds, so that little or nothing of its original architecture appeared. But internally the ceilings throughout were vaulted, the doors Gothic,



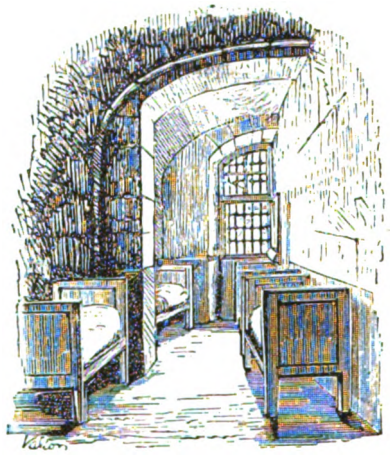
CELLS UNDER THE HALL OF THE REVOLUTIONARY TRIBUNAL.

and the whole prison had a thoroughly feudal aspect, which was suggestively dismal. The Conciergerie at the time of the Revolution was damp and filthy. The majority of the dungeons were below the level of the street, on that of the river, and infested with rats to such an extent that more than one prisoner was nearly killed by them. In the first year of the Republic the Conciergerie was fairly well organized; but from 1792 to 1794 it became a veritable pandemonium, being literally packed with prisoners of both sexes, beds being made up in what had been the chapel and in some of the passages to accommodate the extraordinary number of

UN CACHOT.

poor creatures who were doomed to pass here their last hours on earth.

Turning to the right out of the court-yard, the guide of to-day unlocks a heavy door, descends a few steps, and ushers the visitor into the noble old guard-room of the palace of the kings. Here everything is mediæval in character. Columns rise from the stone floor and spread themselves out into vaulted, groined, springing arches, extending to the roof. Over a stone wall which rises to about the height of a man's chin, the eye looks into the *cuisines de Saint Louis*, and into bare hearths and cold fireplaces. The guard-chamber is picturesque and imposing in its stately architecture, and vividly suggests

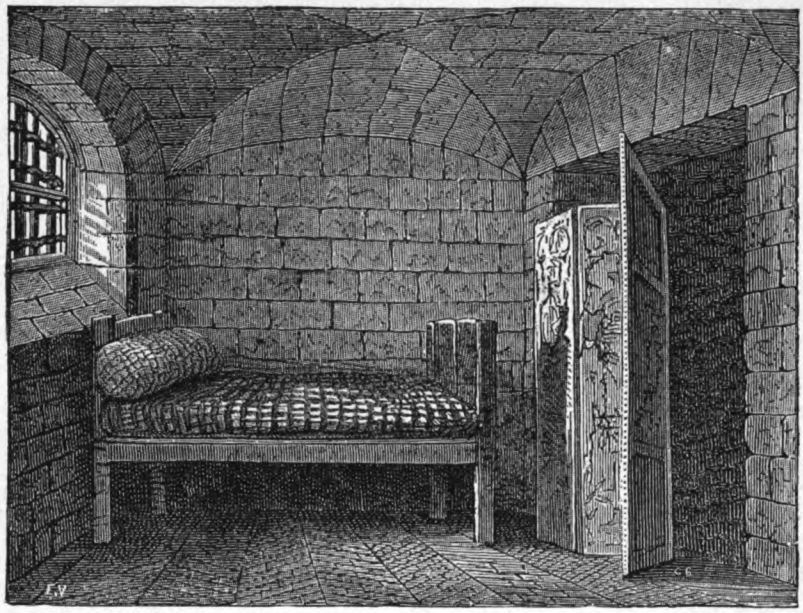


UNE CHAMBRE DE PISTOLE.

visions of the state and splendor of that feudal royalty which needed ample military watch and guard. Time, which changes so many things, has given up the old palace of the kings to become a palace of justice.

From the Salle des Gardes the ancient prison is entered through the rue de Paris — a vast dark corridor, which in Revolutionary days was lined with rows of dismal cells always crowded to excess. It has contained two hundred and fifty prisoners at the same time. A frightful black *couloir*, with barred gates, is this memorable passage; and the cell of the queen is to the right where the

street ceases. Near to it is the *ancienne cour de la Conciergerie*. From the high walls, of a dead, dirty white, the heavily-barred windows of two upper storeys of dungeons look into the court. Here are the windows of the cells of Marie Antoinette, of Robespierre, of Madame Roland, of André Chénier, of Madame du Barry, and of other famous prisoners. The cells of the old Conciergerie were occupied by female prisoners; males being incarcerated in the part called *l'enceinte cellulaire*, which is not now shown. The Conciergerie was then the ante-chamber of the tribunal, and then the storehouse for the guillotine. It is to-day a modern prison for vulgar crime, and visitors are not allowed to enter any cell in which criminals are confined. A part of the prison which retains many of its old features is the yard, in which the fountain still exists at which so many ladies washed their linen and their dresses.



CELL OF MARIE ANTOINETTE IN THE CONCIERGERIE.

One of the memorable sites of the Conciergerie — an apartment which, if furniture and fittings be excepted, remains to-day in the same condition as it was when it was used for the last night of the Girondins — is the chapel. It is a large vaulted room, with square columns and iron gratings above the columns at one end, gratings which veil windows and suggest dungeons. This chapel (*Salle des Girondins*) has a sacristy, and this is a small, hard, bare cell, which stands next to that of the queen. This cell is noteworthy, because within its walls were passed the last hours of the monster Robespierre. Close to this little cell is another and larger one, which is both a dungeon and a shrine. This is *le cachot de Marie Antoinette*, the cell in which the unhappy queen passed the latest and the longest time of her stay in the Conciergerie. When she arrived, General Custine, the soldier-martyr of the Revolution, was turned out of a cell to make room for *l'Autrichienne*; and the position of this cell, near the wicket at which prisoners saw their friends, was very disagreeable, since it was mostly surrounded by a noisy crowd, whose filthy language disturbed the ear by day and night. M. Eugène Pottet, assisted by M. Tixier, the director of the Maison de Justice,

tried to identify this first cell, but found the task impossible. It seems clear that her first cell was one of the worst in the Conciergerie, and was in the worst part of the prison. The removal of the poor queen to somewhat better quarters was probably due to the humanity of the concierge. She spent seventy-six days in the Conciergerie, coming there from the Temple on the night of the 2nd of August, 1793, and leaving it for her execution on the 16th of October, 1793.

Round the corner of the palace, in the *cour du Mai*, beside the great staircase which now leads upwards to the Courts of Justice, is the grated door through which prisoners emerged from the dreadful prison in order to mount the death carts.

Barthélemy Maurice gives the number of persons sent from the Conciergerie to the guillotine as 2,742. Of these 2,742, 344 were women, 41 were infants, 102 were over seventy years of age, while one man was ninety-three years of age. Taine suggests that the numbers given are understated, and it is more than probable that such records, at least during the Terror, were badly kept, and are unreliable.

There are now in the Conciergerie about sixty-three cells constructed in 1864. These are built on a concrete foundation, facing the large windows that look out on the river Seine, and are said to be among the finest in Europe. They are occupied by prisoners awaiting their trial at the courts, which are held in another part of the building.

CALHOUN AS A LAWYER AND STATESMAN.

By Walter L. Miller of the South Carolina Bar.

IV.

AND now it is in order to inquire how did Mr. Calhoun stand on some of the great, practical questions of that day, and, in their bearing, application, and pertinence, to a very considerable extent at least, of this day also. What were his views as to the wisdom and practicability of civil service reform? Did he believe in this doctrine, — to the victor belong the spoils? That was the favorite shibboleth during Jackson's administration. It was the rallying cry of his followers and it met with the cordial approval of their great leader. We find, however, that Mr. Calhoun was opposed to it — that he fought against it with all of his might and main. Were he living to-day, we have not the slightest doubt where we would find him on this question. He would be found standing side by side with Roosevelt and the other leading civil service reformers. Mr. Von Holst and Mr. Trent criticise him because, though he opposed this doctrine and did his best to have the Executive stripped of its patronage and shorn of its power in this respect, yet he failed to anticipate an equal abuse of the same great power on the part of Congress and its members. They maintain that he should have gone to the root of the evil, and have extirpated it entirely from our political system. They claim that the transfer of the patronage from the President to the members of Congress does not relieve matters — that it simply shifts the objectionable feature from one department of the government to another, — and that Mr. Calhoun was to blame for not foreseeing that this would be the case. My reply is that he vigorously fought

the evil as it existed in his day, and that it was expecting too much of him that he should have anticipated every twist and turn in politics and the administration of governmental affairs. We do not hold the public men of our day to any such strict accountability. We should not expect public men to foresee everything. When the electoral system was established, who anticipated that it would prove to be a mere formality and that the selection of our chief magistrate would be practically in the hands of our nominating conventions? When the Spanish-American War was first agitated, who had any idea that President McKinley, who was so reluctant to engage in it, would, in so short a time, become an expansionist and would be dubbed with the title of "imperialist"? Time is an important factor in political as well as in other matters, and our statesmen have to alter their plans in accordance with changes which it renders necessary.

Speaking of expansion suggests that it is interesting to inquire how did Mr. Calhoun look upon this question. Was he in favor of it or not? He was perhaps the leading advocate of the annexation of Texas. At that time, he was a member of the cabinet, occupying the important place of Secretary of State. Indeed, it is an admitted fact that he was appointed secretary by Mr. Tyler and accepted the office for the very purpose of accomplishing the annexation of Texas. He carried the matter through successfully and was proud of his achievement with reference to this matter. In speaking of this subject, in a speech in reply to Mr. Benton, he said: "He traces the authorship to me, because, as he asserts, I am the real author of annexation. Less than twelve months since, I had many competitors for that honor: the official organ here claimed, if my memory serves me, a large share for Mr. Polk and his administration, and not less than a half dozen competitors from other quarters claimed to be the real authors. But now, since the war has become unpopular, they all seem to agree that I, in reality, am the author of annexation. I will not put the honor aside. I may now rightfully and indisputably claim to be the author of that great measure, a measure which has so much extended the domains of the Union, which has added so largely to its productive powers, which promises so greatly to extend its commerce, which has stimulated its industry, and given security to our most exposed frontier. I take pride to myself as being the author of this great measure." This quotation from his speech shows that Mr. Calhoun appreciated highly his own efforts in behalf of the annexation of Texas, and it also presents forcibly and succinctly the advantages which resulted from that measure.

At first blush, Mr. Calhoun's position with reference to the war with Mexico seems to militate against the idea of territorial expansion. It is well known that he was opposed to that war. Not only did he regard it as unnecessary, but he looked upon it as a war of conquest. He was bitterly opposed to holding Mexico as a province or incorporating her into the Union. He held that it was against the character of our government and contrary to the policy of free institutions for us to hold Mexico as a conquered province. He contended that it would put too much power into the hands of the President, that it would clothe the Executive with an immense patronage, that it would tend to strip the States of influence, and strengthen the central government at Washington; and that it would make the general government a strong, central power and would be utterly subversive of the rights of the States. He referred to the Roman government as illustrating the point for which he was contending. He said that "when the Roman power passed beyond the limits of Italy, crossed the Adriatic, the Mediterranean, and the Alps, liberty fell prostrate; the Roman people became a rabble; corruption penetrated every depart-

ment of the government; violence and anarchy ruled the day, and military despotism closed the scene."

He referred to Great Britain as an example to the contrary. He freely admitted that she held large territorial possessions without demoralizing her people or ruining her institutions; but he said that resulted from the peculiar character of her government — "that her executive and the House of Lords (the conservative branches of her government) are both hereditary, while the other House of Parliament has a popular character." He contended that even England had suffered the penalty of a free government attempting to hold provinces in subjection, that she was groaning under a heavy debt; and that the subjection of Ireland was not only a cause of debt but a perpetual menace to the peace of the government. Nor, as I have already said, was he in favor of incorporating Mexico into the Union. He thought that it would involve great expense and a large standing army to keep her there. Then, too, he maintained that the Mexicans were entirely different from our own people in their traditions, habits, and ideas, and that it would be impossible to convert them to our ideas of liberty and government. But even Mr. Calhoun himself, after the war had been started and carried on for a while, in discussing the settlement of the issues involved, acquiesced in the result of things up to a certain point and indeed favored retaining a part, at least, of the conquered territory. In his speech on "The Three Million Bill" delivered in the Senate, February 9, 1847, he said: "Under such circumstances, to make peace with Mexico without acquiring a considerable portion, at least, of this uninhabited region, would lay the foundation of new troubles and subject us to the hazard of further conflicts — a result equally undesirable to Mexico and ourselves. But it is not only in reference to a permanent peace with Mexico that it is desirable that this vast, uninhabited region should pass into our possession. High considerations connected with civilization and commerce, make it no less so. Left as it is, it must remain for generations an uninhabited and barren waste."

The last sentences have very much the same tone that we hear in the argument of the annexationists of the present day. "Manifest destiny" was at that time a popular term. And then, too, we must remember that, to a very large extent, the woof and warp of Mr. Calhoun's mind were regulated and controlled on public matters by his estimate of their relation to the subject of slavery. All of his ideas upon the subject of the annexation of territory were largely biased by his views on the slavery question. And besides, and in a large measure as the result of this fact, his ideas on this subject were also influenced by his State-right views, — that this was a Union of equal, sovereign States, each of which had the right to judge for itself when its constitutional rights were infringed upon. In discussing Mr. Calhoun's position upon the subject of territorial acquisition, therefore, we must make allowance for both of these considerations, neither of which can operate now, for slavery is a thing of the past and that feature of State sovereignty, to which I have referred and for which he contended so vigorously, has been eliminated from the doctrine. That having the Philippines on our hands as one of the results of war, we should cast them adrift and thus practically consign them to a state of anarchy and barbarism, or allow them to become the prey of mercenary nations, I can hardly believe would have accorded with Mr. Calhoun's character or met with his approbation; that he would have been in favor of maintaining over them a protectorate with an ultimate idea of freeing them as soon as they became capable of self-government, I think extremely probable; but that for this Republic to hold in subjection any civilized people de-

siring to be free, and capable of conducting a government of their own, would have been totally at variance with all of Mr. Calhoun's ideas of justice and right, I feel perfectly assured.

At the beginning of this article, I referred to the fact that Mr. Calhoun was of Scotch-Irish extraction, and that the qualities which he accordingly inherited had a great deal to do with his success in life. We find that his Irish blood, especially, was advantageous to him politically also. There is an old maxim, more forceful than elegant, that a man should not go back on his raising. Mr. Calhoun never repudiated his Irish lineage, and, as a consequence, his fellow-citizens of Irish descent stood manfully by him. In Pennsylvania, particularly, where that element was strong, he was exceedingly popular, and it was largely owing to their efforts that his name was brought forward for the presidency and for a while vigorously pressed for that position.

It is a circumstance worth mentioning that Mr. Davis and Mr. Lincoln, the two presidents who were so bitterly arrayed against each other, received their inspiration and took their models from the lives and characters of Mr. Calhoun and Mr. Clay, respectively. Mr. Blaine, too, admired Mr. Clay more than he did any other of the great men of the country and he is said to have patterned his life largely after him.

That Mr. Calhoun was Mr. Davis's model, we are not left to conjecture, for the latter tells us so himself: "Mr. Calhoun was to me the guiding star in the political firmament and I was honored by him with such confidence as made our intercourse not only instructive, but of enduring love." But, even in the absence of his statement, we would have known it any way. The resemblance between them is very striking. Both of them were tall, commanding, dignified gentlemen. Both of them were men of high character and of remarkably pure personal life. Both of them were good speakers and were fond of public life. Both of them were metaphysical rather than practical in their mental make-up, and were logicians of the first order. And, what is remarkable, this resemblance was not confined to their manner and character, but it is to be found in their lives also. Both of them started out in life with unusually brilliant prospects, both of them at an early period in their careers won the confidence of the people and became exceedingly popular; both of them were thoroughly informed on politics and statesmanship, both of them held Cabinet positions and filled them with great acceptance. Both of them loved the South and devoted their lives to its service, both of them were greatly admired and cordially hated, and both of them left a name and a memory which have been revered on the one hand and reproached on the other. That the tendency of Mr. Calhoun's mind was metaphysical and theoretical rather than practical was a charge brought against him in his lifetime by such men as Clay and Webster, and, though he smarted under it, yet, in his cooler moments, his own friends must have told him that that was legitimate criticism which he must make up his mind to bear. That the charge was not only within the sphere of proper criticism, but as a matter of fact was true, I think is gradually getting to be pretty generally conceded, and I have said as much elsewhere. We do not mean, however, that he was deficient in what we term common sense — far from it — nor do we mean that he was a visionary dreamer, a mere theorizer, a man who would prove a failure in the practical affairs of life. His success as a farmer, his safe, conservative ideas, his successful conduct of the two great offices which he held as a member of the Cabinet, the good sense which he displayed in his speeches and writings, the wise course which he usually advocated while he was in public life, all of these abundantly refute and contradict any such charge. What we do mean, however, is

that his intellectual make-up was metaphysical in its discriminating character and tendency, as compared for instance with the eminently practical turn of mind of Mr. Clay, or even that of Mr. Webster. When, however, we hear Mr. Calhoun spoken of as "a fanatic" and as "an impractical doctrinaire," and more especially when we find out that these charges are founded principally upon the fact that he believed in slavery, even thought it was a positive good, we are bound to raise our protest and call for the proof. If Mr. Calhoun was a fanatic because he believed in slavery and advocated that institution, then the whole South must be placed in the same category. With but few exceptions, the entire Southern people — its farmers, merchants, doctors, editors, preachers, jurists, and in fact men of every vocation, who dwelt in the South previous to the war, stood or fell with him. It has been said that an indictment will not lie against a whole people. If this is true and the indictment against the entire South will not stand, then Mr. Calhoun too must share in the relief granted, and go harmless of such charges.

Nor did Mr. Calhoun devote his great life to a speculative, abstract idea, that was crushed into atoms with the destruction of slavery, as some would contend. They tell us that he played a part, and they even admit that it was an important part, — in a drama that is wholly past; that he will stand in history simply as the representative of an *idea*, — that his hapless and lurid fate will be held up as a warning; and that he does not deserve the gratitude of his country, and then they call upon us to see how a man, fitted for a noble part, may waste his life and bring ruin upon himself and his people in behalf of a monstrosity, and an extremely absurd one at that. Read what Mr. Von Holst says on the first page of his book: "A man endowed with an intellect far above the average, impelled by a high-soaring ambition, untainted by any petty or ignoble passion, and guided by a character of sterling firmness and more than common purity, yet, with fatal illusion, devoting all his mental powers, all his moral energy and the whole force of his iron will to the service of a doomed and unholy cause, and at last sinking into the grave in the very moment when, under the weight of the top-stone, the towering pillars of the temple of his impure idol are rent to their very base, — can anything more tragical be conceived?" Fortunately we do not all think alike; nor will we allow this foreigner to do our thinking for us. I was very much impressed with the able argument which Mr. Curry made in the great speech before the University of Chicago, to which I have already referred. He showed conclusively that the doctrine of State-rights, which Mr. Calhoun advocated, is not dead, — that its cardinal principles still live, save only one, the right of a State to withdraw from the Union, which was finally settled by the arbitrament of arms. Indeed, he goes even farther and contends that these principles have been approved by the Supreme Court of the United States, have become incorporated into our government, and that upon them depend in a large degree the safety and happiness of our people. To Mr. Calhoun he awards high praise for advocating and upholding so ably, so grandly, so eloquently, these principles, and furthermore he contends that Mr. Calhoun, for his splendid work, merits the deepest gratitude and the warmest love of the American people. He asserts in eloquent language that the Constitution is the sheet-anchor of our faith and he demolishes the shallow and superficial ideas of our government which Mr. Von Holst presents. To quote his language: "Let us cherish a reverential attachment to our written Constitution as the palladium of American liberty, the truest security of the Union, the only solid basis for the public liberties, the substantial prosperity, and the permanence of our representative Federal Re-

public." Mr. Von Holst and Mr. Trent seem to think, that we can exalt the Constitution to too high a place in our regard, that we can make of it a kind of fetich. The former maintains that the first question we ought to consider when weighing a measure, is not whether we have the constitutional right to pass it, but whether or not we desire it, and then — does the Constitution prohibit it? And in passing upon the last question, he would not have us to scrutinize too closely — we are not expected to use a microscope. Such a course may do very well for some forms of government but certainly not for ours. He seems to forget that our government is one of limited powers — that all powers not delegated are reserved to the States or to the people. Indeed his ideas upon this subject are fundamentally at variance with our own. The idea of our esteeming the Constitution too highly, when we remember that the national government, with all of its powers and all of its limitations, — indeed, its very life-blood, depends upon it! It is refreshing to turn from the crude ideas of our government, which such doctrinaires as Mr. Von Holst, and men who think like him hold, to the true doctrine presented by Dr. Curry. Says the latter: "The Union being an instrument to accomplish certain specified ends, he is an enemy who perverts it from its original purpose, and he is the true friend who keeps it within prescribed metes and bounds, who preserves the original intact, who resists and defeats all infractions, and no man abstained more carefully than Calhoun from violations of the Constitution or was more forward to arrest them." The imperialists of the present day, who seem to have the same light regard for the Constitution which characterized Mr. Von Holst, should study afresh the speeches and writings of Mr. Calhoun.

Though not perhaps strictly within the scope of my subject, yet it is interesting to observe what were Mr. Calhoun's ideas on the subject of education. He seemed to think that the people of the North did not know so well how to train children as those of the South, — he contended that the former educated the head at the expense of the body. He claimed that the physical system should first be developed — that out-of-door sports should be encouraged, — that the cultivation of the mind should follow after obtaining health and strength of body. On the occasion of a visit to the West, where one of his boys was attending college, he told some of the professors what his ideas were on the subject of the management and training of boys. He seemed to believe pretty much in allowing them to take care of themselves — to grow up without control. He was opposed to restraining them and contended that it was best not to exercise much supervision over them. His position with reference to the order of development, I think is well taken, but as to the second, the question of discipline and control, opinions differ. After all, however, the maxim of the old writers was a pretty good one, — *Ne sutor ultra crepidam.* While on the subject of education, I may remark that Josiah Quincy, in his charming book, "Figures of the Past," speaks in high terms of the ability and skill displayed by the daughter of Mr. Calhoun in the discussion of some political topic when he met her on one occasion. He goes on to pay a high compliment to the better class of young women in the South, so far as educational training and intellectual equipment were concerned. He said that our fashionable ladies of that day were more highly cultivated than the same class in the North. "The fashionable ladies of the South had received the education of political thought and discussion to a degree unknown among their sisters of the North. 'She can read bad French novels and play a few tunes on the piano,' said a cynical friend of mine concerning a young lady who had completed the costly education of a fashionable school in New York; 'but, upon my word, she does not know whether she is

living in a monarchy or a republic.' The sneer would never have applied to the corresponding class at the South." Can the same be said now?

As a result of my study of Mr. Calhoun's life and of my investigation of the views which he entertained, I have been somewhat surprised at a query which has been raised in my own mind with reference to him and which I have not been able satisfactorily to solve. Was Mr. Calhoun democratic in his ideas of government? I know that in the main he affiliated with the Democratic-Republican party of his day. I know that he was democratic in his intercourse with his fellows, that he was uniformly polite and respectful to those whom he met, that he accorded to every one, from the page in the Senate to its most dignified member, every courtesy, that he dressed plainly and was unassuming in his manner, that he was a republican in his simplicity of style, that he was the champion of a limited national government, and that he was unalterably opposed to a strong, consolidated, central government and resented any infringement upon the rights of the States; — but was he a democrat after the order of Jackson? was he like Lincoln, one of the people? did he have that sympathy with them and that confidence in them which characterized the two men whom I have just mentioned? did he believe like them that the people — the plain common people of the country — should rule? did he believe that the great masses of the people should control the affairs of the government — that their voice, and their voice alone, should be the supreme authority in the affairs of the nation? Or, on the contrary, did he think that the management of affairs should be in the hands of the representative few,—not the party manipulators, for I know he had but little sympathy or respect for them — but the superior classes and the more intelligent and higher order of men among the people? If he were living now, would he be in favor of a primary or opposed to it? Let us see what some of the writers say upon these matters. Says Mr. Jenkins, one of his warmest admirers: "He was no friend to progressive democracy, nor did he think that liberty and licentiousness were synonymous terms. 'People do not understand liberty or majorities,' he remarked. 'The will of a majority is the will of a rabble. Progressive democracy is incompatible with liberty. Those who study after this fashion are yet in the horn-book, the a, b, c, of governments. Democracy is levelling — this is inconsistent with true liberty. Anarchy is more to be dreaded than despotic power. It is the worst tyranny. The best government is that which draws least from the people, and is scarcely felt, except to execute justice, and to protect the people from animal violation of law.'

"I will now quote from Mr. Josiah Quincy. It may be, however, that he drew a wrong inference from Mr. Calhoun's remarks. Mr. Quincy is giving an account of an interview which he had with Mr. Calhoun, while the latter was vice-president: "The concluding words of this aggressive Democrat made an ineffaceable impression upon my mind. They were pronounced in a subdued tone of esoteric confidence, such as an ancient augur might have used to a neophyte in his profession. Substantially they were these: 'Now, from what I have said to you, I think you will see that the interests of *the gentlemen* of the North and those of the South are *identical*.' I can quote no utterance more characteristic of the political Washington of twenty-six than this. The inference was that the 'glittering generalizations' of the Declaration were never meant to be taken seriously. *Gentlemen* were the natural rulers of America, after all."

THE FATE OF THE WILL.

By Fred Borton.

OH, a man there was and he filled his sack
(Even as you and I),
With a mine and a mill and a railroad track
(We thought he would leave to his children a stack);
But the lawyers they knew that they'd get a whack
At his wealth in sweet bye and bye.
Oh, the ink we waste and the chink we waste,
And the work of our penning hand,
Make sport for the lawyers who never say die
(For now we know that the lawyers are sly),
And the jury who don't understand.

Oh, a widow she was and she saw her chance
(Even as you and I),
With her passionate tale of a young romance
(And veil and weeds her cause to enhance),
She lead those poor heirs a merry dance
(Even as you and I).
Oh, the plans we lay and the hands we play
And the trump cards we command,
Are powerless to cope with the widow's tears
(And the lawyer who shouts in the jury's ears),
That jury that don't understand.

The judge then scratched his round bald head
(Even as you and I),
And some fossilized nonsense he solemnly read
(From some other old fogies three centuries dead),
Which settled the will so His Honor said
(Even as you and I).
And it isn't the claim nor the widow's game
That kills our conceit so bland,
It's the coming to know that our hard work is nil
(For the judge and the lawyers make rags of the will),
And the jury do not understand.

ENGLISH TREATMENT OF POLITICAL PRISONERS.

THE debate on the release of the dynamite prisoners in the House of Commons brought up once again, and directly, for public consideration two questions, at least, which had for a long time been discussed in the newspapers and on the platform, and by the public generally. The first question was, whether there ought to be a different system of treatment with regard to political offenders, and what we may call private offenders. The second question was, whether the whole system of prison discipline in these countries did not require some modification and some improvement. Now, with regard to the first question, as to whether political offenders ought to be treated on different conditions from private offenders, it seems to us that there can be no reasonable difference of opinion whatever, if men will but calmly think the subject over. Some of the greatest and noblest of Englishmen were put to death as political offenders. Some of the greatest and noblest of Englishmen were tortured before death as political offenders. Some of the Englishmen whose names are most revered and are most enshrined in the affection of England were tortured and put to death as political offenders. In modern times, it is quite certain that men, otherwise of the most stainless character, have passed years of suffering because they strove for some political purpose which they sincerely believed to be genuine, honest, and beneficent.

In the debate on the address to which we have been referring an immense impression was undoubtedly created in all parts of the House of Commons by the speech of Mr. Michael Davitt. Mr. Michael Davitt was a man absolutely blameless in private character. As a London newspaper not committed to Irish ideas said of him, he was a man in whom the whole Irish race at home and abroad felt a just pride. He was in his youth concerned in the Fenian movement, and he was sentenced to a long term of imprisonment. In the House of Commons he mentioned the fact that while he was in Portland prison it had been part of his work to be harnessed daily to a cart, as if he were a mule or a horse, and to drag stones this way and that for hour after hour, and that he had to sleep in a cell which only barely allowed him room to lie down. His words told on the House of Commons, which, to do it justice, is one of the fairest political assemblies in the world, and in which no member of any party felt anything but respect for Mr. Davitt. The question then naturally arose, whether a man like Mr. Davitt ought to have been treated in that fashion; and, of course, with that doubt came the inquiry whether political offenders ought not to be treated on a different principle from the ordinary criminal offenders. No matter whether a man is right or wrong in his opinions, and in his way of carrying them into action, is there to be no difference made between the man who moves only on some personal and selfish purpose and passion, and the man who is moving only for a cause or a principle out of which he can obtain, and out of which he wants to obtain, no personal gain whatever? Is Lord William Russell, is Theobald Wolfe Tone, exactly on a level with Bill Sykes, and Jack the Ripper, whoever that mysterious person may have been? An American once said to the writer of these volumes, "I know nothing whatever of your Irish controversies with English governments, except the fact that the English government put heavy sentences on Michael Davitt and John Boyle O'Reilly, two of the noblest creatures I have ever

met; and that settles for me the whole question of your English government system in its dealings with Ireland." Of course we must all admit — every man in his senses is compelled to admit — that the government of any country is bound to defend its own existence. It cannot allow the most virtuous man or the most patriotic man to endeavor to overthrow it without taking strong measures to sustain it against overthrow. Therefore, as it seems to us, there is no reason that even an Irishman should complain against the fact that the English government, after sentence in a court of law, consigned, let us say, Mr. Michael Davitt to imprisonment. But then, was it really necessary that he should have been condemned to be yoked to a cart which dragged stones at Portland, and to sleep in a cell in which he hardly had room to lie down? Was he really to be confounded with the ordinary class of miscreants who murder their wives, and who use brutal violence to old men in order to rob them of their money? Can anybody on earth say that the greatness and the integrity of the empire are to be secured by means which confound a man like Theobald Wolfe Tone, or a man like John Mitchel, or a man like Michael Davitt, with Bill Sykes and Jack the Ripper? In the same House of Commons, when the debate on the address was going on, sat with Mr. Davitt, Mr. James F. X. O'Brien, who in his youth had also been concerned in a Fenian insurrection, and who had been sentenced to be hanged, drawn and quartered. He had, in fact, the proud distinction of being the last man on whom such a sentence had been passed. The sentence, which of course was impossible to be carried out in our days, was commuted to penal servitude for life; and that sentence, too, was commuted, on the ground that during an attack on a police barrack he had determinedly protected the lives of the few poor policemen who had to give in. Calumny itself could never say a word against his character, and he was allowed by amnesty to return to his own country, and he became a member of the House of Commons, and a member of whom the bitterest Conservative would not say a single word that was not a word of respect. The debate, therefore, on the address in the opening of the session of 1897, brought this question into a concentrated form: Is it right to class men of this character, and this purpose, and this kind, with Bill Sykes and Jack the Ripper? It has to be remembered that America, — that is to say, the conquering Northern States,—after their great civil war, put no one to death, or even prolonged the period of imprisonment, except for two or three who were actually convicted of assassination. The great leader of the Southern civil war was allowed, after a very short period of imprisonment, to go his way unharmed. Mr. Swinburne, the English poet, published at the time when the Manchester prisoners were under trial — the story is told already in these volumes — a poem in which he said: —

"Lo! How fair from afar, taintless of tyranny, stands
Thy mighty daughter for years who trod the wine-press of war
Shines with immaculate hands,
Slays not a foe, neither fears,
Stains not peace with a scar."

And he added, speaking of vindictive punishments: —

"Neither is any land great whom in its fear-stricken mood,
These things only can save."

Lord John Russell had pointed out in the House of Commons, a great many years before, that no death and no torture inflicted on any political patriot, on any political fanatic, ever prevented some other man of the same mood and of the same purpose from following just the same course. No doubt it is a difficult question to settle — that question as to the manner of dealing

with political offenders. But to us, at least, it seems clear that there is nothing reasonable to be said for the hashing up in one system of Michael Davitt and Bill Sykes.

The criminal laws of England stand in immense need of emendation. They press with terrible force on one class of offenses, and they deal very lightly with another class. The rights of property are maintained even now with a ferocious vigor, and a poor man or a woman stealing a loaf of bread is punished with what might be called in proportion an extraordinary severity. On the other hand, we read every day in the papers of a drunken scoundrel who has kicked his wife almost to death getting off with something like six months' imprisonment. The whole general system needs a parliamentary review; but, unfortunately, Parliament is busied mostly with foreign affairs, and gives itself little time to look into the concerns of the inhabitants of these islands. When we get time enough — if we ever do — to think of domestic affairs, we may come to form, and act upon, some definite opinion as to the scale of punishment for offenses against life, and likewise to arrange for some difference being made between the treatment of a high-minded and virtuous man who starts a rebellious movement against the existing authorities, and a man who amuses himself after the fashion of Jack the Ripper. The second question which came up concerned the general dealings of the authorities in the English prisons. To that we have already made some reference. The English prison system is beyond all question — and we are not now speaking of the relative guilt of the offenders — much more severe than that of the United States. In the American Republic there is every chance given to the convicted criminal to reform and become a better man. An English visitor to one of the State prisons in the American Republic is sometimes amazed at the sort of advantages placed within the reach of the convict.

In some of the State prisons in America there is, no doubt, a stern severity in dealing with serious breaches of discipline or with attempts at escape or mutiny. In many of these prisons measures of punishment for such offenses are allowed which would not be endured by public opinion in England. But, on the other hand, the ordinary life of a prisoner is in most of these States made much more endurable than the ordinary life of a prisoner in England.

The idea in the United States is to give the imprisoned man or woman a fair chance of becoming reformed, and returning to society a better citizen. Of course it may be said, and it is said here every day, that we must not make prison life an agreeable experience for criminal offenders, and that if a man ought to be punished he ought to be punished, and there is an end. That argument, of course, however it may be expressed, is an argument pure and simple for the principle of torture. The man has done wrong; he ought to be sent to prison; he is sent to prison; his life ought to be made miserable for him in prison, in order that when he comes out of prison he may take care not to go into prison again. As a matter of fact, it is quite certain that in no country in the world is there created a regular jail-bird class as much as in Great Britain. Men and women pass their whole lives in getting into prison and getting out of it. Some of the restrictions imposed in the Irish prisons were positively grotesque, and especially grotesque when they applied to political offenders. A short-sighted man was not allowed to wear spectacles; a man with a severe cold in his head was not allowed the use of a pocket-handkerchief, lest, perchance, he should make use of it as a rope and hang himself; and this in the case of men whose lives, as soon as they came out of prison, would be comfortable, happy, and even honored. But to return to the mere question of the common criminal, it is greatly to be doubted whether the severity

of our prison system in these countries tends in the least to make him a better man. — *From "History of our Own Times," by Justin McCarthy.*

NEW INEBRIATES LEGISLATION IN ENGLAND.

By A. Wood Renton.

A JUDICIAL experiment of great interest and importance on medico-legal grounds was initiated in England on New Year's day. Its legislative authority is derived from chapter 60, of the statutes 59 and 60 of the Queen. Up to the present time, the only legislation that we have had in England affecting habitual drunkards, as such, is contained in the Inebriates Acts, 1879 and 1880. The effect, in brief, of these statutes was to establish a system of licensed retreats to which any habitual drunkard might *voluntarily* commit himself for a period not exceeding a year, coming thereby under a liability to be *compulsorily* detained in the retreat for the entire time that he had on admission agreed to remain in. On the whole, these arrangements for the remedial treatment of habitual drunkards on their own initiative have worked well. Experience, however, disclosed certain defects in them. One year maximum was found in many cases too short a time for a cure to be accomplished. Again the maximum duration of licenses was limited to thirteen months — a condition which operated as a deterrent, both on applications for licenses and on the expenditure of money on retreats. To touch for a moment on questions of detail, the procedure for the re-admission and recapture of patients was hampered by unnecessary restrictions. And, lastly, there was the crowning blot of the absence of any provision for any compulsory "sequestering" of inebriates, whom neither their own will nor the moral suasion of relatives moved to consent to voluntary committal. These shortcomings the Inebriates Act, 1898, has not supplied. Indeed it is evident that public opinion in England is not yet ripe for the change; the other defects, however, are remedied. The maximum period for voluntary detention is raised to two years. The maximum duration of licenses is increased by nine months, and the procedure on re-admission and recapture is simplified. But it is not to details of this kind, important as, in their own way, they are, that the Inebriates Act of 1898, owes its interest. The statutes of 1879 and 1888 applied to non-criminal inebriates alone. They did not deal with the pathological phenomenon presented by that type of criminality now described in technical medico-legal parlance as "the *recidivist*," whose main feature is the persistent commission of petty offenses under the influence of intoxicating liquor. The difficulty of grappling with such cases was obvious. The simple drunkenness could not be punished. The offenses were so slight that only a fine or a very short term of imprisonment could be imposed. There was no power to sequester the unfortunate from temptation for a considerable period of time. Numerous specimens of this class have been familiar figures in the English police courts for some years. One of them — Jane Cakebread — who died in December, 1898, had between three hundred and four hundred convictions for being drunk and disorderly recorded against her. Another, a woman, Gates — who was told by the magistrate on her last appearance

before him, that she would be amenable to the new act after January 1, and who may be enjoying the protection which it confers on the victims of habitual drunkenness before this article reaches the eyes of any reader of THE GREEN BAG; has already been convicted on similar charges a thousand and one times. It is at this point that the great value of the new statute comes in. Henceforward the courts may order the committal to a state or certified inebriate reformatory for a period not exceeding three years of (1) any person convicted on indictment of an offense punishable with imprisonment or penal servitude, if satisfied by the evidence that inebriety was the cause, or a cause, of the commission of the offense, and (2) any habitual drunkard convicted of an offense against the Licensing Acts or Town Police Clauses Acts, who has been convicted of similar offenses three times within the preceding twelve months. This departure will be all the more interesting to American readers because of its indirect recognition of the soundness of the principles on which the administration of the Elmira reformatory is based, as well as of the conclusions of Italian jurists. It only remains to give the substance of the model regulations which have been made by the home secretary under the new statute. The site of a reformatory whose certification is desired, must be at some distance from large centres of population. The quantity of land attached to it (if a reformatory for males) must allow not less than one acre for every ten patients (and half that quantity in the case of reformatories for females) so as to give ample scope for outdoor employment, exercise and recreation. The minimum number of patients to be received at each institution is fixed at twenty-five. Certificates are to remain in force until withdrawn or surrendered. Each reformatory is to have a resident superintendent. Every officer is to be a total abstainer. No intoxicating liquors or drug of any kind shall be admitted into the reformatory under any pretext whatever, except in pursuance of a written order of the medical officer specifying the quantity to be admitted, and the name of the person for whose use it is intended. The inmates of the reformatory shall mess together, and the food should be carved in the room, and should not be weighed out to each man. Each inmate shall be responsible for the cleanliness of his room, bedding, utensils, etc. He shall be provided with complete and suitable dress, and shall be required to wear it. It is, however, not desirable to enforce strict uniformity, and, unless there are special reasons to the contrary, an inmate should be allowed to use his own clothes if he desires. Mechanical restraint is to be limited to the strait-jacket, and that is to be employed only when its use is necessary to prevent the patient from hurting himself or others. Female offenders are to have female warders. Corporal punishment is never to be inflicted. The sole punishments recognized within the reformatory are to be in the nature of dietary deprivations and deprivations of privileges. Provision is made, however, for bringing recalcitrant patients before courts of summary jurisdiction; the maximum penalties being a fine of twenty pounds or three months' imprisonment with hard labor. No patient is to receive dietary punishment or to be put in solitary confinement unless under a medical certificate that he is fit to undergo it; and no patient is to be punished in any way without a fair hearing. We may conclude by citing the provisions as to classification and conditional discharge.

"Chronic invalids incapable of earning their own livelihood, and persons who require special care and constant medical attention, or persons suffering from any contagious or infectious disease, should not be eligible for an inebriate reformatory. Persons suffering from any organic disease in

an advanced stage are not fit subjects for admission, and in all cases of pulmonary tuberculosis special precautions should be taken to prevent the communication of the disease to others. Discharge on license should be possible after nine months' treatment, and should be the usual practice at the end of twelve months. If an inmate is not licensed at the end of a year the matter should be reported to the secretary of state, and if still in the reformatory after eighteen months, there should be a detailed report on the case, in order that it may be decided whether the inmate should be discharged on the ground that no cure can reasonably be expected, or whether he should be removed to another reformatory or otherwise dealt with. A temporary license should be given whenever it is thought advisable to allow any inmate to leave the reformatory for more than a few hours.

A THREE-CORNERED ELECTION.

By A. M. Barnes.

IN the year of our Lord 1710, and of the founding of the Colony of Carolina the fortieth, Colonel Edward Tynte was distributor of favors and procuror of revenues — principally land rents and taxes — of all that section lying between the southern boundary of Virginia on the north and the St. John's river on the south. In other words, he was the governor selected to push the interests of the proprietors, and right royally did he show himself capable of so doing, as well as of moving along a wheelbarrow turn of his own now and then.

He had been appointed to succeed the Very Hon. Sir Nathaniel Johnson, deposed because of "ill-administration"; some said on account of his officiousness concerning the Church Acts, others, and by far the majority, that it had come about through lack of briskness relative to Indian matters. The trade in Indian captives shipped to the West Indies and other markets, had fallen off twenty-five to thirty per cent. Governor Sir Nathaniel being a man of peace, or it may have been that he desired more time to give to his own private affairs, didn't stomach the business of pushing the war into the Indian country, facing the risk of losing his scalp, may be his life, for the purpose of securing captives, men, women, and children to load the ships already greedily waiting at the Charlestown wharves. He vastly preferred the more gentle industry of silkworm raising, of which he was the introducer into the colony, rather than the more risky pursuit of dealing in live Indian skins for the pocket replenishing of his masters.

At any rate, Sir Nathaniel went out under a cloud, silkworms and all, and Colonel Edward came in, beneath skies glowing with the promise of brilliant things in the way of a moneyed administration. Like his predecessor, he didn't fancy the traffic in live Indians, especially as the Indians themselves objected to it in a manner that now threatened serious consequences if persistence in it were shown. At the same time, he realized that he had been elected for revenue, and "for revenue only," and forthwith set about devising ways and means for carrying out the chief policy of the administration. Instead of pouncing upon Indians, he found it a far safer undertaking to pounce upon delinquent land-holders, upon those who, leasing lands under the provisions of the grand model — Locke's masterpiece of anything but common-sense, — were now vastly in arrears. He also set himself to the disposal of such lands as had not yet received allotment.

But Governor Tynte didn't have the opportunity long of showing his successful administration of affairs "for revenue only," for soon he was called on to meet his own arrears, to pay the tax of nature at a higher court, departing this life rather suddenly in the summer of the same year of his beginning to reign.

Now, Governor Tynte's commission as governor, or procuror of revenue, provided that, in the event of his death or resignation, his deputies should have it in their power to choose one of their own number to be governor until another should be appointed and sent out by the proprietors. It so happened that there were at that time only three deputies in the Province, though there should have been eight, one representing each proprietor. These were Mr. Chief Justice Roberts Gibbes, Colonel Thomas Broughton, and Fortesque Turbeville. The last had just come out as the deputy of the Duke of Beaufort. In most of the historical records he is alluded to in what seems rather a disparaging manner as

"one Fortesque Turbeville." Now, I do not know whether this came about through his having no title, a very serious drawback in the eyes of the aristocracy of those days, or whether this designative unit had been made to preface his name because of its significant suggestion of his having been the one of all others, the pivot on which this queer election hinged. At any rate, we will accept this latter explanation, since he may have been a man of family, and no risk must be taken of hurting feelings.

The day of the election came. The deputies met. Two of them had their votes fixed, the same as though they had been cast. Strange to say, the third one, and "the one of all others," had not. He was anything else but a pivot at this period of the proceedings. He was more like a pendulum, swaying back and forth; but, as the sequel showed, he was far from being a brassy one. Neither had he taken unto himself any such thoughts as had flown to high places in the minds of the other two from the moment of the announcement of the necessity of the election.

Coming from his plantation that morning in his canopied boat, propelled by his six stout negro rowers, Colonel Thomas Broughton had communed with himself something after the following manner: —

"It is only too evident that I, and I alone, am the man for the position, for which one of my associates has such qualifications as I? If the proprietors could speak, I am sure I would be the man of their choice."

Very nearly the same comments had passed through the mind of Mr. Chief Justice Gibbes, as he left his East Bay residence in grand style for the scene of the election.

The three deputies were soon closeted in the room, while outside the crowd waited anxiously. The Hon. Mr. Gibbes at first showed the most nervousness of the three; but in a few moments he sat smoothing his ruffles with a pride and complaisance that indicated they might very soon pass into the possession of the governor of Carolina. Colonel Thomas Broughton opened his silver box and took therefrom snuff in the good old-fashioned style, in a pinch conveyed to the nose. Then he sneezed once, twice, thrice. An unkind observer of the present generation, noting the rather alert expression of the eye, the furtive look now and then out of the corner, might have somewhat smartly declared that he was up to snuff.

The first ballot showed a decidedly mixed state of things. Broughton and Gibbes had each voted for himself. Turbeville, still playing pendulum, hadn't voted at all. So, as yet, behold, there was still no governor of the mighty Province of Carolina!

"Mr. Turbeville," said Mr. Chief Justice Gibbes blandly, "this will never do. Come, my dear sir, your ballot must be cast. I am sure you cannot hesitate further when you realize what might be the result, nay, is the danger of leaving this great Province of Carolina one moment longer without an official head. The question is easy enough to decide it seems to me. It is simply as to which one of us now is the best fitted to undertake the responsible duties of this position."

At these words the chief justice looked at him in a way that plainly indicated that if he, Turbeville, had but half an eye, he could see clearly that point as Mr. Gibbes himself saw it.

"Yes, friend Turbeville," said Colonel Broughton, going a degree further in his expression of affectionate interest, "you must vote; otherwise there can be no election, and things must not remain at this pass."

It was clear that the thought had not entered the colonel's head that one of the two already voting might play the rôle of self-abnegation, and change his vote to the other. Such a course was plainly beyond even contemplation.

"Yes, friend Turbeville," continued Broughton, and looking at him in the most affectionate and solicitous way, "you must vote. Of course, you will cast your vote in the fear of God and to the best interests of your

fellow-men, in the direction in which it is calculated to bring about the most good to this great Province of Carolina."

The expression here bestowed upon "friend Turbeville" said plainly that there was but one direction in which to cast it in order to bring about such a result, and that was in the direction toward Broughton himself. At the same time there was such a look overspreading the whole bland face that said plainly that did he decide to cast it at so worthy a target, it would not be dodged.

"Come," said Mr. Gibbs, "let us vote. We are wasting precious time."

His impatience was great. He let it be seen, and it lost him the day, as it has many a man before and since.

The result of the second ballot showed no random firing. It was a clear shot. Each man from his corner had sighted straight at the mark. A governor for the great Province of Carolina had been elected. Broughton had again voted for himself; so had Gibbes. But to Broughton's vote had been added that of Turbeville.

The newly-elected governor arose quickly. He was clearly elated.

"Having received two-thirds of the votes cast," he said, "I am plainly elected."

Then he waited no longer, not even to thank the man whose vote, cast in response to affectionate solicitation, had given the decisive turn to the election. This was another fatal error committed that day, but Gibbes was not to be the sufferer this time, far from it.

The newly-elected governor of the great Province of Carolina moved off pompously, albeit with celerity. To the friends gathered in the building he announced the result and also to those he met on the streets. In each instance he would add, "I am going home to prepare for the inaugural. I must have my friends present and many of my people. Now, you do your best by my return tomorrow, to make arrangements worthy of — of — ahem! of the occasion."

The back of the new governor had not more than disappeared from the room, when the honorable chief justice, turning to plain Mr. Turbeville, remarked, "He goes quickly. His head is all in a whirl like a top. Some men can't stand honors it is clear."

Then he added a little ironically as well as insinuatingly, "It does look as though he might have tarried long enough to return thanks for favors received."

The expression of "friend Turbeville's" face at that moment showed plainly that he fully endorsed these words. He was a man of feeling as well as of oscillation. The mere fact that he could swing from side to side proved that he had very impressionable sensibilities.

"Had it been for me now, my dear Mr. Thurbeville, that you had shown your preference," continued Mr. Gibbes, with an air as suave as though he were addressing one of the Lords Proprietors himself, "I would have considered my first obligation to you, not only in the shape of thanks, which would have been immediately forthcoming, but in another and — a — a — in short, in a more substantial way. I am sure you understand me. The governor of this great Province, aside from his exalted position, also has favors to bestow, which it seems your friend Broughton forgot along with — shall I say — with his manners."

Mr. Turbeville approached and gave the honorable chief justice a close scrutiny; he asked, "Have I not the right to change my vote?"

The words came slowly, but those of Mr. Gibbes's reply did not. They were quick and to the point.

"Yes, if on second thought you become convinced that you have not cast it to the best effect and to the highest good of this great Province which we have the honor to represent, you and I."

The words as well as the manner were highly flattering to Mr. Turbeville. He had made a mistake. He saw it now. Here

was a man who would know how to receive a favor as well as to reward it. He drew still nearer the chief justice.

"Suppose we take another ballot."

"I am agreed," replied Mr. Gibbes.

On the morrow, Broughton hastening to town in great state, accompanied by his family and many friends, and attended by a retinue of servants, was met with the astonishing news that he would be too late in his plans, as another had been installed governor.

"What!" he cried incredulously. "How can that be?"

"On your departure," replied the messenger, "Turbeville changed his vote to Gibbes. You made a mistake in going home. You should have seized the reins of government then and there."

"This is a rascally piece of business!" declared Broughton, excitedly. "It cannot be, it must not hold good. Turbeville has been bribed."

He sent his family back to the plantation, and pressed on to the city with his friends and retainers. On the way his ranks were joined by numerous adherents who had come forth to meet him, until he had quite a company, many of whom were armed.

At the drawbridge giving access to the town they demanded entrance. This was refused by order of Gibbes, who declared that no one should enter except those who kept guard on the bridge. A skirmish occurred in which several were wounded. The bridge was seized and thrown across the moat, then Broughton and those of his followers who were on the outside entered.

On gaining entrance, Broughton's first question was, "Where is Turbeville. I must see him."

He was informed that Mr. Turbeville was not in town. Later, the startling news was conveyed to him that Turbeville was dead. This proved to be true. He had dropped off suddenly, and was now plainly beyond the power of changing his vote again, even had he so desired. The affair had thus narrowed down to a two-cornered one, and as such must be fought to the finish.

Broughton rallied his followers and began a march to the exchange. On the way, numerous encounters took place with the men of Gibbes's party, but owing to the coolness and good sense of two or three leaders on either side, the use of firearms was prevented. But sticks and stones flew wildly, and various bruises and some broken bones were the result.

Broughton reached the exchange and demanded that the government be transferred to him. Gibbes refused. Broughton charged bribery in the changing of Turbeville's vote, whereupon Gibbes at once threatened prosecution if the charge was not withdrawn. Thus begun and continued for many days, even weeks, thereafter, one of the most disgraceful squabbles in the annals of colonial politics. Neither side would yield. Each appealed to the Lords Proprietors. They settled it by ignoring both, and by appointing as governor the Hon. Charles Craven, brother of the Palatine, the hero of the Yemassee war, than whom no colony, or State either, for that matter, ever had a better ruler.

The Green Bag.

PUBLISHED MONTHLY, AT $4.00 PER ANNUM. SINGLE NUMBERS, 50 CENTS.

Communications in regard to the contents of the Magazine should be addressed to the Editor, HORACE W. FULLER, 344 Tremont Building, Boston, Mass.

The Editor will be glad to receive contributions of articles of moderate length upon subjects of interest to the profession; also anything in the way of legal antiquities or curiosities, facetiæ, anecdotes, etc.

FACETIÆ.

"ARE you the defendant in this case?" asked the judge sharply.

"No, suh," answered the mild-eyed prisoner. "I has a lawyer hired ter do de defendin'. I 's de man dat done stole de ahticles."

JUDGE (to witness who, by mistake, is making his way to the bench instead of to the witness stand). "Well, my friend, are you thinking of becoming a judge?"

WITNESS. "I am getting pretty old and may be that is all I am good for, your honor."

THE law reports contain many cases with odd and striking titles, but the most absurdly and incredibly appropriate combination of names that has yet come to light is to be found in the case of Hobson *v.* Kissam, Ala. 357. If any one can show cause why that should not be awarded the cake let him now speak or forever hold his peace.

A POMPOUS Chicago lawyer in the midst of his argument remarked: "Gentlemen of the jury, I once sat on the bench in Iowa."

"Where was the judge?" inquired the opposing attorney, and the argument of the pompous gentleman went to pieces right there.

"LOOK at this man," said the attorney, pointing to the prisoner. "Does he look like one who would commit a crime?"

"No," replied the witness. "But neither do you."

A GEORGIA judge warned his people with regard to coming into court intoxicated, and used these words: "I wish to put everybody on notice that if they come into this court-room while I am sitting on this bench drunk, they had better look out!"

NOTES.

MAN AND BEAST. — It is interesting to know that a man does not necessarily become a beast by being perched upon a bicycle. In Gloucester S. T. Co. *v.* Seppee (N. J.), 41 L. R. A. 457, that such a combination was not chargeable with toll as for "a carriage, sleigh or sled drawn by one beast," the court said: "A bicycle ridden by a human being no more comes within this description than a wheelbarrow drawn by a man or a perambulator pushed by a nursemaid."

CHIEF JUSTICE BLECKLEY ON AMENDMENT.—One of the most brilliant and original pieces of judicial writing in recent reports is the opinion of Chief Justice Bleckley, in Ellison *v.* Georgia Railway Company, 87 Ga. 691, holding that a declaration which does not state a cause of action in substance is amendable, overruling the doctrine of Martin *v.* Gainsville, etc. Railway Company, 78 Ga. 307. The chief starts out by saying: —

"Some courts live by correcting the errors of others and adhering to their own. With these exalted tribunals who live only to judge the judges, the rule of *stare decisis* is not only a canon of the public good, but a law of self-preservation. At the peril of their lives, they must discover error abroad, and be discreetly blind to its commission at home."

And further on: —

"But is not a general demurrer too diabolical to have any claim upon modern emotion? Stated in the most partial terms, its merits would seem to stand thus: 'Demurrer is the only legal devil always present and always ready; every logical universe requires one such character; some destructive work has to be done; and how can it be done if there is only resistance, no coöperation, not even sympathy?' But the spirit of modern procedure is altogether constructive and conservative, and though it

gives the devil his due, it takes care to restrict his dues as much as possible."

And still further: —

"The pleader does not slaughter his cause of action by the way he deals with it in pleading. In point of fact, pleading merely describes it, and failing to mention some of its parts is only omitting to tell the whole truth about it. It might as well be said that a man or an animal is killed by a deficient description." Amendment "neither creates nor raises from the dead; its function is neither generation nor resurrection, but is rather one of development, nutrition and medication." "A cause of action, if alive at all, is alive all over; each fragment is living matter, and has neither more nor less vitality in consequence of being put in or left out of the declaration."

CURRENT EVENTS.

IN Jetmore, Ks., not a single house is rented nor to rent. The man or woman of the house owns the house in every instance. There are 350 people in Jetmore.

UNDERGROUND and underwater railway schemes are becoming more common every day as the only available solution of transportation problems. Before long there will be another road under the Thames, in London, in addition to those already in existence or proposed. The London County Council has just decided to apply to Parliament for authority to proceed with this structure, which will provide not only a railway, but a path for pedestrians also. It will lie about midway between the Tower Bridge and the Blackwall Tunnel, and will run from a point near the St. Katharine's docks on the Middlesex or northern bank to Rotherhithe, where there is also a great system of docks, on the Surrey or southern side of the river. The total length of the structure, including the approaches, will be a mile and a quarter, or a little longer than the East River bridge here, and the cost is estimated at about $11,000,000. Recent engineering improvements greatly facilitate the construction of works of this kind.

LITERARY NOTES.

THE serial attraction of THE LIVING AGE for the summer months is a story by "Neera" one of the best-known of contemporary Italian writers. It is called "The Old House" and the opening chapter, in the number for July 1, is full of color and romantic charm.

THE July number of HARPER'S is especially interesting for the unusual number of short stories it contains, and in this respect is admirably suited to summer readers. Israel Zangwill contributes "Transitional," a touching story of how a little Jewess renounced her Christian lover for her father's sake; "The Wrath of the Zuyder Zee," by Thomas A. Janvier, is in many respects the best of Mr. Janvier's short stories; Frederic Remington is both the author and the illustrator of "The Honor of the Troop"; "Matilda's Address Book," by Margaret Sutton Briscoe, is one of the most entertaining features of "The Drawer"; Jessie Van Zile Belden contributes "Not on the Passenger List," and Wolcott Le Clear Beard tells a pathetic story of a telegraph operator in a rough western town. Hon. Henry Cabot Lodge brings to an end his "War with Spain," and Mr. Russell Sturgis contributes the third paper on "The Interior Decoration of the City House." Herbert C. MacIlwaine writes of "The Australian Horseman," and describes his life and customs.

THE July CENTURY is a story-teller's number, and is novel in its make-up, not only because it has a large amount of original fiction by ten living story-writers, but because it contains also articles on seven of the world's most famous makers of fiction, two only of whom are living. In only one or two cases do these articles consist of criticism. Two hitherto unpublished portraits of Sir Walter Scott, accompanied by a sketch of the artist who made them, are followed by a detailed and authentic account of the romancer's unhappy love affair, which cast a shadow over his entire life. Mrs. James T. Fields tells of a visit to George Eliot; "Stevenson in Samoa" contains such reminiscences as might be expected from the story-teller's step-daughter and secretary; "The Making of 'Robinson Crusoe,'" gives the true story of Alexander Selkirk and his sojourn on Juan Fernandez, with reproductions of his gun, his trunk, and other relics; Victor Hugo as an artist is the subject of a paper by Le Cocq de Lautreppe; "Bret Harte in California" was well known by Noah Brooks, who fills several pages with entertaining gossip of a period that seems more remote than it really is.

LIPPINCOTT'S MAGAZINE, which starts on an entirely new career with the July issue, brings out — complete — a Japanese novel, by John Luther Long, the author of "Madame Butterfly"; "The Fox-Woman" deals with the half-humorous, half-pathetic infatuation of a little Japanese artist for a wilful American beauty, who never realizes the tragedy she heartlessly compels; "The Teller," by the author of "David Harum," and the only existing fiction left by Edward Noyes Westcott, is a story in which the pathetic incident of every-day life is treated with a power never surpassed and seldom equalled in contemporary literature.

In the AMERICAN MONTHLY REVIEW OF REVIEWS for July the editor reviews the work of our delegation at The Hague up to date, presenting the latest phases of the arbitration question, with some consideration of its bearings on the present international situation. Among other topics discussed in "The Progress of the World" this month are "Tariff Trusts" as a political issue, the Dreyfus vindication, the war in the Philippines, the recent change in the civil-service rules, and the newly-elected college presidents. "Rosa Bonheur and Her Work" is the subject of an article by Ernest Knaufft. Pierre de Coubertin writes on "Modern History and Historians in France," and Mr. George Wharton James relates "A Pilgrimage to Some Scenes of Spanish Occupancy in Our Southwest."

PROFESSOR WILLIAM CUNNINGHAM, of Cambridge, England, opens the July ATLANTIC with a valuable paper on English Imperialism, in which he shows the gradual development of English policy from the Nationalism of a hundred years ago to the Cosmopolitanism of the present day. Horace Howard Furness contributes a study of Much Ado about Nothing, in advance of its appearance in his forthcoming edition of the play; Charles Johnston discusses "The True American Spirit in Literature," and Mark H. Liddell treats of the "Right Approach to English Literature"; Leon H. Vincent's "Virtuoso of the Old School" is a lively and entertaining sketch of one of the literary and social lions of the early part of the century; Will Payne, Francis Lynde, and Elizabeth Washburn contribute lively stories and sketches, and Agnes Repplier adds a lifelike picture of Revolutionary times, taken from the contemporary diary of a Philadelphia Quaker lady.

SCRIBNER'S MAGAZINE for July has as a frontispiece a fine wood engraving by Gustav Kruell. It is from a very rare daguerreotype of Daniel Webster, and accompanies Senator Hoar's paper on Webster, for which he has been collecting material for many years. Russell Sturgis, who stands in close sympathy with Mr. La Farge, has written the leading article in the number, in which he fully defines La Farge's place in art, and his method. There is also a very practical article which describes how the foreign mails are handled in New York. The fiction includes a pathetic but not unhappy story of a girl who is threatened with blindness, entitled "The White Blackbird," by Bliss Perry; another of "Aunt Minervy Ann's" amusing chronicles, by Joel Chandler Harris; a character study of old age, by Mrs. Robert Louis Stevenson; and a fascinating instalment of "Q's" serial, "The Ship of Stars," in which Taffy is apprenticed to a blacksmith.

WHAT SHALL WE READ?

MESSRS. LITTLE, BROWN & CO. have just issued a second edition of Captain Mahan's *Life of Nelson*.[1] In the revision of his original work the author devotes considerable additional space and has incorporated new, interesting material upon the disputed estimate of Nelson's affection for his wife. Other minor details have been corrected and amplified. The author's previous estimate of Nelson's character is not, however, modified or affected by these changes. The work is one of exceeding interest, and a most valuable addition to biographical literature. The illustrations include portraits of Nelson, Admiral Hood Admiral Jervis, Lady Nelson, Lady Hamilton, Admiral Collingwood, etc.

State Trials, Political and Social selected and edited by H. E. Stephen of the Inner Temple, is the title of a two-volume work to be published by The Macmillan Company at an early date. The editor has tried to bring the atmosphere of the Crown court into the study and to enable us, as it were, to take contemporary interest in the men and women long since dead on the block or the gallows. What the trials in these cases tell us, as nothing else can, is what were the popular beliefs as to witchcraft shared by such a man as Hale; how revolutions were planned, while such things were still an important faction in practical politics; and what was the state of the second city in the United Kingdom when a man could be kidnapped in its busiest streets by a gang of sailors and privateersmen.

The same firm will also publish Professor George H. Carpenter's *Insects, their Structure and Life*. A Primer of Entomology. The work is designed as a small, inexpensive text-book, sketching in outline the whole subject of entomology. It is profusely illustrated with about two hundred drawings and contains an exhaustive bibliography of authorities likely to be of special use to the student.

Messrs. Longmans, Green & Co., New York, have just issued the first volume of the "American Citizen Series," a series which is intended to serve as handbooks on the subjects treated, giving a systematic outline in which general divisions and relations shall be made clear, problems shall be studied and the criteria for solving them pointed out. The initial volume contains an *Outline of Practical Sociology*[2] by Carroll D. Wright. As United States com-

[1] THE LIFE OF NELSON. The Embodiment of the Sea Power of Great Britain. *Second Edition*, revised, By Capt A. T. Mahan, D.C.L., LL.D United States Navy. Little, Brown & Co., Boston, 1899. Cloth.

[2] OUTLINE OF PRACTICAL SOCIOLOGY. With Special Reference to American Conditions. By Carroll D. Wright, LL.D. M. Longmans, Green & Co., New York, 1899. Cloth. $2.00.

missioner of labor the author has had available a vast amount of valuable material which he has embodied in this volume, with the result that the work is one of the clearest and most interesting expositions of the subject yet offered to the public. Its scope may be seen from the following table of contents: *Part I.* The Basis of Practical Sociology. Introduction. 1. Development of the Science of Social Relation. 2. The Population of the United States. 3. The Status of the Population of the United States. 4. Native and Foreign Born. *Part II.* Units of Social Organism. 1. Social Units. *Part III.* Questions of Population. 1. Immigration. 2. Urban and Rural Population. 3. Special Problems of City Life. *Part IV.* Questions of the Family. 1. Marriage and Divorce. 2. Education. 3. Employment of Women and Children. *Part V.* The Labor System. 1. Old and New Systems of Labor. 2. Appliances of the Modern Labor System. 3. Relations of Employer and Employee. 4. Questions Relating to Strikes and Lockouts. *Part VI.* Social Well-Being. 1. The Accumulation of Wealth. 2. Poverty. 3. The Relation of Art to Social Well-Being. 4. Are the Rich Growing Richer and the Poor Poorer? *Part VII.* The Defence of Society. 1. Criminology. 2. The Punishment of Crime. 3. The Temperance Question. 4. Regulation of Organizations. *Part VIII.* Remedies: Solutions that are Proposed for Social and Economic Difficulties. Maps and Diagrams. Index.

NEW LAW BOOKS.

A Review of recent Legal Decisions Affecting Physicians, Dentists, Druggists, and the Public Health. By W. A. Purrington of the New York Bar. E. B. Treat & Co., New York, 1899. 50 cts.

This little volume is of value to the legal practitioner as well as to the professional gentlemen whose rights and duties are defined by the cases reviewed. In addition to these cases the work contains a brief for the prosecution of unlicensed practitioners of medicine, dentistry, or pharmacy, with a paper on manslaughter, Christian science and the law, and other matters.

A Treatise on the American Law of Administration. By J. G. Woerner. Second edition. Little, Brown & Co., Boston, 1899. Two vols. Law sheep. $12.00, *net.*

This work of Mr. Woerner is a practical and exhaustive treatise upon the law of administration in America and is most admirably adapted to the practitioner's needs. It is now ten years since the first edition appeared and the changes wrought during this period have necessitated some alterations and the rewriting of portions of the work. Some five thousand new cases have been selected and added to the treatise and the statutes referred to have been carefully compared and brought down to date. No practicing lawyer can afford to be without these volumes and this second edition is certain to meet with even a heartier welcome than that extended to the original work.

American State Reports, Vol. 66. Containing the cases of general value and authority decided in the courts of last resort of the several States and Territories. Selected, reported and annotated by A. C. Freeman. Bancroft-Whitney Co., San Francisco, 1899. Law sheep, $4.00.

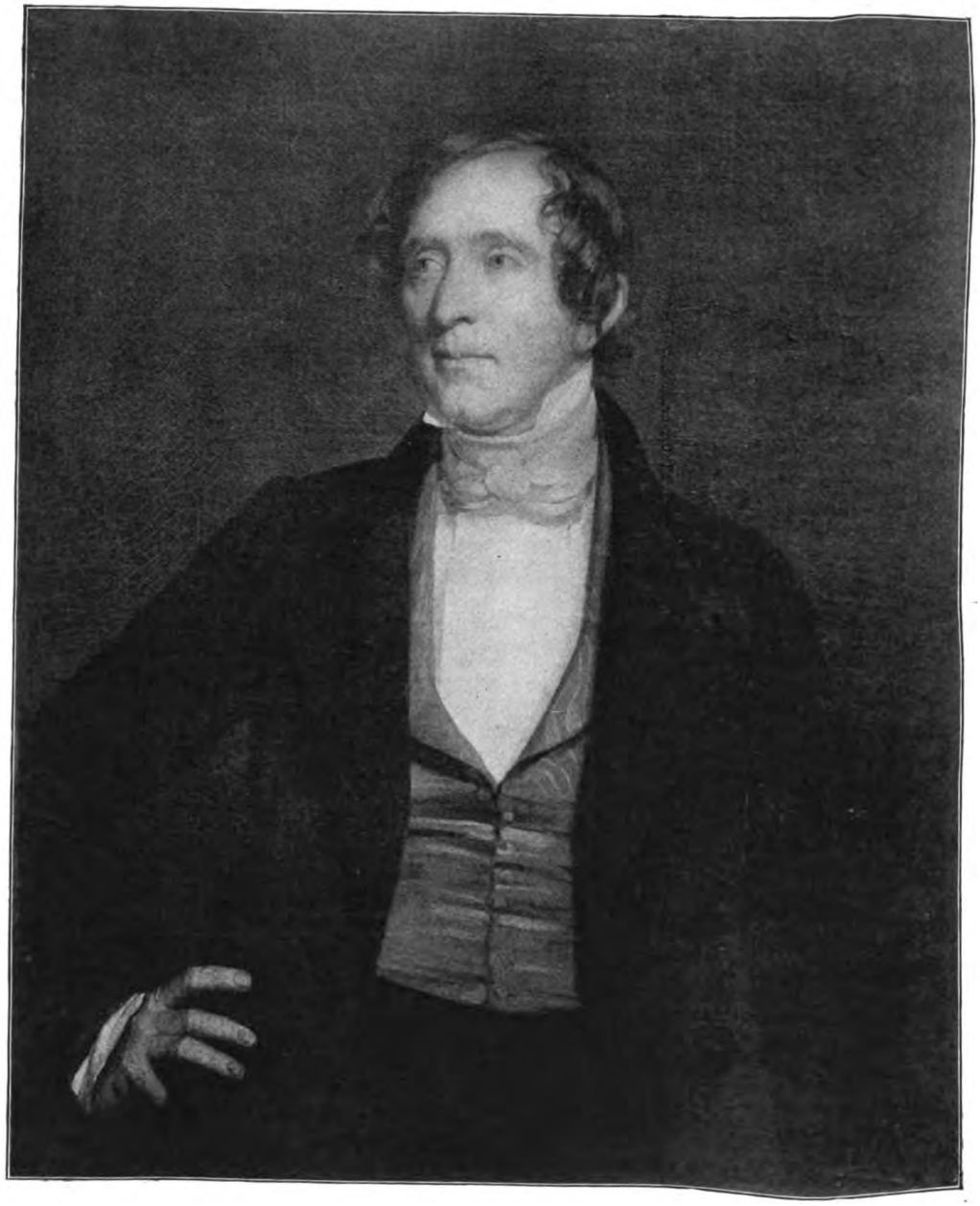
This series of reports is kept up to the high standard which has characterized them, under the able editorship of Mr. Freeman. The selections of cases shows rare judgment and discrimination, and the annotations are veritable mines of valuable information.

State Trials. Edited by Charles Edward Lloyd. Callaghan & Co., Chicago, 1899. Cloth. $3.00, *net.*

This volume, which is we trust the harbinger of more to follow, gives to the profession, at a reasonable price, several notable state trials. It contains the Trials of Mary, Queen of Scots, Sir Walter Raleigh, and Captain Kidd, the Pirate. These are condensed, but everything of special interest is given in full. There is no better way of impressing English History on one's mind than by reading these trials. No lawyer can fail to find a romantic interest in every page of the book and he will be amazed at the language and the ruling of some of the lawyers and judges of the dates given. The volume is admirably gotten up, type, paper and binding, leaving nothing to be desired. If the publishers will only supplement it with others covering all the state trials of importance they will confer a favor which will be fully appreciated by all lawyers.

Historical Introduction to the Private Law of Rome. By the late James Muirhead, LL.D. Second edition, revised and edited by Henry Goudy, LL.D., Regius Professor of Civil Law, Oxford. Adam and Charles Black, London, 1899. The MacMillan Company, New York. Cloth. $5.00.

This work when it first appeared in 1886 came as a most valuable addition to our literature upon Roman Law and was heartily welcomed by students of jurisprudence. In this new edition the editor has supplemented the author's notes by references to such works of importance dealing with the history of Roman Law as have been published since the date of the first edition. In its present form the treatise is a thorough and exhaustive exposition of a most interesting subject.



WILLIAM C. PRESTON.

The Green Bag.

VOL. XI. No. 9. BOSTON. SEPTEMBER, 1899.

WILLIAM CAMPBELL PRESTON.

I.

BY WALTER L. MILLER OF THE SOUTH CAROLINA BAR.

IN studying the lives of great men, we naturally admire and instinctively honor those who have had to struggle with adversity, — those who have built themselves up from the ground. The boy of humble parentage, deprived of the advantages which wealth and affluence give, with no family prestige, no influential friends to help him along — the boy who, in despite of all these disadvantages, forges his way to the front and wins for himself position and fame, we cannot help but admire. The self-made man commands our respect, our admiration, and our praise. We read with interest the accounts of his early efforts to rise, we watch him as he surmounts difficulties, we sympathize with him in his struggles, and we rejoice at his success. A strange fascination attends the efforts of him

> "Whose life in low estate began,
>
> * * * * * * *
>
> Who breaks his birth's invidious bar,
> And grasps the skirts of happy chance,
> And breasts the blows of circumstance,
> And grapples with his evil star."

And this is well. But, while this is the case — and it is to the credit of human nature that it is so — we must not forget to honor those of distinguished lineage and possessed of all that wealth and family rank can give, who yet rise above temptation, spurn a life of idleness and luxurious ease, apply themselves assiduously to the demands of duty, and by their own efforts uphold the family name and show themselves to be noble sons of noble sires. To this latter class the subject of this sketch belongs.

William Campbell Preston came of a distinguished family, both on the paternal and maternal sides. He belonged to the F. F. V's. Through his veins flowed the best of blue blood. He was of Irish extraction. William Preston, his grandfather on the paternal side, was born in County Donegal, Ireland, in 1729. We are told that "he was the companion of Washington in his expedition to the Ohio, and filled during his life many important trusts. He became colonel in 1775, and led his regiment at Guilford Court-House, where he received injuries that caused his death the following July."

His son, Francis, the father of William C., was born in 1765. In 1792 he was elected a member of Congress from Virginia. During the same year, he married Sarah, the daughter of Colonel William Campbell of King's Mountain fame. Sarah was in fact the only child of her parents. Her mother was Elizabeth Henry, the sister of Patrick Henry, the Revolutionary orator and patriot, who gave expression to those noble words which have become historic, — "Give me liberty, or give me death!" Francis Preston is said to have been on terms of intimacy with Madison, Monroe, Jefferson, and Chief-Justice Marshall. We are also told that

William C. was "cousin to Lord Brougham and Lord Erskine, they and Patrick Henry being nephews of Robertson, the Scotch historian." Thus we see that the subject of this sketch had a noble ancestry. Mrs. Campbell, who afterwards became Mrs. Russell, was a lady of wealth; but having manumitted her slaves, she kept but few servants. Like her distinguished brother, she seems to have been endowed with the gift of eloquence. She was a devout Methodist, and led in prayer, and took part in class-meetings and love-feasts. Her eloquence on such occasions was marked.

William Campbell Preston was born in Philadelphia, on Dec. 27, 1794, where his father was in attendance upon Congress, which was in session there. He was reared in the mountains of Virginia amid an atmosphere of patriotism and piety. When a boy he is said to have spent a good deal of his time — more than any other of the grandchildren — with his good old grandmother, Mrs. Russell, whose house was the preachers' home. In this pious Methodist home little William often heard prayers offered with fervor and unction by such men as McKendree, Whatcoat, and Asbury. The latter spoke of Mrs. Russell as "that elect lady." We shall find that the holy example, the religious conversation, and the fervent prayers of these godly men made their impress upon young Preston and were destined to bear rich fruit years afterwards. He himself tells us that when these good preachers would visit his grandmother's home, his services were often in demand to assist in waiting upon them. One of the chores which usually fell to his lot on these occasions was to bring corn from the mill for their horses. The seed sown in his heart, which was to fructify later on, was the blessed reward he received.

Mrs. Russell was a woman of marked individuality. Mrs. Martin, the wife of Rev. William Martin, wrote an interesting sketch of Mr. Preston's life, which was published in 1871, in "The New Monthly Magazine," and to her I am indebted for many of the facts mentioned in this paper. In speaking of Mrs. Russell, Mrs. Martin tells us that after Mr. Preston's return from Europe, whither he had gone to complete his education and widen his views, as soon as his good old grandmother met him she said: "Now, let us pray!" The prayer which she offered was after her usual eloquent style — "among other things giving God thanks for that William had not married 'a paltry French woman!'"

In Mrs. Martin's sketch we find the following: "At the 'Centenary of Methodism,' commemorated by 'the people called Methodists' all over the world, Colonel Preston was one of the first to lay his offering on the altar in memory of his sainted grandmother, and as an acknowledgment of his indebtedness to the teachings of Methodism . . . 'My grandmother,' said Colonel Preston, 'I think, *might* have preferred the Church of England, had such been accessible to her in those times.' 'Pshaw!' said I, 'what would such as *she* ever have done in the Church of England?' 'Burst her boiler, I verily believe!' said he, with one of his contagious peals of laughter."

Dr. H. Baer, in an address before the alumni of Wofford College, speaks of Mr. Preston's birth and the home of his childhood as follows: "A tradition in the family states that Mrs. Washington was the first person to hold him in her arms, and that Mrs. Madison listened to his earliest cries. He was cradled on the slope of one of the green hills of as lovely a spot as can be found in all this land of beauty. Saltville, in Smith county, Va., near one of the forks of the Holtson river, where his parents were living, offers a landscape unequalled for beauty. Here you have a valley, little over a mile in length, shut in apparently on all sides, with hundreds of cattle, sheep, and horses peacefully browsing on these grassy slopes. I used to stroll through the woods,

during my residence there in the summer of 1852, and imagine that this was the veritable Happy Valley, Samuel Johnson so beautifully describes in his Rasselas."

Mr. Preston was born and brought up during the formative period of his country's history. The echoes of the Revolution had hardly died away. Many of the participants in it were still upon the stage of active life. No doubt from their lips young Preston often heard recounted deeds of daring and adventures full of thrilling interest. We are not surprised that he should have become thoroughly imbued with patriotic ardor, which was to crop out in his after life and, indeed, was to become one of its main-springs. We must remember, too, that his childhood and youth were spent in Virginia, which was, at that time particularly, so prolific of great men. Even the little boys reared there then must have caught from them their enthusiastic spirit.

Dr. Baer describes Mr. Preston as a lad as follows: "William was a handsome boy, fair, ruddy, well grown, with lustrous eyes, and most winning ways — naturally the idol of an extensive circle of most partial relatives. He was the eldest of a large family of children, twelve of whom reached maturity."

Mr. Preston's early educational training was fairly good. His first teacher was Peter Byrnes, an Irishman, who taught in his grandfather's family and continued in the vocation of a teacher for many years. Under him, Preston learned the alphabet and also to read the Testament, imperfectly, however. Byrnes died when Preston was twelve years old. The latter was then placed under the instruction of a thoroughly competent teacher, a Mr. Hercules Whaley, who was not only an accomplished Latin scholar, but was quite familiar with the English and French literature. He was an excellent reader, and it was a treat for his pupils to hear him exhibit his power in that respect. Under him Preston began the study of Latin and acquired a fondness not only for it, but for French also.

When he was fourteen years old, he matriculated as a pupil of Washington College, Lexington, Virginia, where Dr. Laborde tells us "he labored but little." Washington College is now Washington and Lee University. While a student there, Preston roomed with General Edward C. Carrington, of Halifax County, Virginia, and William C. Reeves. Having weak lungs and, indeed, having had several slight hemorrhages, he was taken away from college and started off on a trip to Florida, where it was thought it would be well for him to spend a winter. His companion on this trip was a trusty old family servant, Isaac. They rode on horseback. They had instructions to pursue their journey as far as Columbia, South Carolina, where they were to get letters and fresh instructions. When Preston reached that city, he heard for the first time of the South Carolina College, and the accounts which were given him of it were very glowing. Here, too, he met a number of young men who had repaired thither for the purpose of taking the examination preparatory to admission to the college. They urged him to join their number, assuring him that they looked forward to their college days with pleasure. He doubted his ability to stand the examination, but they told him that there would be no trouble on that score. Finally, Preston yielded only on condition, however, that it should meet with Isaac's approbation. That good old servant cordially acquiesced in the project and at once gave his consent.

The examination took place on December 25, 1809, and Preston was admitted into the the Sophomore class. One of the incidents of that examination experience is worth relating. It was in the Classics particularly that Preston felt himself most deficient. It so happened that Dr. Park, the Latin Professor gave him the passage from Virgil beginning

"Tempus erat, quo prima quies mortalibus aegris
Incipit, et dono divùm gratissima serpit."

Preston first read the Latin and then asked the Professor if he would accept the translation of Dryden. Dr. Parks consenting, Preston repeated some fifteen or twenty lines, when the Professor remarked: "That will do for Latin."

It seems that even as a school-boy Preston excelled as an extemporaneous speaker, and that while he was at college he made a fine reputation for himself as an orator. Indeed, Judge O'Neall tells us that his oratorical efforts as a college student were never surpassed by any that he made afterwards on the hustings, at the bar, or in the halls of legislation. The learned Judge just referred to was one of his classmates.

Preston graduated in December, 1812, receiving "the third distinction of his class, in company with Whitfield Brooks, James R. Massey, and Arthur H. O'Hara."

The subject of his graduating speech was, "The Life and Character of Jefferson." In speaking of his speech on that occasion, Dr. Laborde says: "It was a time of much political excitement between the Federalists and the Republicans, and as his elocution was far above the common standard, the speech was well received, and, as was thought, shadowed forth his future reputation." As a result of my study of the lives of great men, one fact has impressed me, and that is that we so often find that the subject selected by a student for his graduation speech is indicative of his trend of thought and prophetic of his life. And we should not be surprised that this should be the case. His graduation speech and its subject constitute an important fact in a young man's life, at least in his own estimation. They are for a while the burden of his thought, and his whole heart and mind are fixed upon them. It is not unnatural, therefore, that they should reach down into the innermost depths of his soul and that they should reveal to us the bent of his mind and the tendency of his life. We find this illustrated, to some extent at least, in Mr. Preston's case. He had been brought up in Virginia, where Jefferson lived, attained his greatest popularity, and was most highly honored. What was more natural than that this young Virginia student in attendance upon a Carolina college, when he came to select a subject for his graduation speech, should have had his State and sectional pride challenged and should have felt called upon to vindicate the reputation and character of that great Virginian and eminent Southern statesman, Thomas Jefferson? We see here clearly revealed, too, the fact that Preston's inclination and tendency were already in that direction, in which he was destined to shine conspicuously,—the domain of politics and statesmanship. It is to be regretted that his speech on that occasion has not been preserved. It would be interesting to read it in connection with the subsequent events of his life and in the light which they would throw upon it. Every young man should preserve his college speeches and essays. In after life, he will find them more interesting even than when they were prepared and delivered. And then, too, they will give an insight to his life that will be invaluable.

After graduating, Preston spent a part of the winter in Richmond, where the Legislature of his State was in session, and the remainder in Washington. I have no doubt that his stay in these cities was highly beneficial to him. At these capitals he was brought into contact with the leading men of the country. He heard them speak, met them socially, and from his association with them no doubt modified his ideas of public men generally, broadened his views of life, and learned lessons that were of infinite service to him afterwards. I have the most profound sympathy for the average college graduate. His ideas of life are necessarily crude and ill-digested. His education, in one sense, is but just commenced. Practical life is very different from the placid quiet

which we find within college walls. Jostling with the rough, outside world rubs off excrescences and smooths down uneven places. It tries the temper but it proves the mettle.

We are not at all surprised to find Mr. Preston deciding upon the law as his profession, and in the spring of 1813 entering upon its study. He belonged to a family which, almost from time immemorial, had been prominent in public life. He came from a State which, more, perhaps, than any other in the Union, loved politics and generated and fostered statesmanship. He had been educated in a college which took high rank as the foster-mother of orators and the nursery of statesmen. And then, again, he was a young man of fine natural endowments, had already made a reputation for himself as an orator, and had graduated with distinction. It was the generally accepted and usual thing at that time in the South for young men, with the education and qualifications of Preston, to turn their attention to law, politics, and statesmanship.

There seems to have been good judgment displayed by some one all along through Mr. Preston's life. In many instances no doubt the credit must be given to his father. When he began to study law, it was an exceedingly happy thought that he should enter as a pupil the office of the widely celebrated lawyer, William Wirt of Richmond. Intimacy and association with such a man is itself, I might almost say, a liberal education. A law-student learns sometimes almost as much outside of books as in them. The suggestions which an able old lawyer makes to his pupil are invaluable. And then, too, a friendship likely springs up between teacher and pupil, and we find the former lending to the latter a helping hand ever afterwards. We may rest assured that it was a wise step which Preston took, when he selected as his perceptor in the law William Wirt.

On the approach of summer, however, we find his father removing him temporarily from the law office and dispatching him on a trip on horseback to the far West. I suspect the father's tender regard for his son's health and constitution had a good deal to do with this change. And then we are told that Preston's father had another motive, — it was a part of his plan for the complete education of his son. He wanted him to first become thoroughly acquainted with his own country and then to go abroad and spend a while in Europe in travel and study. The course which he mapped out for his son was wiser than that usually adopted by young men of means. Too many of our men, after graduating here, hurry to Europe to complete their course without first knowing something of their own country. The result is that they come home with their academic or professional degree and with the advantages afforded by travel abroad, and yet they have a very superficial knowledge of their own land and people. Too frequently we have as the result an undue self-appreciation and an over-weening self-conceit. The course which Preston pursued is far better. He built up his physical constitution, he acquainted himself with the habits and customs of his people, he added to his knowledge of human nature, he familiarized himself with the extent, geography, climate, condition, and surroundings generally of the great country in which he lived, and then he was in a condition to appreciate and enjoy life abroad. The trip which he took through this country was an extensive one. He traversed on horseback four thousand miles, and it took him seven months, to make the journey. He travelled over the following States: Kentucky, Tennessee, Missouri, Indiana, Illinois, and Ohio. These were then rough countries, on the borders of civilization, abounding in natural resources, and teeming with future possibilities, but, at that time, as far removed as possible from what Virginia had even then attained in point of refinement and culture. The benefit which he derived from the trip

is thus succinctly stated by Dr. Laborde: "The curious and valuable information thus obtained was of great service to him in his subsequent tour to Europe. The best informed were entirely ignorant of the 'Far West.' It was a region of vast natural resources, with a population and state of society of peculiar character, presenting at that period a state of perhaps not more than half civilization, but yet, to the acute observer, combining within itself all the elements of an overshadowing power and greatness."

THE LONG ARM OF COINCIDENCE.

A STORY OF CIRCUMSTANTIAL EVIDENCE.

NOVELISTS and playwrights are often ridiculed for their indebtedness to the "long arm of coincidence" to pull them out of the difficulties of a tangled plot, and, without doubt, their demands upon this convenient *deus ex machina* are frequently of a kind to provoke our incredulity. At the same time it is hard to place any limit to the possibilities of coincidence, and most persons, who have had much experience of life, must be able to recall some strange coincidences which were altogether outside the pale of probability. The story we purpose telling here affords a singular instance of unexpected incidents happening at the very moment when a man's life was quivering in the balance, and supplying evidence to save him from the gallows.

On the night of Monday, June 10, 1861, a mysterious and brutal murder was perpetrated at Kingswood Rectory, about four miles from Reigate, in the county of Surrey. The rector, with his wife and family, was on a visit at Dorking, and the house had been left in the sole charge of Martha Halliday, wife of the parish clerk. She was absolutely alone, for the servants had accompanied their master and mistress, and her husband had to look after his own house, as there was no one to take his wife's place there. But Martha being a woman of courage and nerve, had no objection to sleeping alone at the rectory, as she had frequently done before.

She was last seen alive by her husband, who parted from her between six and seven o'clock in the evening. When he went up to the rectory the next morning to see his wife, he found the back door locked, but on going round to the front door, to his surprise found it ajar. He entered and called to his wife, but receiving no answer; went in search of her. She was nowhere downstairs, but, on entering her bedroom, to his horror he saw her lying dead on the floor in her nightdress. That she had been brutally murdered was evident at a glance, for her hands and feet were bound with hempen cord, a handkerchief was tied over her face, and a stocking had been thrust tightly into her mouth.

Halliday promptly gave the alarm, the parish constable arrived, and a minute search of the premises was made. But they had not to go far for a clue to the murderer. Under the bed, a few inches from the spot where the murdered woman lay, there was picked up a packet of papers tied round with string. The papers, six in number, were all in German. One was what is called in Germany a service-book — the credentials furnished by the authorities to craftsmen and others — and was made out in the name of Johann Carl Franz of Schandau, in Upper

Saxony, a minute description of whose person it contained, similar to that in the passport. There were also two certificates, one of birth and one of baptism, both bearing the name of Johann Carl Franz.

The other three papers had apparently no connection with Franz. One was a letter without address, soliciting relief from some lady of quality, signed "Adolphe Kröhn." Another, dated June 7 (three days before the murder), was in the handwriting of Madame Tietjens, addressed to Mr. Kroll of the Hamburg Hotel, America Square, requesting him to send the bearer, a destitute fellow-countryman, back to Germany at her expense. The third was a slip of paper with a number of addresses jotted down upon it, among them that of Madame Goldschmidt (Jenny Lind).

Besides the papers, there was found in the room a roughly shaped bludgeon of beechwood, not long cut from the tree. This, however, had not been used, for the woman's body bore no marks of blows, and it was evident that death had been caused by suffocation, for the stocking had been rammed into her mouth with such force that the tongue was forced back over the glottis or narrow opening at the upper part of the windpipe. The footprints on the flowerbeds under the windows were of different sizes, and showed that two persons at least had been concerned in the crime. The motive was doubtless robbery, but the men were probably frightened when they found that they had killed the woman, whose resistance necessitated violence, or else they were alarmed by some sound outside, for they decamped without taking anything from the house.

With such an important clue as the packet of papers to start with, the task set the police seemed an easy one. It was soon discovered that two foreigners, one short and dark, the other tall and fair, had been seen in the neighborhood of Kingswood on the day before the murder (Sunday, June 9). They had applied for lodgings at the Cricketers' Inn, Reigate, and had slept there on the Sunday night, remaining in the house till four o'clock on the Monday afternoon, when they left. During their stay they had only quitted the inn twice to make some purchases, and on each occasion had only been absent a few minutes. The potman was certain he should recognize them both again, because, hearing them talk in an outlandish tongue, he had taken particular notice of them.

Then a laborer remembered having seen two foreigners in a beech wood not far from Kingswood, about seven o'clock in the evening of the day of the murder. He passed within a dozen yards of them and knew they were foreigners, because they were speaking in a language which he did not understand. This was an important piece of evidence for, on examining the wood, it was found that a branch had been newly torn from one of the trees, which exactly corresponded with the bludgeon found in the room.

But the most startling evidence was that supplied by the wife of a brush-maker at Reigate, who remembered that on the day of the murder, two foreigners came into her shop and bought a ball of string of a peculiar make, very seldom manufactured, known as "rublay cord." One of them could speak broken English, but when they conversed together it was in a foreign language. She showed them several different kinds of string before they selected this particular one, which was precisely identical with that found round the murdered woman's hands and feet.

The only other fact of importance was that two men, apparently foreigners, had been stopped by a policeman at Sutton, some eight or ten miles from Kingswood, about two o'clock on Tuesday morning, that is to say, presumably two or three hours after the murder was committed, and in reply to the constable's question, "Where are you going?" one of them said, in a

strong foreign accent, "To Old Pye Street, Westminster."

So far the scent was hot, and it seemed as if the quarry must be speedily run to earth. But the trail was lost at Sutton, and every effort to pick it up again failed. No one could be found who had seen anything of the two foreigners after the policeman accosted them at two o'clock on the Tuesday morning. The government offered a reward of one hundred pounds; Mr. Alcock of Kingswood Warren, M.P. for the division, added another hundred pounds; but no further clue was forthcoming, and the murder of Martha Halliday seemed destined to be classed among the unsolved mysteries of crime, when an accident put the police upon the track of the murderer.

On the second of July, more than three weeks after the murder, a German was taken into custody in the east end of London on a trumpery charge of assault. The inspector on duty was about to let the man go, when it suddenly flashed upon him that the fellow bore a resemblance to the description circulated of Johann Carl Franz, and he ordered him to be detained until the Reigate police could be communicated with. The Reigate inspector came up to town, saw the suspected German and, after close examination, decided that he was sufficiently like the description of Johann Carl Franz, given in the service-book already mentioned, to justify his arrest. Accordingly the man was brought up before the Reigate magistrates for examination. He gave his name as Salzmann, denied that he was Johann Carl Franz, of whom he declared he knew nothing, and was remanded for further inquiries. At his second examination he caused a profound sensation by voluntarily confessing that he *was* Johann Carl Franz, the owner of the papers that bore his name. But at the same time he stoutly denied all complicity in the crime, declared that he had never been in or near Reigate or Kingswood in his life, and told the following story to account for the discovery of his papers by the side of the murdered woman. He had landed, he said, from Germany at Hull, and had made his way through Leeds, Oldham and Manchester to Liverpool, where he hoped to get a passage to America. But failing in his object he resolved to tramp to London in search of work. On his way thither he fell in with two fellow-countrymen, both sailors, the one named Adolphe Kröhn, the other Wilhelm Gertensberg.

The latter had no papers, and being of about the same stature and complexion as Franz, was perpetually asking him for the loan of his papers, as the description, he said, would suit both of them. But Franz refused to grant his request. One evening in May they all three lay down to sleep behind a stack of straw in an open field. Franz was so tired that he slept soundly. When he awoke, his companions were gone, and they had taken with them his papers and his bag, which contained a suit of clothes of the same stuff and pattern as he was then wearing. Among the papers stolen from him was one which was missing from the packet found in Kingswood Rectory: it was a railway guard's testimonial or certificate. From the moment he awoke and discovered that his companions had deserted and robbed him, he had never set eyes on either of them. He had eventually reached London, where he wandered the streets in a state of destitution till he met a fellow-countryman whom he accosted and asked for assistance. The man took him into an eating-house, and whilst he was having his meal, read to him from a newspaper the account of a murder, the perpetrator of which was supposed to be a German named Johann Carl Franz. He was dreadfully alarmed on hearing this, and resolved to assume another name; for that reason he had called himself Salzmann.

So far the story was plausible, and as Franz declared that his clothes had been stolen as well as his papers, and that those

clothes consisted of a suit exactly like the one he was wearing, it was within the bounds of possibility that the witnesses, who swore that they had seen him at Reigate on the day of the murder, might have mistaken his double, Gertensberg, for him.

But there was something else the prisoner had to explain. When his lodgings in Whitechapel were searched, there was found a woolen shirt which he admitted to be his — this shirt was tied up in a bundle with a piece of string, and this string was "rublay cord" of precisely the same manufacture as that which had been sold to the two foreigners at Reigate on the day of the murder. The prisoner's explanation was that he had picked up the bit of string casually in a street close to his lodgings — it was lying on the pavement outside a tobacconist's shop. He remembered this, because it was on coming out of the shop, after buying half an ounce of tobacco, that he saw the string and picked it up.

Here was the weak place in his story; for the manufacturer of the string was called and swore that it was the same uncommon kind as that with which the hands and feet of the murdered woman were bound — that it was his own special manufacture, unlike that made by any other manufacturer — that the woman who had sold the ball of string to the two foreigners was an old customer of his, and that he had recently sent her a consignment of that particular kind of "rublay cord." It was extremely unlikely that a piece of that peculiar string, his own special make, should be picked up casually in the streets of London where very little of it was used.

The prisoner was also asked to say where he was at the time the murder was committed. He could not tell, but he supposed he must have been tramping on the road to London. He was not, however, able to prove an alibi, and there was no evidence but his own assertion that he had not been in the neighborhood of Reigate at the time when several witnesses swore to having seen him there.

The magistrates had no hesitation in committing the prisoner for trial, and there was little, if any, doubt in the minds of those who had heard or read the evidence that Johann Carl Franz was the murderer of Martha Halliday.

The case came on for trial at the Croydon assizes on the 6th of August, 1861. Mr. Justice Blackburn was the judge: Serjeant Ballantine conducted the prosecution, and the Honorable George Denman, Q. C. (afterwards justice of the common pleas), was specially retained by the Saxon embassy to defend the prisoner.

There were some discrepancies in the evidence adduced for the prosecution, of which the prisoner's counsel made the most in cross-examination. For example, the potman at the Cricketer's Inn, Reigate, swore that the two foreigners who stayed there on the Sunday and part of the Monday, did not leave the inn, except for a few minutes, from the time they came till the time they left, and one of those foreigners he identified on oath as the prisoner at the bar. But another witness, a laborer, swore positively that the prisoner was one of the two foreigners whom he met, and spoke to at four o'clock on the Sunday afternoon four miles from Reigate. Clearly, then, the foreigners seen by the laborer could not have been the two who stayed at the Cricketers', and if the potman were correct in his identification of Franz as one of the latter, the laborer must be mistaken, and *vice versâ*.

Then the woman who sold the string would not swear positively to Franz as one of the men who came to her shop, though the servant, who only saw them through the glass door, identified Franz as the taller and fairer of the two foreigners without any hesitation.

Despite the severe cross-examination of all these witnesses and the discrepancies

disclosed thereby, the case looked very black against the prisoner until his attorney was put in the box, and then the whole aspect of the trial was suddenly and sensationally changed.

Now this attorney, before acting as Franz's legal representative, had appeared as interpreter before the magistrates, and he was called by the prosecution to verify the prisoner's answers to the questions put to him, and his own explanations of the proceedings to Franz, whose knowledge of English was very imperfect.

In the course of his examination-in-chief, the attorney was questioned as to his knowledge of Franz's handwriting, and a manuscript-book was suddenly put into his hands by Serjeant Ballantine, who asked abruptly, "Is this the prisoner's handwriting?"

The witness, not knowing what was being sprung upon him, but recognizing at once that the handwriting *was* that of Franz, answered hastily, "Yes — but I never saw this before."

Counsel for the defense asked to be allowed to look at the book and found that it was a diary kept by the prisoner. Each day's events were carefully recorded, with the names of the towns at which he had stopped, until he reached Leek in Staffordshire — at that point the entries abruptly ceased.

Mr. Denman expressed his surprise that notice of the existence of this diary had not been given to the attorney for the defense, and then the following remarkable facts were brought to light. The diary had only come into the hands of the prosecution on the preceding evening. It had been picked up by two tramps on a heap of straw in a deserted hovel in Northamptonshire, on the 9th of July, *the day after* the prisoner had told his story to the magistrates. These men arrived in London a few days before the trial, and hearing some persons talking about the murder in a public-house, they caught the name Johann Carl Franz frequently repeated. On searching through a newspaper they saw the name printed, and recognized it as identical with that attached to a paper which they had found inside the diary. They showed both documents to the landlord, who advised them to communicate with the prisoner's attorney, who would probably reward them for their 'find.' But by mistake they went to the attorney for the prosecution. Mr. Denman asked to see the paper which had been found by the tramps inside the diary. Apparently it had been thought of no account by the prosecution — at any rate, Serjeant Ballantine was not aware of its nature, and the surprise of the court may be imagined when it proved to be the railway guard's testimonial or certificate which Franz declared to have been one of the papers that had been stolen from him. This was a most singular corroboration of one portion of the prisoner's story, but there was a more startling coincidence yet to come.

In cross-examination by counsel for the defense, the prisoner's attorney said he had taken great pains to try and verify the statements made by his client, and with regard to one piece of evidence, which was held to tell strongly against the prisoner, he had made a remarkable discovery. Franz's explanation of his possession of that damning bit of "rublay-cord" was, that he had picked it up on the pavement outside a tobacconist's shop in a street not far from that in which he lodged. The attorney, while trying to obtain evidence for an alibi in the locality in which Franz had lived, turned into a tobacconist's shop for a cigar, and the first thing which met his eye on the counter was a ball of this very "rublay-cord"! On inquiry he found that the tobacconist was in the habit of using this particular kind of string. Now this tobacconist's shop was but two minutes' walk from the street in which Franz had lodged, and on further investigation, it was discovered that the premises of the string-maker, who manufactured this

peculiar "rublay-cord," were closely adjoining the tobacconist's shop. It was therefore quite possible, nay, even probable, that the prisoner's story of the way in which he became possessed of that damning piece of string was true.

No witnesses were called for the defense: Mr. Denman had thus the advantage of addressing the jury without a reply from the prosecution, and the value of the last word in such cases is often inestimable. In a powerful and impressive speech, which lasted four hours, he pressed home the force of these striking coincidences in corroboration of the prisoner's story with great vigor and point. The judge, too, one of the ablest, most clear-headed and logical reasoners on the bench, laid considerable stress upon them in his summing-up, and the end of it was that, after a long deliberation, the jury gave the prisoner the benefit of the doubt and acquitted him, though it transpired afterwards that at first *ten* of them were in favor of a verdict of "Guilty."

It was a case that fairly bristled with coincidences on both sides, but those in support of the prisoner's innocence were the more strange, and the more striking. If the tramps had not discovered the diary and the railway guard's certificate when they did, and had not been prompted to show it to the landlord of the inn — if the attorney had not accidentally gone into that tobacconist's shop and seen the ball of "rublay-cord" lying on the counter — there would have been no independent evidence to corroborate the prisoner's story, and Johann Carl Franz would undoubtedly have been found guilty and hanged. He owed his life, therefore, to

> A "strange coincidence," to use a phrase
> By which such things are settled nowadays.

Disheartened by the acquittal of Franz, the police made no further attempt to solve the mystery of Martha Halliday's murder. Yet there was more than one problem connected with the case, which the public would have liked to see worked out to a solution. Were there two distinct pairs of foreigners in the neighborhood of Kingswood on that eventful 9th and 10th of June? The evidence certainly seemed to indicate that there were, and this in itself was a curious coincidence. While, strangest of all was the fact that neither of these two pairs of foreigners could be traced beyond Reigate and Kingswood, unless indeed the policeman at Sutton were correct in assuming that the persons he stopped were foreigners — a point on which some doubt was thrown. If they had been spirited away by supernatural agency they could not have vanished more completely or left less trace behind them. — *Chambers's Journal.*

THE LAW OF THE LAND.

XI.

WHAT'S IN A NAME?

By William Arch. McClean.

WHAT'S in a name? That depends on a great many things, for instance the size of the deposit to the credit of the name. If the name on the end of the check happens to be any one of the multi-millionaires that encumber the earth, the payee is fortunate in proportion to the size of the check. If however the name on the check should be the plain one of John Doe, who overdrew his account yesterday, then the last state of that name would be worse than the former.

Fools by any other names would exhibit the same folly, and what fools we mortals be when it comes to the writing of names. We scribble them everywhere, cut them with our jack-knives on the highest branches of trees or on the topmost point of some steeple, or chisel them upon rocks, or put them on the back of negotiable paper for sweet friendship's sake and lose thereby a friend and win a debt.

A rose by any other name would smell as sweet, and our friends the Joneses, Browns and Smiths can well be satisfied that they would be just as distinguished, illustrious and numerous, as they now are, if they were called Johnsons, Brownsons and Smythers. It would only be the same old wine put into new bottles.

We are presented with our names without the asking for them, without even our consent thereto, when we start in life, and many a Liz mourns her whole life because she was not named Ophelia, and many a Peter swears intermittently because he was not born a Reginald. The names we are punished with, we use as branding irons for as much of this world's possessions as we can gather together and then when we part with the name we use it to scatter that which was gathered.

One doesn't always have to stick to one name, he or she can support an alias if he or she choose, and he or she can get himself or herself legally bound as easily with the alias as with his or her own name. The name of Mark Twain on a check would be just as good as Samuel L. Clemens and a recovery had against the man who wrote it, for the courts have said if a man is baptized by one name and known by another, a grant by the name by which he is known shall be good.

You need not even write your name to bind yourself, you can just make a mark, a cross, an X, and you will be fast. You may or may not designate it as your mark, or another may or may not write his name alongside of your mark as a witness, yet you are bound if it can be proved that you made the mark with the intention of binding yourself.

It makes no difference whether you made the mark by reason of the existence of a dense ignorance or being a university graduate you made use of it as a freak. A court has refused to allow proof of ability to write in the face of the fact that the mark was made, saying the fact of being able to write would make no difference, for a person may become bound by any mark or designation he thinks proper to adopt, provided it be used as a substitute for his name and he intends to bind himself.

It is not necessary for you to use the only old rusty pen you have in the house, moistened by the few watered drops of ink found

in a dusty bottle to bind yourself. A lead-pencil signature, either hard or soft, will fasten you as tight as a signature made with a gold pen dipped into the best writing fluid.

A person can use only half a name and it will go as far as the whole name, so that if Jane B. makes a lease by name of Joan it is good. Or the initials can be used, or any odd Hebrew, Japanese or Chinese hieroglyphics, and it will be just as good as the full name. As it is written by the oracle of laws, a person may execute an instrument and bind himself as effectually by his initials as by writing his name in full. Figures or a mark may be used in lieu of the proper name, and where either is substituted by a party, intending thereby to bind himself, the signature is effective to all intents and purposes.

The fact is you do not have to write your name, alias, initials or mark to bind yourself. Your hands may have been up to the wrists in a batch of dough, or you may have been weeding your garden, and have authorized another to write your name. That fact being established, the signature will bind you as well as one made with your own hand.

It is possible that Brown may have been thinking about a winning lottery combination when he endorsed a bill of exchange with the figures 1, 2, 8, as a substitute for his name. It being shown that he intended thereby to bind himself as endorser, 1, 2, 8 was held to be just as good for that purpose as his name.

There are undoubtedly thousands of Catharines in the world, but when one of them signed a mortgage with that name alone, and in the body of the instrument it appeared what particular Catharine she was, she was bound, the court remarking the object of names being merely to distinguish one person from another, it seems to be sufficient if this is effected though the full name of the party be not used or even no name at all.

So again where Dr. Jekyll made a deed for a piece of land he owned to Mr. Hyde, and Mr. Hyde conveyed the same to a third party, the latter took a good title, neither being permitted to deny his fictitious other self, for it was held to be the law that there are no authorities which hold that one is not bound by the name he adopts or uses.

In other words all the law of the land looks to is the identity of the individual, and when that is clearly established the act will be binding upon him and upon others, for if an individual assume a name for the purpose of making a written contract and put that name to the contract with the view to bind himself, the name thus assumed is his name *pro hac vice* and he will be held to the contract. Thus is fulfilled the legal maxim, "that is certain which may be rendered certain."

Now if one can write with pencil or pen his name, initials, figures, pseudonym or mark, and in the eyes of the law it all goes as one and the same thing, can one rubber-stamp his signature? Of course he can, as was recently decided.

This rubber-stamp signature decision illustrated two points of view in addition to the legal points disposed of. The first was, and we will take the word of counsel and court for it, that there was no parallel authority to be found in the books. It was a new question growing out of a rubber state of civilization.

The second was the fact how courts do disagree. Of course we all know what happens when doctors disagree. There are two diagnoses and either may kill. It is to be expected that lawyers would disagree as a matter of business. If they did not, there wouldn't be any litigation and the practice might fall into innocuous desuetude.

But when courts disagree with as little shame-facedness as two women in a wrangle on either side of a fence, the result is usually a beautiful battle of opinions. The approval of the opinions of the dissenters becomes a comfort to the loser of the case, so that the wrong of the majority opinion does not make, in his eyes, the matter necessarily and

hopelessly wrong. The right of the minority as against the right of the majority contains the reflection that the right that was right might have been wrong if it had not resolved itself into a question of mathematics.

The questions presented in this interesting rubber-stamp signature case were, first, was a rubber-stamp signature made by another than the owner of the stamp, a forgery? The signatures would be exactly similar in either case, made with the same stamp, the only difference so to speak being as to whose hands pushed the button.

Second, as a bank is bound to know the signature of its depositors, and if it pay out the money on a forged check it cannot charge the depositor with the amount, but as against him must bear the loss, was a bank responsible for payment of a check containing a forged rubber-stamp signature?

The facts were that the plaintiff, as president of a corporation, had occasion to send out a large number of invitations to a banquet, and in order to save himself the labor of writing his name so often, had a rubber stamp made which would make a facsimile of his signature. For a time the stamp was kept in the company's office, but after he resigned the presidency it was sent to his private office which he rented from a gentleman who had the adjoining office. With this office he was entitled to the services of an office boy of about sixteen years of age. For about nine months he employed this boy for errands and messages, including the sending of him to bank to draw money on checks. He never had occasion to doubt the boy's honesty. When the rubber stamp was returned to the plaintiff from the corporation office, he placed it in a compartment inside of a fire-proof safe. He locked this compartment and put the key in a drawer in the safe behind some papers and covered it up. He then locked the drawer and put the key in another unlocked drawer in the safe. He then locked the safe and put the key in a little box, which he put in a wooden drawer or box and this was kept on top of another safe. The plaintiff's surmise was that the office boy had watched his moves, found where he kept the safe key, opened the safe and rummaged around until he found the stamp and with it signed two checks.

One portion of the divided court were of the opinion that they could not assent to the proposition that it is negligence *per se* for a depositor to have in his possession a harmless and useful thing as a rubber stamp, and one lawful for him to have, but which, in the hands of a thief, breaking into his house or his safe, may be used to forge his signature. If he commit the use of it to an agent, selected by himself, or leave it in such a place as to invite the use of it for illegitimate purposes, there would be plausibility in the contention that he should be deemed to contemplate such use as one of the natural and probable consequences of his act. But where he has used due care in securing it against unlawful use by others, it cannot be said that his mere possession of the thing was the proximate cause of the mispayment of the money to one who unlawfully possessed himself of it and used it to commit a forgery.

To hold that the plaintiff must have kept the stamp absolutely inaccessible to others would be to hold the owner of a rubber stamp up to the same standard of responsibility as the owner of a vicious animal, in other words, to hold that he is bound to keep the stamp at all hazards where a trespasser or a thief cannot possibly get possession of it and use it. This is not the standard of his responsibility to the bank in which he is a depositor or to the public. He is not an insurer against its unlawful use, but it may be conceded that he is responsible for the consequences of his negligence in keeping it. He is bound to exercise the care of an ordinarily prudent man. A fair submission of the question of fact to the jury would be, was it put away in such a manner

as was, in view of all the probabilities of the case, sufficient to protect the stamp from being improperly used.

It is not unlawful for a man to have a rubber stamp by which a facsimile of his written signature may be affixed to papers. Nor is it so extraordinary a thing as to warrant a bank in presuming, without inquiry, that a depositor will not possess nor use such a stamp for any purpose. If the owner place it in the hands of a third person for the purpose of affixing his signature to certain papers and he without authority use it to forge the signature of the owner to checks, it might well be argued that the bank honoring the checks should not be responsible for the loss.

In such a case there might be propriety in applying the maxim that where one of two innocent persons must suffer, he should suffer who by his own acts occasioned the confidence and loss. In the case supposed the loss would be traceable to the act of the owner of the stamp in the selection of the agent to use it. In the case in hand it was traceable, proximately, to the criminal act of a third person in the use of the stamp, and more remotely to his tortuous, if not criminal act in possessing himself of it against the will of the owner. In the former case there would be an element of negligence in the care of the stamp, while in the case in hand there is none.

The rule that where one of two innocent persons must suffer loss that party who did the act that was the occasion of the loss ought to bear it may be extended so as to reach a *reductio ad absurdum* so far as it applies to the practical business of life. The doctrine of remote and proximate cause must govern in such cases. In determining what is proximate cause the true rule is that the injury must be the natural and probable consequences of the negligence, such a consequence as under the surrounding circumstances of the case might and ought to have been foreseen by the wrong doer as likely to flow from his act. To apply the maxim here would be carrying the principle too far.

The production of the rubber stamp was a lawful act and the procurement and possession of it without notice to the bank did not relieve the latter from the liability for the amount paid out on the forged checks. An act which is in and by itself entirely lawful and which had no relation to the plaintiff's deposit in bank, did not impose upon the former the duty of notifying the latter of the performance of it and if such a duty was not created by the procurement of the stamp, the loss occasioned by the use of it in the perpetration of the forgeries did not necessarily fall upon him, provided he had taken proper precautions to prevent an unlawful appropriation or use of it.

The other portion of the divided court were of the opinion that to hold the bank responsible put an additional burden upon the bank not resulting from the commercial contract between it and its depositors. When an account is opened at a bank by the deposit of money the depositor leaves his genuine signature with the banker for his guidance and protection in the payment of checks. When checks are presented bearing this signature they must not be refused, but if the signature is a forgery, no matter how skillfully it is done or how difficult of detection, they must not be paid. The contract which the commercial law raises upon a deposit of money with a banker, is that the deposit shall be paid out only to the depositor or his order. Payment upon a forged check is therefore no payment and in no way affects the depositor.

But if the depositor executes a check and for any reason leaves it on his table where it is found by another who fills it up, presents it at bank and receives payment upon it, this is a good payment by the bank and the loss is that of the depositor, for the check was signed by him. If instead of leaving his check upon the table the drawer had

deposited it in a drawer within his safe, locked the safe and put the key away in a box in his office, nevertheless if a clerk or employee had taken the key from the box, unlocked the safe, abstracted the check and used it for his own benefit, its payment by the bank would have bound the depositor. His loss would have been due not to the failure of the banker to distinguish his genuine signature but to the crime of his employee who had obtained it surreptitiously.

One of two innocent persons must suffer because of the payment of the check, and the law determines that the loss shall fall upon him whose act or omission made the loss possible. If the depositor had not signed his check and left it where it was possible for a criminal to appropriate it, palpably the loss could not have happened. This principle rules this case.

It is conceded that the plaintiff caused the stamp to be made with which this check was executed. He says he only intended to use it for a particular purpose, but it is perfectly apparent that he intended his signature produced by this stamp should be recognized as his by the friends and acquaintances who should receive it, as it certainly would be. Now this stamp belonged to him, was made under his direction, and for his use. It was intended for the rapid production of his signature. It was in his possession. He was bound to take care of it as safely as of his own signature made by himself with his own hand. He was bound to do this at his peril. There is no question of reasonable or sufficient care in the case. As with the signed check so with this stamp signature. When he put it in his safe and left the key where it was possible for any one to get it and gain admission to the safe, he exposed himself to the loss that might follow, and that loss is his.

He seeks in this action to put his own proper loss upon the bank that paid the checks by alleging that the checks were forged. But they were not forged. The signature was his. He prepared it. All that can be said is that he did not affix it to the checks. But he had prepared it so that any one could affix it to a check or any other paper, and when so affixed it was absolutely impossible to tell that it had not been done by him. There would be some justification for his claim upon the bank, if he had advised the banker that he had prepared such a signature, that might by a possibility be clandestinely gotten from his possession, and given him an impression made by it, and pointed out, if he could have done so, how it might be distinguished from his signature as made by a pen, but he did nothing of the kind.

It the bank is not protected by his signature made by means of his own private stamp, if they are bound at their peril to know and discriminate between his signature made with his pen and that made with his private stamp, then he had by the use of the stamp very greatly increased the responsibility and peril of the banker without so much as giving him notice or affording the slightest intimation of the necessity for additional vigilance in scrutinizing checks purporting to bear his signature. Upon every rule of commercial law and upon every consideration of equity and good conscience the plaintiff is not entitled to recover.

Such are horns of the judicial dilemma. As one reads one finds himself agreeing with both opinions: that's all right, that's good common sense, there's nothing the matter with that; and then when one finds that he has assented to and affirmed both points of view one wonders where he is at. Well, take your choice of opinions. Of course you want to be on the winning side, for majorities count in the matter of legal opinions as they do in political conventions. It's as good as a guessing game to tell, if you don't know, which was the majority opinion. Can you guess? Give it up. It

was the first one above. The plaintiff recovered in spite of his banquet.

Of course you conclude, why, such a case is a fitting problem for a Philadelphia lawyer; and when you discover it really was — you can't help commenting that you are not surprised that it came out of the place where one would expect it to come from.

OLD FRENCH PRISONS.

II.

THE BASTILLE.

LA Bastille Saint Antoine owed its origin to the earlier wars with England. The name Bastel or Bastille was originally applied to all strong erections built to withstand military attack, and it was in 1356 that Stephen Marcel, provost of the merchants of Paris, alarmed lest Edward, the English king, and his armies should penetrate to the very capital itself, constructed on either side of the gate Saint Antoine, at the eastern end of the city, two strong towers, calculated to arrest the invader's progress. Marcel, however, did not live to test the utility of his own erection. Shortly after its completion he was struck down on the very threshold in civil fray with the Dauphin, thus baptizing with his blood his building, and heading with his name the long list of victims which mark the history of his towers.

For four centuries those towers frowned over the city of Lutetia, and although increased in number under the next monarch, Charles the Sixth, their construction was never materially altered, and, alternately used as a prison and a fortress, were a truly formidable object to those who dwelt within their shadow or passed beneath their archways.

The walls were of immense thickness, and each tower rose a hundred feet in height and was divided into noisome dungeons and gloomy cells. Under the later Bourbons each cell had a fanciful designation, and each prisoner, the more completely to obliterate his identity, was called after his cell.

Notwithstanding the works published by several writers — M. Ravaisson, in his "Introduction to the Annals of the Bastille," Victor Fournel, Bord, Biré, Bégis, etc. — public opinion remains attached to the legend which represents the Bastille as full of iron cages and dark cells.

Louis Blanc, speaking of this melodramatic Bastille, says eloquently, "The man who enters it ceases to belong to the world." In 1789 the cells of the Bastille situated on the first floor of the old fortress had windows; for a century there had been no instrument of torture; the prisoner had a large room, and could furnish it as he pleased with furniture from the outside; he could wear any clothes he liked and had no uniform; each room had a fireplace, the prison furnishing the wood; the prisoner could procure candles, if he liked, as well as paper and ink. The prison had a library where he could get books; he could have as many as he liked sent to him from the outside. He was allowed to play on the violin or the flute. There were concerts given in the chambers and even in the governor's rooms. Prisoners whose conduct was not disorderly were allowed to visit each other, to play at cards, chess or trictrac; in the courts they could have games; they were authorized to take walks on the platform of the castle, and

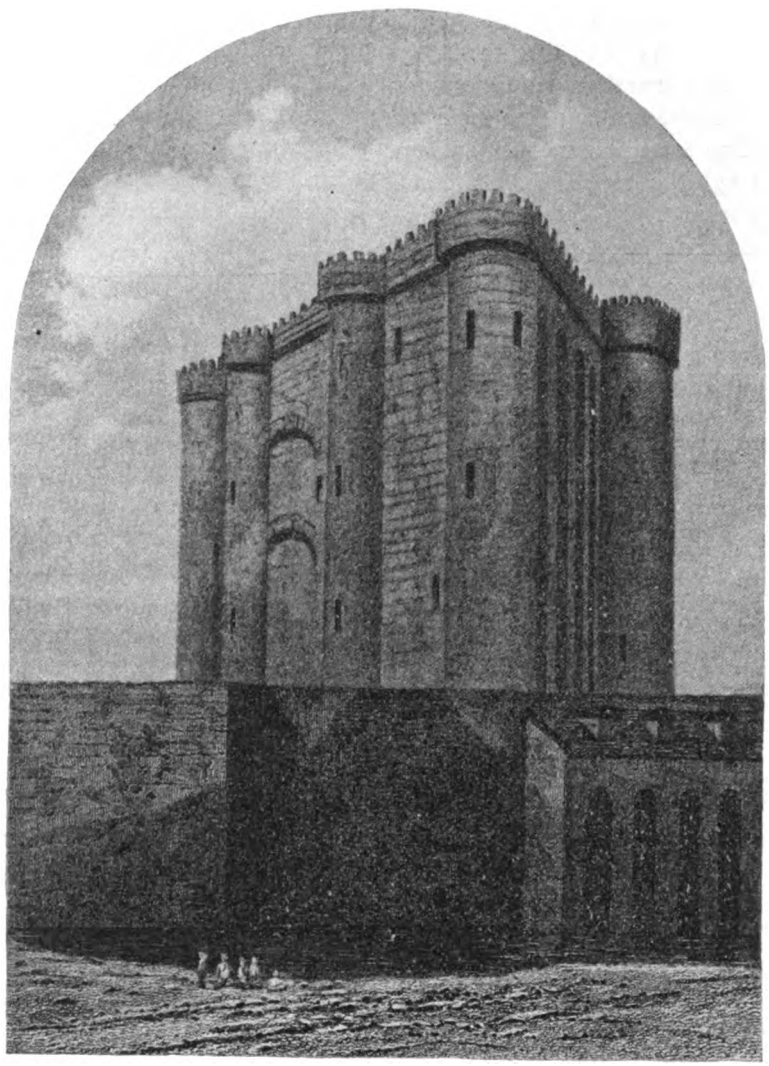
from there they saw the Rue St. Antoine. The regimen of the prison was, in fact, very lenient under Louis XV and Louis XVI; whatever the Bastille may have been in earlier times, it had become a prison chiefly for gentlemen who were imprisoned, without any preliminary trial, by *lettre de cachet.* This is probably what made the name of the Bastille synonymous with the abuses of the old régime; it was the prison of the *arbitraire* of the *bon plaisir.* The downfall of the Bastille was the signal of a renovation, of a revolution."

M. Funck-Brentano gives us the text of a passage in the register of Du Junca, lieutenant of the king, at the Bastille, in these terms: "On Thursday, September 18, 1698, M. de Saint-Mars, governor of the château of the Bastille, arrived, from his government of the islands Sainte-Marguerite and Sainte-Honorat, bringing with him, in his litter, a prisoner whom he had at Pignerol, whom he keeps always masked, and whose name is not revealed." This prisoner is treated with much care, and a second report says that he died on November 19, 1703, "without having had any great malady." In the register of the church of Saint Paul, the dead prisoner, buried in the cemetery of that church, is entered as Marchioly, aged forty-five years.

The new Bastille, with a portion of the Faubourg St. Antoine, constructed of wood and canvas, was run up in a few months. The old Bastille (not nearly as old as the Tower of London) took twelve years building, from 1370 to 1382, the architect being one Hughes Aubriot, who was the first prisoner confined in its walls. It consisted of eight towers, seventy feet high, connected by curtains ten feet thick; then there was an outer wall and two moats, one of which was twenty-five feet deep, and was filled with water when the Seine overflowed its banks. Within the wall were numerous buildings, such as the governor's house, the council chamber, the library and the kitchen; there were also courtyards where the prisoners were allowed to walk or play and to receive their friends. The cells were spacious, with the exception of those on the fourth, or top story, but as the Bastille was originally meant for a fortress — to protect Paris from English pirates coming down the Seine — the windows were narrow and the prisoners had to put up with a short allowance of light and air.

The Bastille was capable of holding one hundred prisoners, but in general it contained only half that number, and sometimes it was nearly empty. For example, in 1764, there were only four captives. There were certainly dungeons below ground which at times were flooded, but these were only used for punishment when prisoners were recalcitrant and gave trouble. Beneath the foundation of each tower was a small conical chamber in which a prisoner would have been unable to sit, to lie down or to stand upright. But there is nothing to show that the prisoners were confined in these terrible *oubliettes.* According to M. Viollet-le-Duc, the celebrated architect, these *oubliettes* were simply ice-houses, such as existed in several castles. Only two forms of torture appear to have been practiced in the Bastille, those of water and the boot, and Charpentier, in his "Bastille Unveiled," admits that when the prison fell into the hands of the mob neither instruments of torture, nor skeletons, nor men in chains were discovered there. Barrière, too, mentions that citizens, when the gates of the Bastille were thrown open, were indignant at not finding cells filled with racks. One citizen did find what he thought was some terrible instrument of torture, but it turned out merely a printing press which had been seized by the authorities in the time of Louis XV.

The Bastille was several times taken before it finally succumbed in 1789. In 1411, during the reign of Charles VI, twenty thousand Parisians rushed against it and vainly endeavored to carry it by assault. They then



THE BASTILLE.

lighted huge fires round it in hope of smoking out the garrison. After a short resistance the governor consented to surrender on condition of being allowed to leave Paris unmolested. His conditions were accepted, but he had no sooner opened the gates than he was dragged to the *Chatelet* and beheaded. In 1418 another governor surrendered the Bastille, and another massacre took place. The fortress was then handed over to the English, and Sir John Falstaff was named governor. Some years later Sir John was succeeded by Lord Willoughby d'Eresby, who capitulated in 1436 and was allowed to march out with arms and baggage, unmolested. During the League Bussy Leclerc surrendered the Bastille and was permitted to leave the country, and in 1593 Dubourg opened the gates to Henry IV. During the Fronde the place was beseiged by the Duc d'Elbœuf, and after two shots had been fired the governor, Du Tremblay, capitulated, and a few years later Louvière, on being threatened with death if he did not open the gates in two hours, followed the example of Du Tremblay. From that period, until the Revolution, the Bastille, whose record was not a brilliant one, was allowed to enjoy tranquillity.

Attacked once more in 1789 the old fortress capitulated after a resistance of two hours, the governor consenting to open the gates on condition of the garrison being allowed to depart in peace. As upon more than one previous occasion, the conditions were not observed, and the capitulation was followed by the massacre of De Launay and a number of his officers and men, whose heads were paraded through the city. —

The towers of the Bastille were thus designated: —

Towards the city:

1. La tour du Puits.
2. La tour de la Liberté.
3. La tour de la Bertandière.
4. La tour de la Bassinière.

Towards the faubourg:

1. La tour du Coin.
2. La tour de la Chapelle.
3. La tour du Trésor.
4. La tour de la Comté.

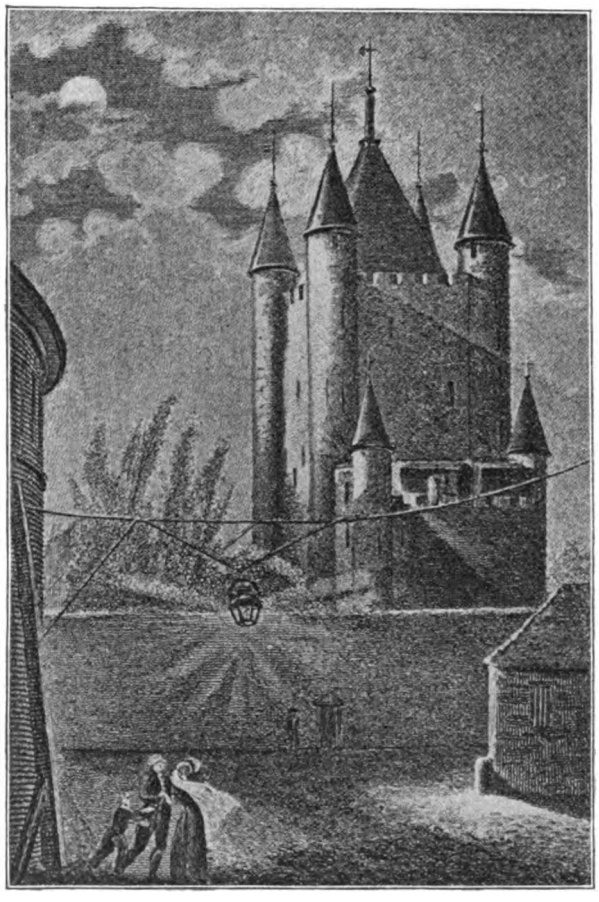
It was in one of the towers of this fortress that Louis XI, in 1475, caused the celebrated wooden cage to be constructed for Guillaume de Harancourt, bishop of Verdun. It was extremely substantial, being composed of thick planks fastened together by iron bars, and so heavy that it was necessary to build a new arch for it to rest upon. Nineteen carpenters were employed twenty days in its construction. In this cage, or one similar to it, Anne Dubourg, councillor of the *Parlement*, condemned to be burnt for heresy, was shut up in 1559.

In 1553 the fortifications were augmented by the construction of a curtain flanked with bastions and surrounded by a wide flat-bottomed ditch. For the expense of the new works the proprietors of houses in Paris were taxed from four livres to twenty-four, according to their value.

This fortress became not only a state prison, but upon some occasions a place of deposit for the king's treasures. In the memoirs of the reign of Henry IV it is related that, at the death of that monarch, a sum of thirty-six millions was found at the Bastille.

The entrance to the Bastille was by a gate which opened at the extremity of the rue Saint Antoine; on the right were barracks; on the left of a small area was a gate leading into the governor's court, on the right of which stood the government house; at the bottom was a terrace which commanded the city ditches, and on the left were the moat of the Bastille and a double drawbridge leading into the interior.

At the period of the Revolution the Bastille was commanded by a governor and three general officers, who had under them two captains and eighty-two *invalids*.



THE TEMPLE PRISON.

The Bastille was demolished in May and June, 1790, in pursuance of a decree of the National Assembly; part of the materials were employed in the construction of the Pont Louis XVI. Its site formed the Place de la Bastille, and the moat was converted into a basin for vessels passing through the canal.

PRISON DU TEMPLE.

The jurisdiction of the military monks, called Knights Hospitallers of St. John of Jerusalem, extended over a great part of the quarter called *le Marais* and into the rue du faubourg du Temple. They had a bailiff and other officers, and a prison. It was in this prison that convicts condemned to the galleys were formerly chained together.

In the day of their military and political power, the Templars of France acknowledged none but the authority of the grand master of the order, and treated with royalty as between power and power. Philippe le Bel, in 1307, however, broke the power of the Knights Templars of France. Their order was abolished, and most of their wealth was bestowed by Philippe upon the Knights of St. John of Jerusalem.

The prison of the Temple became a prison of the state, and the Temple and the Louvre were the forerunners of the Bastille. There were various princely prisoners confined here in the reigns of Philippe V, Philippe de Valois, and King John. Four sovereigns — Charles VII, Louis XI, Charles VIII, and Louis XII — seem to have forgotten the dungeon which the Templars had bequeathed to them, and the cells and chambers in the great tower of the Temple remained closed, not to be opened until after the 10th of August, 1792. To the Temple Louis XVI and his family were hurried on the 14th of August of this year.

The tower of the fortress was allotted to them, and a portion of the palace and all the adjacent buildings were levelled, so that the dungeon proper was completely isolated. The space of garden reserved for their daily exercise was enclosed between lofty walls. Louis occupied the first floor of the prison, and his family the second. Every casement was protected by thick iron bars, and the outer windows were masked in such a manner that the prisoners obtained scarcely a glimpse of the world beyond their cage. Six wickets defended the staircase which led to the king's apartment, so low and narrow that it was necessary to squeeze through them in a stooping posture. Each door was of iron, heavily barred, and was kept locked at all hours. After Louis's imprisonment a seventh wicket with a door of iron was constructed at the top of the stairs, which no one could open unassisted. The first door of Louis's chamber was also of iron, so here were eight solid barriers betwixt the king and his friends in freedom, not counting the dungeon walls. There was also a guard of some three hundred men around the Temple. Marie Antoinette was removed, after Louis's death, to the Conciergerie. Their daughter quitted the Temple to go into exile, while their son died wretchedly in the prison.

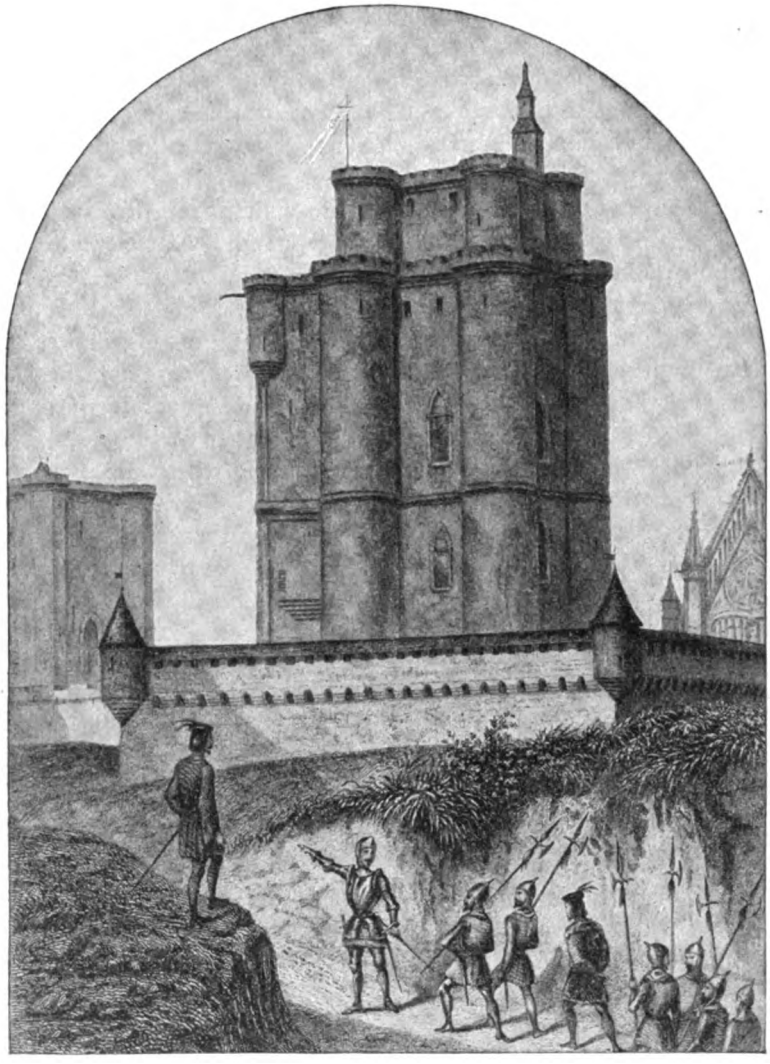
The Convention seems to have given no political prisoners to the tower of the Temple, which was again a prison of state under the Directory, the Consulate, and the Empire.

In June, 1808, the prisoners of the Temple were transferred by Fouché's order to the Dungeon of Vincennes.

The tower of the Temple was demolished in 1811, and, four years later, Louis XVIII instituted on the ruins a congregation of nuns, who had for their superior a daughter of Prince de Condé.

PRISON DE L'ABBAYE-SAINT-GERMAIN.

The monks of the ancient abbey of Saint-Germain-des-Prés had their jurisdiction, their officers, and their prison; the latter, which now serves for a military prison, is



THE KEEP OR DUNGEON OF VINCENNES.

very strong, and has its *oublicttes*. In a work on the prisons of Paris, published about 1820, it is said: "The principal dungeon is even more terrible than those of Bicêtre. It is sunk to the depth of thirty feet, its vault is so low that a man of middling stature cannot stand upright, and so great is its humidity that it produces water in a sufficient quantity to set the straw afloat which serves the prisoners for beds. According to the opinion of a physician, a person could not dwell there more than twenty-four hours without being liable to perish."

Military men of all ranks, accused of misdemeanors, are imprisoned here till they are summoned before a court-martial. The prisoners are less vigorously treated here than in other prisons. When the day of trial arrives, the prisoner is conducted to the court-martial, whose sittings are held at the Hôtel de Toulouse, rue du Cherche-Midi. If condemned to the galleys or to death, the prisoner returns to the Abbaye, from which, in the former case, he is sent among the galley-slaves at Bicêtre; and, in the latter, to the place of execution.

Sainte Pélagie.

The buildings of this prison were formerly occupied as a female penitentiary, under the direction of a community of nuns called *Filles de Saint Thomas*, and subject to the control of the managers of the general hospital. Its name is derived from Sainte Pélagie, an actress of the city of Antioch, who became a penitent in the fifth century.

Upon the suppression of religious orders, in 1789, the Hôpital de Sainte Pélagie remained some time vacant. In January, 1792, when the Prison de la Force was set on fire, the prisoners for debt were transferred to Saint Pélagie, which, from that period, became a debtor's prison. In September, 1792, the time of the general massacre in the prisons of Paris, not only did Sainte Pélagie escape, although it contained other prisoners than debtors (among whom were the Abbé Dillon, Madame de Noailles, and Madame de Damas), but the debtors were set at liberty and the prisoners who had escaped the massacres in other houses of detention were transferred to Sainte Pélagie.

During the reign of terror, this prison was occupied principally by the persons called *les suspects*. That part of the building in which the infirmary is now established was appropriated to female *suspectes*, among whom were Madame Roland and several actresses of the Théâtre Français. Besides the *suspects*, persons charged with theft and other offenses were confined here.

Sainte Pélagie afterwards underwent various changes previous to April 4, 1798, when it again became a prison for debtors and persons sentenced to corporal punishment. In March, 1811, it was constituted a state prison, to which all persons confined in the different prisons for political offenses were transferred. Upon the occupation of Paris by the allies, in 1814, the state prisoners were set at liberty on the second of April, by command of the sovereigns.

The prison is now appropriated to debtors, persons sentenced to corporal punishment, those committed for misdemeanors, and children sent there by their parents.

In point of architecture, the buildings of the prison present nothing remarkable. They are spacious, well-ventilated, and in every respect adapted to their purpose.

Prison of La Grande Force.

The buildings which form the Prison de la Grande Force originally belonged to the Duke de la Force. Upon the site of this hotel there existed a palace built by Charles, brother of Saint Louis, who was crowned king of Naples and Sicily in 1266. At his death it descended to his son, Charles-le Boiteux, who resided in it till 1292, when he

gave it to Charles de Valois et d'Alençon, son of Philippe-le-Hardi. The counts d'Alençon continued to occupy it till 1390, when Charles VI purchased it on account of its contiguity to the Culture-Sainte-Catherine, where tournaments were frequently held.

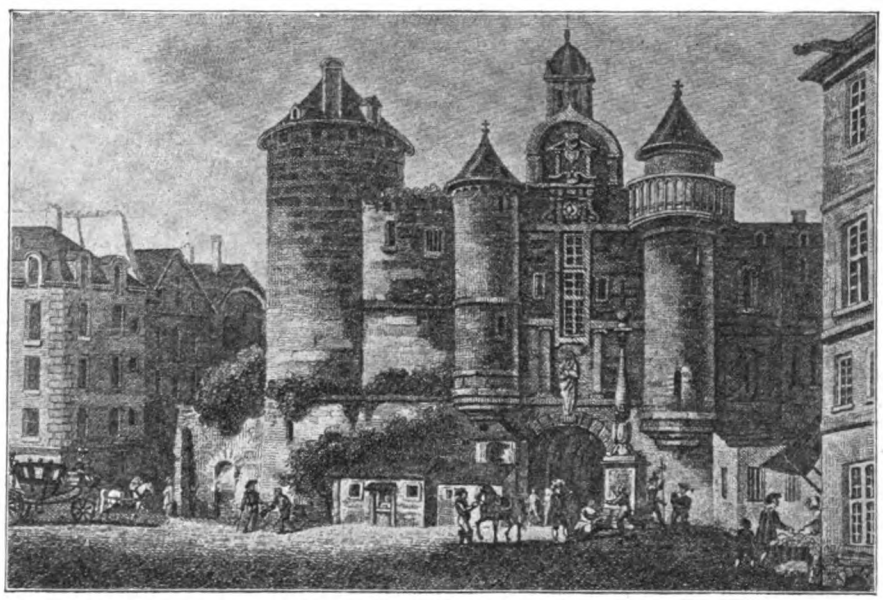
This *hôtel* afterwards belonged to the kings of Navarre and the counts de Tancarville. Cardinal de Meudon bought it in 1559, and commenced its reconstruction, which was finished by Cardinal de Birague, chancellor of France, at whose death, in 1583, it was sold to the Marshal de Roquelaure, and afterwards to François d'Orleans-Longueville, Count de Saint Paul, who called it Hôtel de Saint Paul. It was afterwards bought by the Minister de Chavigny, upon the marriage of whose granddaughter with the Duke de la Force, it became the property of the latter and took his name.

Towards the end of the reign of Louis XIV, this edifice was divided into two parts, one of which took the name of Hôtel de Brienne, and had its entrance in the rue Pavée; the other retained its former name, and its entrance in the Rue du Roi de Sicile.

In 1780, the Hôtel de la Force was converted into a prison for debtors, and persons charged with civil offenses. It is now used for the detention of prisoners previous to trial.

The Prison de la Force consists of three piles of building, each of which has a *preau*, or separate court.

During the tumults at Paris in January, 1792, the Prison de la Force was set on fire by a lawless mob, but the flames were soon extinguished. On the 3d of September, 1792, and the four following days, one hundred and sixty prisoners, among whom were three priests and the Princess de Lamballe, were massacred in this prison.



THE GREAT CHÂTELET.

Prisons de l'Évêque de Paris.

The bishop of Paris, being a temporal as well as a spiritual lord, had two prisons; one was that of the For l'Évêque, his temporal

court, situated in the rue des Prêtres-Saint-Germain-l'Auxerrois, and the other, that of the ecclesiastical court, in the episcopal palace. The former was kept up until 1674, the period when the temporal jurisdiction was united to the Châtelet: the second subsisted as long as the episcopal tribunal.

The prison of the For l'Évêque had dungeons and *oubliettes*. Upon the insurrection of the *Maillotins*, in 1382, the insurgents proceeded to the For l'Évêque, and set at liberty Hugues Aubriot, who was condemned to imprisonment in the *oubliettes* for heresy.

The prison of the episcopal court had also *oubliettes*. In letters of the year 1374, cited by Dom Carpentier in his "Glossary," we find that several prisoners were confined in the *oubliettes* of the prison of the bishop of Bayeux, and died in them.

Prison de Saint Éloi.

This prison, situate in an ancient building called Grange-Saint-Éloi, near the church of St. Paul, figured at the time of the massacres of June 12, 1418. It continued a prison till the reign of Napoleon, by whose decree it was suppressed.

Prison du Grand Châtelet.

This prison was connected with the tribunal of the Grand Châtelet, and formed part of the building in which the sittings of that court were held. It was divided, according to Sauval, into eight parts or separate prisons, under the following names: le Berceau, le Paradis, la Griêche, la Gourdaine, le Puits, les Chaînes, la Boucherie, and les Oubliettes.

In an ordinance issued in May, 1425, by Henry VI, king of England and France, the prisons of the Châtelet are said to have been sixteen. Ten of them were less horrible than the rest, because the prisoners paid two *deniers per diem*, besides four *deniers* for each of the beds. Their names were: les Chaînes, Beauvoir, la Motte, la Salle, les Boucheries, Beaumont, la Griêche, Beauvais, Barbarée and Gloriette.

In la Fosse, le Puits, la Gourdaine, le Berceuil or cradle, les Oubliettes, and Entre-deux Huis (doors), the prisoners only paid one *denier per diem*.

The gaol-fees to be paid on the entrance and departure of prisoners were regulated by an ordinance, according to their rank, as follows: —

	liv.	sols.	den.
A count or countess	10	0	0
A knight banneret, or his lady . .	0	20	0
A knight, or lady	0	5	0
An esquire, or noble *demoiselle* . .	0	0	12
A Lombard, male or female . . .	0	0	12
A Jew, or Jewess	0	11	0
All other persons	0	0	8

In the accompts of the *prevôtée* of Paris there is this article: "Brass pulley for the use of the Prison de la Fosse at the Châtelet." It appears that the prisoners were lowered into the dungeon named *la Fosse*, by an opening contrived in the vault, in the same manner as a bucket descends into a well.

Perhaps this *fosse* was the same that was called Chaussée d'Hypocras, where the prisoners' feet were in water, and they could neither stand upright nor lie down. Its form must have been that of an inverted cone. In general, the prisoners confined here died after a fortnight's detention. This prison was demolished in 1802, with the other buildings of the Châtelet.

There was also the Prison du Petit Châtelet, which formed part of a building at the southern extremity of the Petit Pont and like that of the Grand Châtelet, was divided into several parts, or separate prisons. By letters-patent of December 24, 1398, Charles VI ordained that these prisons should be annexed to those of the Grand Châtelet, which were too full. The prisons of the Petit Châtelet, which had never been used, were examined, and found sufficiently secure and airy, except three dungeons or *chartres basses*, where the prisoners could not survive long, for want of air.

CALHOUN AS A LAWYER AND STATESMAN.

V.

By Walter L. Miller of the South Carolina Bar.

I WILL now present some estimates of Mr. Calhoun from various writers and thinkers, both of the past and present, taking them at random just as I come to them, without regard to their bias or leaning. Among them will be found the opinions of some of the really great men of the country.

Mr. Jenkins, one of Mr. Calhoun's earliest and fairest biographers, says: "Among the intellectual champions of the Senate, Mr. Calhoun now stood, like Gabriel, confessedly preëminent. A world-wide reputation was his; no stranger entered the chamber without seeking him out as one of the first among his compeers; and the warmest admirers of Clay and Webster willingly conceded that he was second only to the objects of their special praise. He attracted the attention alike of friend and foe — he was 'the observed of all observers.'" Says Oliver Dyer, a Republican and an Abolitionist, in his entertaining little book, "Great Senators": "I was much impressed by the clearness of Calhoun's views, by the bell-like sweetness and resonance of his voice, the elegance of his diction, and the exquisite courtesy of his demeanor. Such a combination of attractive qualities was a revelation to me, and I spontaneously wished that Calhoun was an Abolitionist, so we could have him talking on our side. I thought that if he only were on our side he might even eclipse Wendell Phillips as an anti-slavery orator." Magoon, in his "Living Orators in America," says: "What in particular is to be observed with regard to Mr. Calhoun is, that, in a preëminent degree, his is the eloquence of character. There is a moral power in his life which imparts authority to his speech and commands respect." In the pages of the same writer we find the following: "Mr. Walsh, writing from Paris, remarked that Mr. Calhoun's speech on the Ashburton treaty was regarded by some of the best French critics as one of the most classical and cogent arguments of modern times."

Mr. March, in his "Reminiscences of Congress," gives us an account of Mr. Calhoun's great speech on the Force Bill, and, in the course of it, speaks of its author as follows: "The character of this extraordinary man has been the theme alike of extravagant praise and obloquy, as zealous friendship or earnest enmity have held the pen. His sun has lately sunk below the horizon; it went down in all the splendor of noontide, and the effulgence of its setting yet dazzles the mind too much to justify an impartial opinion. But whatever may be the diversity of opinion as regards his patriotism, or the integrity of his purpose, no one who respects himself will deny him the possession of rare intellectual faculties; of a mind capacious and enlightened; of powers of reasoning almost miraculous; of unequalled prescience, and of a judgment, when unwarped by prejudice, most express and admirable. On this, the greatest occasion of his intellectual and political life, he bore himself proudly and gloriously. He appeared to hold victory at his command, and yet determined, withal, to show that he deserved it. There was a strength in his argument that seemed the exhaustion of thought, and a frequency of nervous diction most appropriate for its expression. The extreme mobility of his mind was felt everywhere and immediate. It passed from declamation to invective, and from invective to

argument, rapidly, but not confusedly, exciting and filling the imagination of all. In his tempestuous eloquence he tore to pieces the arguments of his opponents, as the hurricane rends the sails. Nothing withstood the ardor of his mind; no sophistry, however ingenious, puzzled him; no rhetorical ruse escaped his detection. He overthrew logic that seemed impregnable, and demolished the most compact theory in a breath. No little portion of the speech was directed to the consideration of the philosophy of government and the history of free institutions — subjects which the orator had studied to complete mastery, and was amply capable to illustrate."

The German historian, Baron Von Raumer, visited the United States in 1844. In Washington he met our leading men. After alluding to some of them, he says: "Calhoun, on the other hand, is always logical and consistent with himself; a man of solid, well-grounded convictions, perfected both by theory and practice. Even those who do not share them, must allow that he is *totus teres, atque rotundus:* and this no man can ever be, in such an elevated station, without possessing a greatness of character that is worthy of all honor. In the nullification controversy he dared to stake even his popularity, in order, by pushing his self-defense to an extreme, to restore things to their just medium. Concerning the question of slavery, he dared to assert unpalatable facts, in opposition to principles, which, though founded in philanthropy, could not so hastily be carried into effect; neither did he ever forget that practical skill, however great, cannot dispense with scientific knowledge and principles."

Says Judge Story: "I have great admiration for Mr. Calhoun, and think few men have more enlarged and liberal views of the nation."

William Pinkney, of Maryland, speaks of him as follows: "The strong power of genius, from a higher region than that of argument, has thrown on the subject all the light with which it is the prerogative of genius to invest and illuminate everything."

Hon. R. Barnwell Rhett says: "Thousands of generous spirits, since the entrance of civilized man on this continent, have lived and died with the hope of a prolonged fame amongst future generations; but I can discover but two men who will probably obtain this fame — Washington and Calhoun — the former as the founder of a great Republic; the latter as the discoverer of the true principles of free government." The same writer also says: "Mr. Calhoun's mind, in its characteristics, was as striking as it was great. It stood forth like the Egyptian pyramids — vast, simple, and grand."

Says his colleague, Mr. Butler, who announced his death in the Senate: "In my opinion, Mr. Calhoun deserves to occupy the first rank as a parliamentary speaker. He had always before him the dignity of purpose, and he spoke to an end. From a full mind, fired by genius, he expressed his ideas with clearness, simplicity and force; and in language that seemed to be the vehicle of his thoughts and emotions. His thoughts leaped from his mind, like arrows from a well-drawn bow. They had both the aim and force of a skillful archer. He seemed to have little regard for ornament; and when he used figures of speech, they were only for illustration. His manner and countenance were his best language; and in these there was an exemplification of what is meant by action, in that term of the great Athenian orator and statesman, whom, in so many respects, he so closely resembled. They served to exhibit the moral elevation of the man."

Said Mr. Clemens: "Living, sir, in an age distinguished above all others for its intelligence, surrounded throughout his whole career by men, any one of whom would have marked an era in the world's history, and stamped the time in which he lived with

immortality, Mr. Calhoun yet won an intellectual eminence, and commanded an admiration not only unsurpassed but unequalled, in all its parts, by any of his giant compeers."

Among the eulogies paid to Mr. Calhoun none surpassed in grace and beauty those of his illustrious fellow-senators, Clay and Webster. I can only quote a few sentences from each.

Said Mr. Clay: "Sir, he has gone! No more shall we witness from yonder seat the flashes of that keen and penetrating eye of his, darting through this chamber. No more shall we be thrilled by that torrent of clear, concise, compact logic, poured out from his lips, which, if it did not always carry conviction to our judgment, always commanded our great admiration. Those eyes and those lips are closed forever!

"And when, Mr. President, will that great vacancy which has been created by the event to which we are now alluding, when will it be filled by an equal amount of ability, patriotism and devotion, to what he conceived to be the best interests of his country?

"Sir, this is not the appropriate occasion, nor would I be the appropriate person to attempt a delineation of his character, or the powers of his enlightened mind. I will only say, in a few words, that he possessed an elevated genius of the highest order; that in felicity of generalization of the subjects of which his mind treated, I have seen him surpassed by no one; and the charm and captivating influence of his colloquial powers have been felt by all who have conversed with him. I was his senior, Mr. President, in years — in nothing else."

And now I will present the beautiful encomium passed upon Mr. Calhoun by his great rival, Mr. Webster. And what a splendid tribute it is! It is quoted approvingly by Senator Hoar in his Charleston speech, and the setting which he gives to it adds to its beauty. Gracefully intertwining the chaplets so happily, so appreciatively, so worthily bestowed by Mr. Calhoun and Mr. Webster reciprocally upon each other, Mr. Hoar said: "Does it ever occur to you that the greatest single tribute ever paid to Daniel Webster was paid by Mr. Calhoun? And the greatest single tribute ever paid to Mr. Calhoun was paid by Mr. Webster?"

I do not believe that among the compliments or marks of honor which attended the illustrious career of Daniel Webster there is one that he would have valued so much as that which his great friend, his great rival and antagonist, paid him from his dying bed.

"Mr. Webster," said Mr. Calhoun, "has as high a standard of truth as any statesman whom I have met in debate. Convince him, and he cannot reply; he is silent; he cannot look truth in the face and oppose it by argument."

There was never, I suppose, paid to John C. Calhoun, during his illustrious life, any other tribute of honor he would have valued so highly as that which was paid him after his death by his friend, his rival and antagonist, Daniel Webster.

"Mr. Calhoun," said Mr. Webster, "had the basis, the indispensable basis, of all high character; and that was unspotted integrity, unimpeached honor and character. If he had aspirations, they were high and honorable and noble. There was nothing grovelling or low or meanly selfish that came near the head or the heart of Mr. Calhoun. Firm in his purpose, perfectly patriotic and honest, as I was sure he was in the principles he espoused and in the measures he defended, aside from that large regard for that species of distinction that conducted him to eminent stations for the benefit of the Republic, I do not believe he had a selfish motive, or selfish feeling.

"However, sir, he may have differed from others of us in his political opinions, or his political principles, those principles and those opinions will now descend to posterity

under the sanction of a great name. He has lived long enough, he has done enough, and he has done it so well, so successfully, so honorably, as to connect himself for all time with the records of his country. He is now a historical character. Those of us who have known him here, will find that he has left upon our minds and our hearts a strong and lasting impression of his person, his character and his public performances, which, while we live, will never be obliterated. We shall hereafter, I am sure, indulge in it as a grateful recollection that we have lived in his age, that we have been his cotemporaries, that we have seen him and heard him and known him. We shall delight to speak of him to those who are rising up to fill our places. And, when the time shall come when we ourselves shall go, one after another, in succession, to our graves, we shall carry with us a deep sense of his genius and character, his honor and integrity, his amiable deportment in private life, and the purity of his exalted patriotism."

Says Mr. Baldwin, in his "Party Leaders," an exceedingly readable book: "It might be safely admitted that Clay did not possess the wonderful analysis of Calhoun—that incarnation of logic." In another place in the same book we find the following: "Though Calhoun, to say the least, in the higher intellect, was fully equal to Clay, or to Randolph, he could scarcely be considered then, if at any time, a rival to either in oratory. His manner was senatorial. He was decorous in debate, singularly free from personalities, making no pretensions to what is called brilliancy, and indulging very sparingly in declamation. Clay was a more effective popular speaker, Calhoun was a great debater; Clay was a great orator: Calhoun spoke from the intellect; Clay as much from his feelings."

I will now add some later testimonials, and, among them, I will present a number of opinions from living men, some of which have been recently expressed and, through the courtesy of their authors, kindly furnished for the purposes of this paper. Taken as a whole I think they show conclusively that Mr. Calhoun's reputation as an orator, writer, and statesman, loses none of its brightness as the years go by.

Mr. Blaine, in his "Twenty Years in Congress," says: "Deplorable as was the end to which his teachings led, he could not have acquired the influence he wielded over millions of men unless he had been gifted with acute intellect, distinguished by moral excellence, and inspired by the sincerest belief in the righteousness of his cause. History will adjudge him to have been single-hearted and honest in his political creed. It will equally adjudge him to have been wrong in his theory of the Federal government, and dead to the awakened sentiment of Christendom in his views concerning the enslavement of men. Mr. Calhoun's published works show the extent of his participation in the national councils. They exhibit his zeal, the intensity of his convictions, and at the same time the clearness and strength of his logic. His premises once admitted, it is difficult to resist the force of his conclusions. As vice-president, secretary of state, above all as senator from South Carolina, he gained lasting renown. His life was eminently pure, his career exceptional, his fame established beyond the reach of calumny, beyond the power of detraction."

Said ex-President Davis: "Mr. Webster, who had been his great intellectual opponent but, nevertheless, his warm personal friend, when speaking, on the occasion of his death, manifested deeper emotion than I ever knew him to exhibit on any other occasion. He impressively said, 'nothing that was selfish or impure ever came near the head or heart of Calhoun.'"

In 1887, President Cleveland said: "The ceremonies attending the unveiling of the monument erected by his ardent admirers

in the State which bears the impress of his renown, should furnish an occasion for such an instructive illustration of his character as shall inspire in the minds of all his countrymen, genuine respect and admiration for his courage and self-abnegation, toleration when approval of his opinions is withheld, and universal pride in the greatness of this illustrious American."

At the same time, Hon. T. F. Bayard wrote: "So long as the pure name and white fame of Mr. Calhoun shall be cherished in the hearts of our people, unscrupulous ambition and unworthy political methods will be rebuked, and the public conscience strengthened in admiration of that homebred integrity, simple and lucid wisdom, and lofty personal honor, of which he was so noble a type and exemplar."

In July last Hon. J. L. M. Curry said: "With the rugged honesty and fearlessness of John Knox, an acutely analytical and metaphysical mind, Scotch relish for general principles and abstract truths, Calhoun pursued truth with indomitable will and unswerving devotion, and his speeches were ignited logic, the embodiments of his own moral and mental characteristics."

Hon. John W. Daniel of Virginia, writes: "The high character of John C. Calhoun, and his great abilities as a logician and statesman, have made a deep and lasting impression upon the age in which he lived. He was profound, earnest, sincere, manly and truthful to the uttermost, and he is one of the loftiest and most heroic figures of his time. With a prophetic spirit, surpassed in none, he foresaw and endeavored to forestall the great catastrophe of the impending conflict on the race issue. Whatever may be the judgment of his opponents on the questions which culminated in sectional war, it will be agreed that no one more ably maintained his own than he did, and that no one more commands the respect of mankind."

Hon. J. J. Darlington, a prominent lawyer of Washington, D.C., and the author of the standard law-book, "Darlington on Personal Property," says: "Mr. Calhoun seems to me to have been unquestionably the ablest logician who appears in the list of statesmen our country has thus far furnished. With regard to his private life and character, he was, of the great triumvirate, the one who made the least display of religious professions, and yet the one whose life would have been consistent with membership in the strictest of our religious denominations."

Dr. W. M. Grier, an eloquent preacher and leading Southern educator, writes: "Take Mr. Calhoun in all his make-up and he towered above his fellows as a statesman. Broad in his sympathies, he was no haughty, ambitious sectionalist, though so regarded by many; profoundly acquainted with the fundamental law of the land, he understood its wide relations and was jealous of its honor; loving the whole country as an ardent patriot, his indignation was aroused whenever legislation offered its protection to special interests in one section to the hurt of other sections."

Bill Arp, the famous Southern writer and humorist, writes: "It pleases me to say that Mr. Calhoun was my father's ideal of a great statesman, and I was brought up to have profound reverence for him. When I was a lad of ten years, Mr. Calhoun stayed overnight in our village of Lawrenceville, and my father visited him and took me with him. The great man placed his hand upon my head and said kind words which I have never forgotten."

Judge Logan E. Bleckley, the distinguished Georgia writer and jurist, says: "In Mr. Calhoun vast and wonderful intellectual power was misled by its own subtlety and refinement. It was associated with moral power, equally vast and admirable, which enabled him to mislead a large band of devoted followers who, incapable of fully understanding him, were content to walk by faith where they could not walk by

sight. The great theme of his thought and teaching was sovereignty, which he deemed so essentially one and indivisible that, like a triangle, it could not be divided without being destroyed. Had he been less astute, he might have seen that the peculiar work accomplished by the Constitution of the United States was a division of sovereignty between the States as an aggregate and as individuals, and that the result is represented by two concentric circles rather than by a single triangle or a single figure of any kind. His mind being severely logical he reasoned with the same vigor from false premises as from true ones, and no conclusion, however startling, could shake his dialectic courage. He was certainly right in the fundamental conception that all wise practical statesmanship rests on sound speculation and must conform to it. It was because he adopted this conception and adhered unflinchingly to its spirit that he was, *par excellence*, our philosophic statesman. But, like many philosophers in other fields of speculation, he failed to expel certain vitiating errors from his theoretical system. As it was he was grand and glorious, but could he have seized upon the truth, the whole truth, and nothing but the truth, he would have been irresistible."

The National Portrait Gallery describes Mr. Calhoun as follows: "In his person, Mr. Calhoun is slender and tall. His countenance at rest is strikingly marked by decision and firmness. In conversation it is highly animated, expressive, and indicative of genius. His eyes are large, dark, brilliant, and penetrating, and leave no doubt at first view of a high order of intellect. His manners are easy, natural, and unassuming, and as frank as they are cordial and kind. He has none of the cautious reserve and mystery of common politicians; but is accessible to all, agreeable, instructive and eloquent in conversation, and communicates his opinions with the utmost freedom and unreserve."

And now let us see what were some of the leading, distinguishing characteristics of Mr. Calhoun's life. In the first place, I would remark that he had a high ideal. His whole life bears out this assertion. Just think of it. Here is a farmer-boy, who has only had for two or three years the advantages of a common old-field school, — who has hardly received the rudiments of an education. His older brother goes to Charleston, where he was no doubt impressed with the importance of an education and the desirability of a profession, and, on his return home, tells his younger brother what he has seen and how he has been impressed, and then suggests to him that he study a profession. The lad is willing to act upon the suggestion, provided two obstacles can be overcome, — and one of these obstacles is the want of means for a seven years' course of preparation. We see here that from the very beginning Calhoun mapped out for himself a big undertaking — that his aspirations were high. We find him matriculating in one of the finest institutions in the whole country and at once determining to take rank among the very first. And within a few years we find him graduating at Yale, and carrying off the honors of his class at that. Obtaining his diploma, he is not content to receive anything short of the very best professional training! A high ambition still. Entering his profession, he takes rank with its leaders. Branching out into politics, he becomes prominent in legislative circles, but still he is not content, — he must go to Congress. And so we might follow him all along his course, as member of the House of Representatives, senator, secretary of war, vice-president, and secretary of state, and everywhere we would find high aspirations characterizing him. This thought is beautifully brought out in an address by Dr. Means: "In a neighboring farm some *forty years ago*, a whistling ploughboy merrily drove his daily team, but 'thought on nobler things.' And now that plough-

boy's voice thunders in the capitol and electrifies a listening senate; a *nation* does honor to the great *Southern statesman*, and surely Carolina to *her own* Calhoun."

In the second place, I would emphasize his temperance and his clean personal life. I would not make a false impression here. He was not a total abstainer. He was, however, "fully temperate." Mr. Calhoun started out in life with a somewhat delicate constitution and, though he built himself up by working for a while on a farm and no doubt kept himself in good condition by looking after one afterwards; still, I have no doubt that it was largely due to his temperate habits that he lived so long and accomplished so much. And then about his life you never have heard the voice of scandal raised. He was a pure man in his private life. He did not go to Washington to spend his money, waste his time, ruin his constitution, and mar his character on the dissipations common to too many public men. His course in the long run is the safest and certainly it is the best.

And now I have come to the last, and by long odds the most important, characteristic of Mr. Calhoun, — his high moral character. It was this, more than anything else, that was the secret of his strength, the inspiring force of his splendid eloquence, the explanation of his success, and the controlling element of his life. The value of this quality can well be illustrated by an incident that occurred in the late war between the States. I obtained it from the lips of Col. George McDuffie Miller, the gallant commander of Orr's regiment of rifles in McGowan's brigade. It occurred on the fields of Virginia during the dark days of the war, when despondency and gloom had settled like a pall upon the country. The regiment was on the eve of an engagement and its commander was at his post. It was, however, by no means clear what the result of the engagement would be, either to the officers or to the men, and what added to their perplexity and discouragement, they were completely in the dark as to what was the plan of action and the end to be accomplished. Colonel Miller represented himself as almost overcome with a feeling of despondency until he happened to look around and there, a few feet behind him, sat Stonewall Jackson, mounted on his horse and calmly looking on. Jackson's presence was an inspiration. With one glance Colonel Miller said that he felt like a new man — all feeling of despondency was gone; it mattered not how great the difficulties, Jackson was there, and they were safe. What brought about this change? It was the moral heroism of Jackson that inspired his men. We do not know how it acts, but it was there. It was the cropping out of this same quality in Calhoun that made him, when a farmer-boy of thirteen, anxious though he was to receive an education and become a professional man, unwilling to leave the farm and avail himself of these advantages, unless he could first get the consent of his mother. It was moral heroism, speaking out in the face and manner of the young lawyer and politician, that so soon brought him to the front in politics and caused him to be elected to the legislature at the head of the ticket. It was the moral heroism that the people recognized in Calhoun, — it was because they knew that they could trust him in time of danger — it was because they knew that "he stood as their champion

> 'with spear in rest and heart on flames,'

sheathed in the panoply of genius," that induced them to nominate and elect him to Congress. It was his moral heroism that put him, a mere stripling, at the head of his party on the floor of Congress during the war of 1812. It was the moral heroism of Calhoun that enabled him to battle so manfully for the South and for more than forty years proudly to carry her banner. Dr. Pinckney tells us that, in 1833, about the time of "The Great Debate," there was great excitement in Washington. It was

reported that an order had been issued for Calhoun's arrest, and it was thought that the other members of Congress from the South would soon be in prison. He said that there was a feeling of uneasiness among Carolinians generally and that he himself shared in the same. He concluded that he would hunt up Mr. Calhoun and that, when he found him at the capitol, his smiling face and encouraging utterances at once brought confidence, where before was fear. Here was the inspiration which moral heroism gives. And now that I have about reached a conclusion, I cannot do better than to quote and to appropriate in all their fullness to Mr. Calhoun the beautiful words which Joseph Choate applied to Rufus Choate, his kinsman, in his great Boston speech: "And first, and far above his splendid talents and his triumphant eloquence, I would place the character of the man, pure, honest, delivered absolutely from all the temptations of sordid and mercenary things, aspiring daily to what was higher and better, loathing all that was vulgar and of low repute, simple as a child, and tender and sympathetic as a woman. Emerson most truly says that character is far above intellect, and this man's character surpassed even his exalted intellect, and, controlling all his great endowments, made the consummate beauty of his life."

At Wofford College, South Carolina, one of the literary societies was named for Mr. Calhoun. From its wall is suspended his picture, on the shelves of its library are his works, and the history of his country is his life.

When the young men of Carolina and the South gather at this shrine of learning, look upon his face, read his books and study his life, may they gather fresh inspiration for life's duties,— may they learn like him to live wisely or, if need be, in his own grand words "to die nobly."

Abbeville, S. C.

SCOTCH MARRIAGES.

By R. Vashon Rogers.

APPARENTLY at one time the lassies of Scotland enjoyed a continual leap year, for we are told that in the thirteenth century, during the days of her most blessed majesty Margaret, the Parliament enacted that during her reign "Ilke maiden ladie, of baith high and lowe estait, shall have libertie to speak the man she likes. Gif he refuses to tak her to bee his wyf, he shall be mulct in the sum of one hundredity pundis, or less, as his estait may be, except and alwais, gif he can make it appeare that he is betrothit to another woman, then he shail bee free."

Before the time of Pope Innocent III marriage was simple in Great Britain, there was no solemnization in the church; the man came to the home of the woman and led her to his own house; that was the ceremony and nothing more (Moore's Reports 170).

Marriage, as an ecclesiastical matter, did not exist in Scotland until the eighth century. Up to the time of the Reformation a system was in vogue in some parts called "handfasting"— under it a man and a woman agreed to live together for a year, at the end of that time they were free to separate unless they chose otherwise. It was of Celtic origin. Even after this style of temporary union was prohibited the Scottish law of marriage long remained in an unsatisfactory condition. An acknowledgment made by the parties either by word or writing, that they were hus-

band and wife, and followed or preceded by their living together, was held to be a valid marriage. Very early the General Assembly decreed that no contract of marriage made secretly, with subsequent co-habitation, should be recognized till the offenders, as "breakers of good order," submitted to discipline, and by "famous and unsuspect witnesses" the contract was verified.

After the Reformation it was enacted by the General Assembly that all who wished to marry must submit their names to the minister, or session clerk, for proclamation of their banns for three successive Sabbaths. Later on, in consideration of a larger fee the banns might be called for a first, second and third time at one service. Occasionally objection was made to the proposed marriage; once in 1594, in a church in Perthshire, objections were made, and the objecter put them thus: "The man was an idiot, and nocht of wit an judgment to govern himself, and the woman was ane proud young bangster hizzie wha had goglit him in his simplicitie."

In the early days of the Reformed Church forty days had to elapse between "the booking" of the banns and the marriage. During this time the expectant bride lived in semi-seclusion: only her intimates visited her and these young folks rubbed shoulders with her to catch "matrimonial infection."

The forty days during which ordinary mortals had to reside in the parish prior to their marriage was relaxed at the seaports. To Portpatrick, for instance, many couples came from Ireland. The session clerk on receiving a guinea fee, entered the village church and there proclaimed the banns; and then the minister (for a still handsomer reward) tied the nuptial knot, and the parties inside an hour could be back on their ship bearing a marriage certificate. A western divorce could not be more expeditious. In 1826 Portpatrick marriages were forbidden by the Church.

With true Scottish love of knowledge some of the Kirk-sessions insisted upon an educational test for candidates for wedlock (the Commonwealth of Massachusetts prescribes one for citizenship). In 1579 the session of St Andrews decreed that "none be resaivit to compleit the bond of matromonye without they reherse to the redar the Lord's Prayer, the Believe, and the Commandments." The previous year a Perth session considering that those who desire their banns called "are almost altogether ignorant and misknow the causes why they should marry," ordered all to appear before the reader to be instructed in the true knowledge of the causes of matrimony. Clandestine marriages were highly disapproved of; in 1661 Parliament enacted that "whatsoever person or persons shall hereafter marry, or procure themselves to be married in a clandestine and inorderly way, or by Jesuit priests, or any other not authorised by the Kirk, shall be imprisoned for three months: and besides there said imprisonment, shall pay, each nobleman, £1000 Scots; each baron and landed gentleman, 1000 marks; each gentleman and burgess £500; each other person, 100 marks: and shall remain in prison, and until they make payment of these respective penalties." And the celebrator of such marriages was to be banished, and never again to return to the kingdom under pain of death.

Matrimonial alliances with Englishwomen were not encouraged in the old days. In the eleventh year of James VI, an act was passed with a preamble, stating that since experience declared that the marriage of the king's subjects upon the daughters of the broken men and thieves of England was not only a hindrance to his majesty's service and obedience, but also to the common peace and quietness betwixt the two realms, and enacting that none of James's subjects should presume to take upon hand to marry with any Englishwoman, dwelling in the opposite marches, without his majesty's express license under the great seal, under the pain of death and confiscation of all his movable

goods. This bloody law was passed in 1587. In 1639 an overture was adopted by the General Assembly, "for restraining people from passing into England to marry," and Parliament was invoked "to appoint a pecunial sum to be paid by the contraveners." No native of Scotland might wed an English spouse without rebuke, even more than thirty years after James Stuart had climbed into the English throne.

In 1655 the Presbytery of Lanark at first refused to baptize a child because its mother had, contrary to the acts of the Kirk of Scotland, married "ane Inglishman": to save the little innocent from the risk of future torments, the poor mother made public satisfaction, and the "Inglishman" promised that he would bring up the child "according to the confession of faith." As late as 1776 the Kirk session of Greenlaw refused to recognize the marriage certificate of the curate of an English parish of a marriage in England, holding that "neither of the parties had been lawfully married in their parish church" and decreeing that they should be proclaimed three times and married over again.

Marriage rites performed by Roman Catholic priests, or by clergymen of the Episcopal communion, were equally disallowed in the eighteenth century, and parties entering wedlock in that way had to appear as penitents in the parish church.

In 1600 the General Assembly enacted that no minister should officiate at any marriage where the groom was under fourteen and the bride less than twelve. Yet in the seventeenth century many heiresses were married under the age mentioned.

The Scottish reformers wished marriage to be attended with religious solemnities. In 1571, the General Assembly decreed "that all marriages be made solemnly in the face of the congregation," and the practice was to celebrate the union at the close of the morning service; a special pew was provided for those about to perpetrate matrimony, and into it the blushing parties were ceremoniously ushered by the church officers. Sometimes, then, as now, the bridal party was late in arriving. Kirk sessions tried to teach punctuality, and that of Dumfermline (in 1674) ordained that "if brides and bridegrooms came not into the Kirk before the first psalm be closed, they shall pay twelve shillings, or more, as the minister shall please."

It was soon found in divers places that the "new mareit persons" did not keep the remainder of the Sabbath day on which they were united in a sedate and godly manner, that "on the day of their marriage afternwise they resorted not to hering of the doctrine, and at even after supper, they insolentlie, in evil example of uthers, perturbed the town withal rynning thairthrow in minstralye and harlotry." To obviate these unseemly profanations of the Lord's day in 1579, the General Assembly ruled that parties might be married any day of the week if a sufficient number of persons were present. The celebration of marriages in private houses was forbidden, and in 1584, the session of St. Andrews enacted that all seeking matrimony "baith riche and puir, be contarctit in the counsall hous" on Wednesday of every week, and "in no other place." In some parishes the elders were shrewd enough to make money out of Sunday marriages (of course not for themselves). At Abercromby there could be a Sunday marriage if fifty-eight shillings were paid for the use of the poor, and security given that the parties would keep good order. Up to 1627, the ministers of Ayr married applicants on any day of the week, except fast days, but then the minister announced that "because of the great prophanitie that followes," none should desire him to marry them upon any Sabbath day. Still the poor ministers of Ayr had trouble over weddings, and we find that the session in 1684 passed the following resolution: "The session taking to their consideratione the great abuse committed at marriages be multitudes conveining, do therefor enact that

hereafter none shall be maryed except on Thursday immediately after sermon except in case of necessitie and that the persons to be maried enter the church before sermon, otherwise not to be maried that day." (The Ayr authorities were much more considerate of the time required by the bride's toilet and the excited state of all the wedding party than were their Dumfermline confreres. It was bad enough to be there all sermon time, for some in those good days preached five or six hours at a service).

Not only were the people of Scotland prevented marrying when they liked, but apparently they could not don any kind of wedding-garments that they pleased, and their wedding-feasts were likewise restrained and curtailed by laws temporal and ecclesiastical. Among the statutes of King James the second we read, "That sen the Realme in ilk Estaite is great tumlie pured throwe sumptuous claithing, baith of men and women. The Lordes think is speidful, that restriction be thereof in this maner. That na man within Burgh that lives be merchandice, bot gif hee be a person constitute in dignitie, as Alderman, Baillie, or uther gude worthy man, that ar of the Councel of the towne, and their wives, weare claithes of silk, nor costly scarlettes in gownes, or furringes with mertrickes. And that they make their wives and dauchters in like manner be abuilyied gangand and correspondant for their estate, that is to say, on their heads short Curches, with little hudes, as at used in Flanders, England and uther cuntries. And as to their gownes, that na women were mertrickes, not letteis, nor tailes unfit in length nor furred under, but on the Haliedaie. . . . And as anent the commounes, that na Laborers nor husband men weare on the wake daye, bot gray and quhite, and on the Halie-daye bot licht blew, greene, redde, and their wives richt-swa, and the courchies of their awin making, and that it exceed not the price of XL pennyes the elue. And that na woman cum to Kirk, nor mercat with her face mussailed or covered, that sche may not be ken, under the paine of escheit of the courchie.". . . (Nothing shows how far removed from us are the days of James II, of Scotland, than the suggestion that an alderman might be a person "in dignitie," or that any member of a town council could be a good worthy man. People have changed since that law was passed on "the sext daie of the month of March, the yeir of God ane thousand foure hundredth, fiftie-seven yeires."

The law just recited was bad enough, but that wiseacre James VI of Scotland, "God's silly vassal" (as he was once called to his face), in 1581 made matters worse by forbidding all, except dukes, earls, and their wives, and a few others of high degree, wearing or using in their clothing, or apparel, or the lining thereof, any "claith of Gold or Silver, Velvet, Satine, Damask, Taffatacs, or any begairies, Frengies, Pasments, or broderie, of gold, silver or silk: or any Layne, Cammerage, or wollen claith" made and brought from any foreign country, under a penalty of £100 for every landed gentleman, and 100 marks for every other gentleman, and £40 of every yeoman, for every day that he, his wife, son, or daughter transgressed the law. Fortunately people were permitted to wear any of these forbidden articles if they had them before the law was enacted, and any woman might wear "silk apparel" on her head as had been the custom in former days.

Even this last law did not embody all the wisdom and ideas of that high and mighty Prince James on the superfluous usage of unnecessary sumptuousness in apparel by his northern subjects, so he fulminated another blast against these evil doers, and in 1621 the Parliament enacted (among other things) that "None of our Soveraigne Lords Lieges, of whatsoever quality or degree, shall weare any cloathing of Gold or Silver Cloathe, or any Gold or Silver Lace upon their apparels, or any part of their Bodies

hereafter." And it was further ordained: "That no manner of person shall have any Apparel of Velvet, Satin or other stuffs of Silke, except Noblemen, Lords of Parliament, Prelates, His Majestie's Counsellers, Lords of Session, Barrons of quality having of free, yearly rent, fourscore Chalders Victual, or 6,000 marks of Silver," and certain officials.

Even those who were permitted to wear the said apparelling of silk could "no wayes have embroydering, or any lace, or passements upon their cloathes: except only a plain Welting Lace of Silk upon the Seames, or borders of their cloathes: with Belts and Hatbands embroydered with silke, and such like, that the said apparel of silke be no wayes cut out upon other stuffes of silke, except upon a single Taffatie. The wives of the said priviledged persons, their eldest sonnes, and eldest daughters unmarried, and the children of all noblemen be licentiate to weare their apparel in manner aforesaid only, under the paine of a thousand pounds, *toties quoties*."

It was also enacted that no person of whatsoever degree should have Pearling or ribbening upon their Russes, Sackes, Napkins and Sockes; except the persons before privileged. And the Pearling and Ribbening to be so worne by them (if any), to be those made within the Kingdom of Scotland, under the payne of £100, *toties quoties*. "Item, that none weare upon their Heads or Buskings any Feathers." "And notwithstanding it is permitted that any person may weare Chaines, or other Goldsmiths worke, having no stones, nor pearles, within the same; and that no person weare any pearles nor precious stones (except the persons before privileged), under the paine of 1,000 marks, to be payed by the contraveeners, *toties quoties*. And it is statuted, that no person or persons (except, etc.) weare Launes or Cambricke. And that no person whatsoever weare upon their bodies Tiffinies, Cobwebbelaunes or Slytes, under the pain of £100, *toties quoties*."

Then the subject of servants' dresses was considered, and it is statuted: "That no servant, men or women, weare cloathing, except those that are made of Cloath, Fusteans, Canvas, or stuffes made in the country. And that they shall have no silk upon their cloathes, except silke buttons and Buttonholes, and silk Garters, without perling or Roses, under the paine of one hundredth markes, *toties quoties*." But it was declared to be lawful for them to wear their maisters or mistresses old cloathes. No clothes could "be gilded with Gold."

A fine of £100 was for any one not of the privileged classes who presumed to weare a castor hat. Neither man nor woman could change the fashion of clothes then in use, "under the paine of forefaultice of the cloathes, and £100 to be paid by the wearers, and as much by the makers of the said cloathes, *toties quoties*." Husbandmen and laborers of the ground could wear no clothing but gray, white, blue, and selfe black cloth, made in Scotland; and their wives and little ones had to wear the like under the paine of £40.

Some may ask what was the use in women dressing at all, if they had always to be clad in the same fashion? Variety is the spice of life to the fair sex.

Rollicking, pleasure-loving King Charles passed, in 1672, even a stronger and more sweeping act than did his grandfather, to prevent injury to his Kingdom of Scotland from the sumptuousness and prodigality of his subjects in their apparel. He went so far that the manufacturers rose in their might (as they do in these days) and in the following session permission was given to every Jack and Jill to wear satin, velvet, and silk clothes, white lace, and point made of thread, and plain satin ribbons.

Both church and state interfered with wedding-feasts. James and his parliament, in 1581, tried to stop the eating of candy at bridals and promulgated a law in which, after speaking of "the great excesse and

superfluitie in bridelles and uther banquettes amang the meane subjectes of the realme, to the inordinat consumption, not onlie of sik stuff as growes within the realme, but alswa of drugges, confectoures and spiceries, brocht from the partes beyand sea, and sauld at deare prices to monie folke, that are veri unabil to sustene that coaste, for stanceing of quhilk abuse and disorder," those old would-be reformers said: "It is stataute and ordained, that no maner of persones, his (the King's) subjectes, being under the degree of prelates, erles, lords, barrones, landed gentlemen, or utheris that are worth and may spend in yeirlie frie rent, two thousand markes money, or sixtie chalderes victuals, all charges deduced, sall presume to have at their bridelles or other banquettes or at their tables in dayly chere onie drugges or confectoures brocht from the pairtes beyond sea, and that no banquettes sall be at onie upsittinges, after babtising of bairnes, in time cumming under the paine of twentie pund to be payed be everie personne, doer in the contrait, as well as the master of the house, quhair the effect of this act is contravened, as of all uther persones, that shall be found or tryed partakeris of sik superfluous banquetting, and escheitting of the drogges and confectoures apprehended."

Not satisfied with this enactment of their sovereign lord and his three estates, convened in parliament, some of the kirk sessions blew their little penny whistles. That of Glasgow, in 1583, decreed that there should be no superfluous gatherings at bridals and that the cost of the dinner should not exceed "eighteen pennies. The session at Stirling allowed five shillings to be spent on the banquet, but the parties had to put up eighty shillings as a guarantee that they would spend no more than the five shillings. Apparently some wicked Stirlingers tried to escape the clerical eye by having their wedding festivities picnic style in the country. To suppress such ungodly ones, kirk session and town council issued a joint deliverance in December, 1608, threatening heavy fines upon any of the town-folk who should dare to make "thair bridells outwith the said burgh."

Later on in life, after he had lived some years in England, sapient James came to the conclusion that nuts and raisins were bad for Scotchmen, so in the Act of 1621, "It is further statuted and ordained, that no person use any manner of desert of wette and dry confections at banquettings, marriages, baptismes, feastings, or any meales, except the fruites growing in Scotland; as also figs, raisins, plumbe-damies, almondes and other confected fruits, under the paine of a thousand marks, *toties quotics*. Excepting such like the use of the foresaids forbidden confections to be lawful for the entertainment of his majestie, prince, and their traines, being within the countrey, and for ambassadors or strangers of great qualitie."

The Stirling kirk session limited the number of neighbors to be invited to twenty, so did the presbyteries of Haddington and Dunbar, considering bridal-feasts to be "seminaries of all profanations": this was the number that Plato had thought the proper thing. The session of St. Cuthbert's ordained that, under a penalty of £10, not more than twenty-four should be invited. The town council at Dumfries followed St. Cuthbert's ruling but doubled the penalty, "whereof the one half was to be payt by the bridegroom, and the other half by the innkeeper quhar the brydle was kept."

And Charles II in his sumptuary law of 1681, ordained that marriages, baptisms and burials should be solemnized and gone about in sober and decent manner, and that at marriages, besides the married persons, their parents, children, brothers and sisters, and the family wherein they live, there should not be present above four friends on either side, with their ordinary domestic servants; and that neither bridegroom nor bride (nor any one of them) shall make

above two changes of raiment, at that time or upon that occasion; under a penalty of a fourth part of their yearly rentals, or if they had no rents, then one-fourth part of their movables, but "mean craftsmen and servants" were not to be mulcted more than one hundred marks.

The ecclesiastical law-makers also objected to music and dancing at these banquets. In 1599 the session summoned one David Wemyss before it, because he had been to a wedding dance. Davie was rather impertinent, for he admitted his presence and said he had never seen dancing stopped before, and that the custom was kept in his village before any of the session was born. David was, thereupon, imprisoned in the church steeple for contumacy; after a time he cried "Peccavi." In 1649 the General Assembly inhibited dancing.

For "pypering at bridals" William Wallace, pyper, was sentenced by the kirk session of St. Cuthbert's "to stand one day on the pillar and thereafter to remove forth of the parochin, ay and untill he be ane renewit man of his maneris, and get leef of the presbyterie to returne after they see amendment in his lyf and conversatione." Adam Moffatt, another piper, was in 1638, on November 16, ordered by another session for a similar offense, "the next Sabbath to stand at the kirk door with one pair of scheitteis (sheets) about him, beir fuit and beir legitt, and after the pepill was in to go to the place of repentance, and so to continew Sabbathlie induring their willis." Another poor piper was a few years later required to stand two days in the public place of repentance, and to pay £20, or otherwise give over his pypering. Some kirk sessions forbade the presence of pipers at weddings and punished the newly-married pair if they had them there.

Gretna Green marriage ceremonies were not intended for Scotch people but for English persons, and so were the similar performances at Coldstream-on-the-Tweed. Runaways from England who desired speedy marriage could accomplish their purpose by simply declaring themselves to be man and wife in the presence of witnesses on Scottish soil. Gretna Green was the most popular place as there were always one or two persons there with printed forms of certificates of marriage, ready to be filled up. Robert Elliot, the last "border priest," says that between 1811 and 1839 no less than 7,744 persons were married by his certificate. The toll-gate keeper, John Murray, generally married upwards of four hundred couples in a year.

These border marriages were suppressed by 19 & 20 Vict., c. 96, sec. 1, which declared that after the 31st day of December, 1856, no irregular marriage contracted in Scotland, by declaration, acknowledgment or ceremony shall be valid, unless one of the parties had at the date thereof his, or her, usual place of residence there, or had lived in Scotland for twenty-one days next preceding such marriage; any law, custom or usage to the contrary notwithstanding. And twenty-one days means twenty-one full days, as was decided by Sir James Hannen in Lawford *v.* Davies (4 Pro. Div. 61). In that case Miss Lawford and Mr. Davies, intending to contract a clandestine marriage, left London by a train timed to pass Berwick-on-Tweed at 4 A.M. on the 1st of July, 1870, and they reached Edinburgh at 6 A.M. of that day. They remained until the 21st of July, and about noon on that day contracted a marriage, by declaration, before a registrar in Edinburgh. It was decided that they had lived in Scotland only nineteen days and two half-days before the ceremony and therefore the marriage was declared invalid, much to Miss Lawford's delight.

Regular marriages in Scotland are performed by a minister, or clergyman, after one publication. It is now not necessary that the banns be called in the parish church. By a statute passed in 1878, it

suffices if the name of the parties intending to contract matrimony are exhibited for seven consecutive days at the office of the parish registrar.

A learned writer says: "It is a curious fact, though true, that there must always be in Scotland a considerable number of persons who could not say off-hand whether they were married or not. It is only when the question has been decided in a court of law that these doubts can be removed." (F. P. Walton, Scotch Marriages, Regular and Irregular.) This arises from the irregular marriages which still occur there. Scotland is the only country in Europe where it is possible to be married without the presence of either a minister or a government official. The simplest form of irregular marriage consists in the mere expression by parties, who are free to marry, of their mutual consent to marry then and there. A witness is not necessary. A second way, now peculiar to Scotland, but in olden times fashionable and legal nearly all over Europe, is for a man to promise to marry a woman and she, relying on his promise, allowing him to cohabit with her; this is marriage, but must be proved by a written promise or admitted by the man in the witness box. The promise and the cohabitation must have been both in Scotland, although the people need not be Scotch. Another way is marriage by "habit and repute": when a man and woman live together as husband and wife, "cohabit at bed and board," — the man according to the woman the respect due to a wife and not a mistress, — and they are regarded in the society in which they move as married persons, it is a reasonable and right presumption that they meant marriage and not concubinage, and the law recognizes the presumption.

Many and interesting are the cases in the reports in which these irregular marriages are discussed. In every case, to be valid the consent of both parties to the marriage is essential, so there is little danger of innocent travelers falling into matrimony unintentionally.

Maggie Wilson was the daughter of a fishing-tackle maker in Edinburgh; a baronet of forty, a bachelor, and rather disposed to dissipation, was intimate with the family; some neighbors thought he was getting too intimate. The old gentleman alluded to this one night, whereupon the baronet said he would shut the gossips' mouths, that he was poor and could not marry now, but would marry after the Scotch fashion. Then kneeling before the fair Maggie, a damsel of sweet sixteen, he took a ring out of his pocket, placed it on her third finger, saying "Maggie, you are my wife before Heaven so help me God." The girl cried "Oh Major!" threw her arms around his neck and kissed him. All present drank their health and they were "bedded" in the old Scotch fashion. They lived together for some weeks after this performance and met on various occasions afterwards, but there was no continuous cohabitation. Some two years later the gallant major died and then Maggie sought to have their son, who had meanwhile appeared, declared his heir. The Court of Sessions said she was a true wife, but the House of Lords differed and said she was not, and their lordships reached this conclusion mainly upon circumstantial proof that both parties by their behavior after the ceremony repudiated its force, and that neither in fact had been in earnest, although doubtless the ultimate maturing of matrimony had been hoped for and confidently anticipated by Maggie and her friends (Stewart *v.* Robertson, L.R. 2, H.L. Le. 494).

Old Giles Jacob in giving us the law in England in the middle of last century, says: "If a man say to a woman, 'I promise to marry thee and if thou art content to marry me, kiss me or give me thy hand; if the woman do kiss or give her hand, spousals are contracted. If a ring be solemnly delivered by a man and put on a woman's

fourth finger, if she accepts and wears it, without any words, the parties are presumed to have mutually consented to marry, and the ecclesiastical courts would compel to solemnize matrimony."

TO A RECORDING ANGEL.

(AT THE REGISTRY OF DEEDS.)

By Prescott F. Hall.

To you, with awe and reverence —
Although the hour grows late,
And power is but masked pretense, —
These lines I dedicate.

To you, dread power, reviewing
The deeds and deaths of men;
Events long past reviewing,
Nothing escapes your ken.

Deeds of infants and old men,
Executors and mortgagees,
Of guardians and married women,
Co-parceners and trustees;

Lives of wanton and spendthrift,
Of wretched souls who hoard;
Fraud, duress, and makeshift,
You equally record.

In ink which fadeth never,
On paper extra fine,
An abstract true forever
You enter line by line.

You know the hidden treasure
Applied *de bonis non*,
The composition measure
Of bankrupts long since gone.

You note with tender pity
The struggling *tenth* submerged
In yonder teeming city;
You prove the widow's third;

Give each the just share willed him,
Or search the reason why;
Escort the weary pilgrim
His scheduled course to die.

Each old and dear attachment
(Though fully since discharged),
Each base and low preferment
Of claims which should be barred;

Each swift and sad foreclosure,
Each sinner's lot redeemed
From breaking his indenture:
Of equal worth's esteemed.

O Angel! guardian angel
Ad litem (for this strife),
Show me the true evangel
To bound the stream of life;

For life should all be ordered
According to a plan
Drawn and duly recorded
In the conscience of a man.

May all my deeds be valid,
Acknowledged true and free;
My fortunes far from squalid
And from insolvency.

So when I go to slumber,
To have my will approved,
If only by a *number*,
May I be known and loved.

And may your tender glances,
My record looking o'er,
Approve my slender chances
Of reaching heaven's shore:

A title clear on heaven's shore,
Perpetual in time;
Forgiven sin, and — even more —
Forgiven for this rhyme.

LONDON LEGAL LETTER.

LONDON, AUGUST 5, 1899.

A RECENT case in which a domestic servant was found guilty of the murder of her sister by sending a poisoned cake to her, and condemned to death, has awakened a fresh agitation in favor of the establishment of a Court of Criminal Appeal in this country. In the case mentioned, the condemned girl was admittedly feeble-minded. The sister whom she poisoned was an inmate of an insane ward in a workhouse. One of the parents was an imbecile, and two or three other members of the family, it is claimed, are weak in intellect. The motive for the murder was the life insurance of a few pounds which the accused had taken out in a society which made an examination of the assured and received payment of the premiums in small weekly contributions. The jury who found the verdict of murder, recommended the guilty girl to mercy, and, it is asserted by the foreman, returned their verdict only in the belief that their recommendation would be entertained and that the extreme penalty would not be exacted. Immense petitions were forwarded to the Home Secretary, with whom resides the pardoning power, and a large number of influential members of Parliament respectfully requested that a respite might be granted until a further examination by specialist into the girl's mental condition could be made. These appeals were ineffectual, and the law was allowed to take its course.

Mr. George Lewis, one of the leading solicitors in England, and to whose energy and advocacy the recent change in the law permitting accused persons to give evidence on oath is largely due, has come forward as a champion in the cause of Criminal Appeal. He draws attention to the fact that before the accused enters the dock he knows that, however stupid the jury may be, whatever false inferences they may draw, or however wrong their verdict may be, or no matter to what extent the judge may exclude competent and relevant evidence, or how far he may misdirect the jury, there is absolutely no appeal from the verdict. This anomaly seems all the more monstrous when it is remembered that in one court a judge may pronounce a sentence of six months imprisonment for an offence for which another judge sitting in an adjoining court of concurrent jurisdiction may consider it his duty to pronounce a sentence of five years' servitude. But the absurdity of the law is made strikingly apparent when the result in the three following cases is considered: (*a*) a doctor indicted for having been guilty of gross negligence in the performance of his duties; (*b*) a director charged with issuing a false balance-sheet; (*c*) a man accused of obtaining money by false pretences. If in these cases the jury convict, none of the parties have any right of appeal, and no petition for a remission of the sentence would be entertained. But if these accusations were made the ground of civil actions, if the doctor was sued for damages for negligence, the director for fraud, and the accused in the third illustration for a return of the money, all three defendants would have the fullest right of applying to the Court of Appeal for a new trial, and, if so minded, could go to the House of Lords on any point of error in the court of first instance or the Court of Appeal.

It has taken more than a generation of active and persistent agitation to procure the right of an accused to give evidence in his own behalf, and although the new law has been in successful operation for a number of months, there are still many lawyers and some judges who are actually opposed to it. But as there are probably very few persons who have not yet become reconciled to the

abolition of capital punishment for larceny, there is encouragement to believe that an almost equally welcome amendment to our criminal law, to admit of an appeal from the haphazard verdicts of Old Bailey juries, may within a generation or two find its way into our statutes.

In fairness to our legislators it should be mentioned that a recent act of Parliament has very sensibly diminished the number of cases in which the magistrates have been accustomed to refuse bail to accused persons. Heretofore bail has been allowed only in exceptional cases, unless where the offence charged was of a trivial character. The resulting inprisonment before trial worked the greatest hardship to innocent persons and even to those who were convicted and sentenced to short terms. A poor man sent to prison to await trial was in some respects treated much worse than a convicted prisoner. For twenty-three out of twenty-four hours he remained in solitary confinement in his cell. He was allowed only one hour's exercise in the day, and had no indulgence of any sort, the prison system not admitting of his being given any employment or occupation. The principal objection to allowing more exercise or recreation was that it would necessitate more wardens to look after the men, and the treasury officials would not consent to the increase of expense! Under the new act Parliament has made it not merely a matter of discretion, but a duty on the part of magistrates to release accused persons in all but serious cases, even on the accused's own recognizance, and especially where it is a charge of a first offence and when the prisoner resides in the locality where he is arrested.

An odd scene was witnessed last week in the Lambeth Coroner's Court. Coroner's courts in this country have jurisdiction of treasure-trove, and when such treasure is found, an inquest is held to ascertain not only "who were the finders and who suspect thereof," but if there is any claimant to the property. In the event of no owner appearing, it is turned over to the Court, the finder being first rewarded for his find. In this case, two policemen found several bars or ingots of silver on the abutments of one of the bridges which cross the Thames. They were evidently the proceeds of some burglary and the melted down silver from family plate. They had been placed where they were found for extra concealment, the abutments being then several feet below low water-mark. But the burglars had not reckoned with the exceptionally low stage of the water at spring tide, and thus it happened that when it reached its lowest ebb, the glittering silver became visible to the sharp eyes of the policemen. The ingots were taken to the Coroner's Court, and after the facts had been inquired into the usher went outside the Court and in a loud voice asked, "Does anyone claim some ingots of silver found in the river Thames at Westminster Bridge in June last?" On returning to Court he informed the coroners that there was no claimant to the property. The jury then returned a verdict to that effect and that it was treasure-trove and should be handed to the Crown. The coroner therefore seized the ingots on behalf of her Majesty, and said he would send them to the Treasury.

STUFF-GOWN.

The Green Bag.

PUBLISHED MONTHLY, AT $4.00 PER ANNUM. SINGLE NUMBERS, 50 CENTS.

Communications in regard to the contents of the Magazine should be addressed to the Editor, HORACE W. FULLER, 344 Tremont Building, Boston, Mass.

The Editor will be glad to receive contributions of articles of moderate length upon subjects of interest to the profession; also anything in the way of legal antiquities or curiosities, facetiæ, anecdotes, etc.

FACETIÆ.

"I UNDERSTAND Windig, the attorney, is seriously ill." — "Yes; I met his physician this morning, and he says he is lying at death's door." — "That's just like a lawyer."—*Ex.*

"Why is it that your advocate interests himself so much in your case?" "I have borrowed money of him. If I lose the case, he loses his money."

"I READ to-day," said Mrs. McBride, "of a judge who recently granted twenty divorces in one day."

"He must be one of those twenty-knot destroyers we read about sometimes," added Mr. McBride.—*Life.*

GREAT LAWYER (in cross-examination) — Ah! You consider the prisoner an honest man, do you?

WITNESS. — An honester man never lived.

GREAT LAWYER (superciliously). — Will you kindly state on what you base that remarkable opinion?

WITNESS (hotly). — On the fact that he once tried to be a lawyer and failed.

OLD LADY: "I desire to leave all my property in charity." LAWYER: "Your relatives might try to break the will; why not give the property to charity at once?" OLD LADY: "Oh, dear no! They'd put me in a lunatic asylum."

A CANADIAN barrister is responsible for the following: — One day a farmer came into his office, and requested that a holograph will should be prepared for his signature. The lawyers began at once to explain terms, but the tiller of the prairie, who prided himself not a little upon his legal knowledge, only grew angry. "I want a holograph will," he declared, "and I'm going to have it," he added in parenthesis. When the impossibility of his request was still pointed out, he angrily stumped from the office, shouting out, "D—— it! if I can't have a holograph will, I'll blamed well die intestine!" Almost as funny was the tradesman who had recently been left some land. He came to the lawyer with instructions for a deed of transfer to be prepared in favor of himself. On being asked his reasons, he gave them thus: "Don't feel sort of comfortable about that bit of country. I know how particular you lawyer gents are, and I thought, maybe, that if I signed a deed making over the property to myself no one would be able to touch it." When his application was refused, he went away in a rage, and subsequently tried to bring an action against the lawyer, who, he imagined was trying to defraud him.

ISAAC PARKER, of Fort Smith, Ark., probably sentenced more men to be executed than any other judge who ever lived, not because he was so unrelentingly severe, but because he had the hardest lot of criminals to deal with that ever came within the jurisdiction of such an official. One day the judge looked compassionately over his spectacles at one young scamp and said: "In consideration of the youth and inexperience of this prisoner, I shall let him off with a fine of $25——" Before the judge had done speaking, the very fresh young man coolly ran his hand into his trousers-pocket, remarking nonchalantly as he did so: "That's all hunky, judge; I've got that much right here in my jeans." "And one

year in the penitentiary," continued the judge. Then, looking over at the convict in a quizzical sort of way, he added: "Do you happen to have that in your jeans?"

NOTES.

A RECENT viceroy of India (not Lord Curzon) who went out from England full of belief in the perfectibility of native character, was told by a high police official, an Englishman, that no native could be trusted; that every document confided to the care of a native could be purchased; and, in short, that no secret was safe in native hands. The viceroy was extremely angry, and assured his informant, in the language of Burke, that it was impossible to frame an indictment against a whole race. "Well," said the policeman, "I know these people. Your excellency does not; but as you seem so sure that they are to be trusted, I invite you to submit the matter to a test. If your excellency will name some secret document in your personal possession, and will undertake not to mention the matter to any human being, I will undertake in a fortnight to supply your excellency with a copy of that document." "Very good," said the viceroy. "Locked up in a despatch-box in my writing-room there is an autograph letter from the queen. There are only two keys to the box: one is in my possession; the other is in the hands of the private secretary, Colonel ——." Before two weeks had elapsed the police official had furnished the viceroy with a copy of the queen's letter. The governor-general was convinced, but was extremely angry with the head of the police, and charged him with corrupting native servants. The story is a true one, and both parties to it are still alive.

MR. A. H. GARLAND'S legal reminiscences ("Experience in the Supreme Court of the United States, with some Reflections and Suggestions as to that Tribunal") are chiefly remarkable for their modesty. Most people of his distinction would have made a couple of octavo volumes out of himself, while here we have only a hundred small pages. They are readable, and here and there the author makes a good point, as where he observes, of the late Justice Bradley, that it is doubtful if any man ever sat on the bench of the Supreme Court who knew "more law and more sorts of law than he." A good story of Roscoe Conkling and "Matt" Carpenter is given. Conkling, with a record of a case coming on at once in court on his hands, applies to Carpenter for light on a point about which he says he is "troubled," and asks what he, Carpenter, would do about it. Carpenter's reply is, "Why, I would employ a good lawyer." Mr. Garland gives a long list of cases in which he was engaged in the Supreme Court, but the one which will perhaps cause his name to be longest remembered was *Ex parte Garland*, in which, as he somewhat grotesquely puts it, "the right of lawyers against legislative encroachments" was vindicated. So conspicuous at the time did this judgment make him that *Ex parte* became a sort of Christian name for him, as *Ad interim* did for another character of the Reconstruction period.

"THE conservative English lawyer opposes the codification of laws as practiced on the Continent. Yet, there are some regulations, which, while theoretically in force, should be removed from the statutes as obsolete," says the Amsterdam "Nieuws van den Dag." "Thus there is a law which condemns the members of societies for the propagation of prohibition to seven years' hard labor. Disobedient clergymen may be imprisoned for life. Stealing from the queen to the value of more than a shilling must be punished with death or not at all."

WHEN Queen Victoria ascended the throne there were thirteen crimes punishable with death in England. Since the statue of 1861 there remain now only four, namely: Setting fire to Her Majesty's dockyards or arsenals, piracy with violence, treason and murder.

A TEN-MINUTE prayer in a Pennsylvania court in a horse case created quite a sensation recently. Robert F. Thomas had brought suit to recover the part payment he had made on a horse. He bought the animal from Peter German, of Heidelberg township, for $80; paid $50 on him, and the balance, $30, was to be paid in sixty

days. The horse was guaranteed sound. Later, Thomas returned the horse and wanted his $50 back, saying the horse was not as represented; that the animal "knuckled." German denied this and refused to give back the money. Thomas then brought suit. The case came up before Judge Albright. Thomas took the stand, took the oath, and before answering the first question as to where he lived, turned to the learned judge and asked whether he could offer prayer. "Certainly," said Judge Albright, with a quiet nod, and while on the witness stand, Thomas prayed aloud.

"O Lord, Thou who rulest over all, and art willing that all shall have justice, we appeal to Thee, in this our trouble, to lend ear and give Thy presence. Guide us and all of us to tell the truth to this honorable court and to this jury; that I bought that dark bay horse from German for $80; that German said he was solid and sound; that I paid $50 on him; that the horse was not solid and sound, as represented, and that by right and justice this court and jury should compel German to give me my money back and receive his horse back again, as the horse is now just as I bought him. O Lord, we hold no grudge against German, and we don't want him to have any enmity against us; but we want our money back because we are entitled to it. Thou hast said that brethen should dwell together in unity, and it is our desire so to do, but we can't do it if German don't take his horse back and return my $50. Soften his heart toward us; forgive our enemies; give me a safe deliverance in this trial, and bless this good Democratic judge who has just been indorsed by the solid Republican party of Lehigh county."

Thomas went on in his prayer for ten minutes, and at its conclusion the trial gravely proceeded. The jury patiently listened to all the evidence. The parties were farmers near Slatington, but German deals in horses. The jury brought in a verdict for the defendant, and apparently Thomas's prayer had not been answered as he desired, German, the defendant, having shown that the horse was not "knuckled," but was big-boned and sound, as represented.

SCROGGS, Chief Justice: "As anger does not become a judge, so neither doth pity; for one is the mark of a foolish woman, as the other is of a passionate man." (The King *v.* Johnson, 2 Show. 4.)

CURRENT EVENTS.

WOMEN sailors are employed in Denmark, Norway and Finland, and they are often found to be most excellent and delightful mariners.

NORWEGIAN paper currency is printed on cinnamon-brown paper, and the bills are about the size of the "shinplasters" used in the United States in the time of the Civil war. These bills are rarely seen in this country, for they circulate little among the common people, from whom emigrants to America are drawn.

IT is a distinguishing feature of most African rivers that they contain no water for at least eight months of the year. It is true that water can almost always be found by digging for it, but in outward appearance a river is usually a broad belt of sand lying between high and precipitous banks. Many and many a coach has been upset in one of these drifts as they are called. The descent is always steep, frequently so steep that the brakes cannot hold the coaches.

LITERARY NOTES.

THE leading article in APPLETON'S POPULAR SCIENCE MONTHLY for August is a reply to Comptroller Coler by Franklin H. Giddings, Professor of Sociology in Columbia University. Appleton Morgan is the author of an article discussing "Recent Legislation against the Drink Evil." His statistics seem to show that legislative attempts to diminish liquor drinking almost uniformly have the reverse effect. "The Teachers School of Science" is described, with a number of its organizers and officers, in an interesting article by Frances Zirngiebel. Prof. Edward Orton contributes an important article, discussing the true function of the association. "Race Questions in the Philippine Islands" is the title of an interesting article by Ferdinand Blumentritte. The much-discussed question as to the reasoning power of animals is discussed by Edward Thorndike. A number of ingenious and instructive experiments, devised for the purpose of testing their ability to reason, are described.

"FORTUNE'S VASSALS," by Sarah Barnwell Elliott, the complete novel in LIPPINCOTT'S NEW MAGAZINE for August, is undoubtedly the strongest novel she has yet written. In conception it is original, and in execution it is romantic and realistic. The life is that of to-day in a small American town anywhere

you please. The fiction of the month, in all respects striking, is rendered unique by the addition of "Noah's Ark," in which I. Zangwill, in his masterly way, takes his reader from the Ghetto of Frankfort, Germany, to distant Niagara Falls. Dr. C. W. Doyle, author of "The Taming of the Jungle," contributes a picturesque story of the Chinese quarter of San Francisco. A strong and timely paper, by Maurice Thompson, entitled "The Court of Judge Lynch;" Mrs. Ellen Olney Kirk's admirable article, the second in the series of articles "On Women, by Women, for Women," entitled, "Woman: A Phase of Modernity"; Miss Annie Hollingsworth Wharton's second paper on "The Salon in Old Philadelphia"; "The Devil's Bridge," a seasonable legend of the Philippines, by Charles M. Skinner, and "Wireless Telegraphy," by George F. Barker, LL.D., are all of interest at the moment.

THE CENTURY for August is a midsummer and travel number. "The Present Situation in Cuba" is graphically stated in a brief article by Major-Gen. Leonard Wood. Jacob Riis writes of "Feast-Days in Little Italy." The first feast described is in honor of some Italian village saint — "Just-a-lik-'a your St. Patrick here," as one of the celebrants explained to President Roosevelt of the Police Board, who accompanied Mr. Riis to Elizabeth street, and took five chances in a raffle for a sheep. John Burroughs gives a fascinating glimpse of the wild life about his slabsided cabin near the Hudson river at West Park. In "The River of Tea," Miss E. R. Scidmore writes of the Yangtsze-kiang, and especially of the city of Hankow. In a learned paper on "The Churches of Auvergne," Mrs. van Rensselaer introduces effectively the picturesque episode of Peter the Hermit's preaching of the first crusade; "Old, unhappy, far-off days, and battles long ago" are the theme of Professor Wheeler's "Alexander in India." Milder matter is furnished in Jonas Stadling's picturesque "People of the Reindeer," and very thrilling is John R. Musick's description at first hand of a town "In the Whirl of a Tornado," and the accompanying learned article on "Tornadoes," by Cleveland Abbe. Short stories by Chester Bailey Fernald, Mary Tracy Earle and Seumas McManus tend to round out the number.

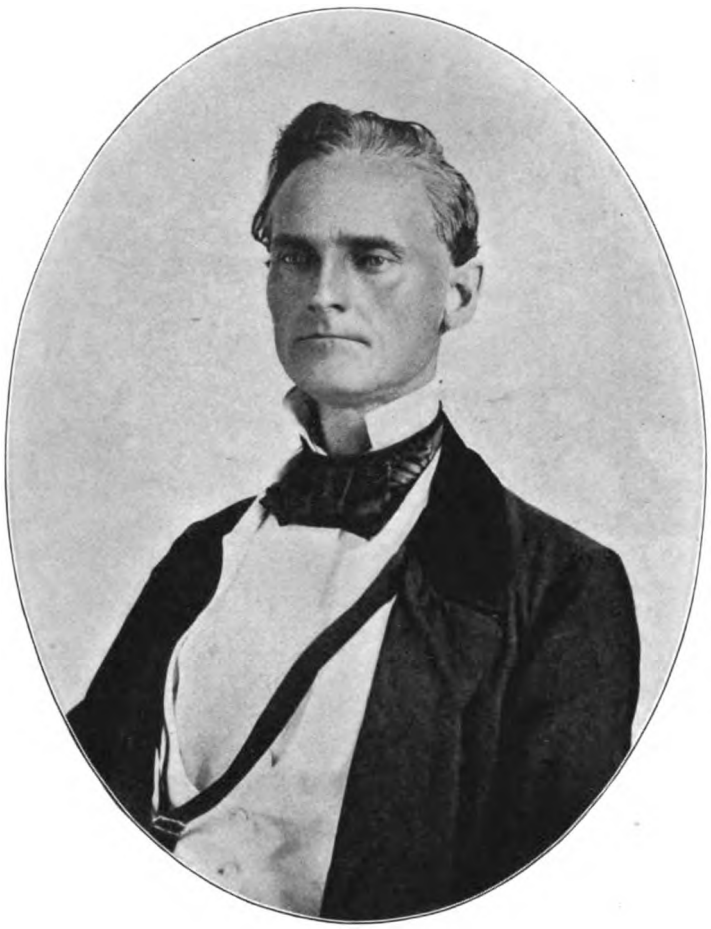
FICTION is the leading feature of the August number of HARPER'S MAGAZINE. Among the short stories which it contains are "Allie Cannon's First and Last Duel," by Seumas McManus; "The Lady of the Garden," by Alice Duer; "The Tree of Knowledge," by Mary E. Wilkins; "The Angel Child," by Stephen Crane; "The Sorrows of Don Tomas Pidal, Reconcentrado," by Frederic Remington; "A Duluth Tragedy," by Thomas A. Janvier; and "When Mrs. Van Worcester Dines," by Anna Wentworth Sears. The main story in "The Drawer" is "A Compounded Felony," by James Barnes. There are further installments of "Their Silver Wedding Journey," by W. D. Howells, and "The Princess Xenia," by H. B. Marriott Watson. The more serious features are Mr. Sandham's article on "Haiti the Unknown," another chapter of Dr. Wyeth's "Life of General Forrest," Admiral Beardslee's paper on "Episodes of the Taiping Rebellion," and Lieutenant Calkins' study of "The Filipino Insurrection of 1896."

THE fiction number of SCRIBNER'S MAGAZINE has come to be an annual event of importance to writers and readers of short stories. The frontispiece and a story, "The Play's the Thing," show illustrations in color by a young man, W. Glackens, who has the cleverness of the modern French illustrators applied to New York themes. Richard Harding Davis tells, in "The Lion and the Unicorn," a love story of a young American playwright in London. Mr. Thompson contributes "The Trail of the Sandhill Stag," with his own poetic illustrations. It tells how the love of the chase grew and developed in a boy, but with far higher results than the mere love of slaughter. Thomas Nelson Page contributes the tale of a negro lynching in the South, entitled "The Spectre in the Cart." In addition to its fiction this number also contains the conclusion of Senator Hoar's article on Daniel Webster; more letters written by Stevenson from Bournemouth, many of them to William Archer, the dramatic critic; a short paper on "Japanese Flower Arrangement," by Theodores Wores.

THE August ATLANTIC is unusually attractive. Miss Johnston's "To Have and to Hold" easily takes the lead among current serial fiction, while Mr. Hopkinson Smith's lively and patriotic story, "The Man with the Empty Sleeve"; Mrs. Phelps-Ward's thrilling "Loveliness"; Mrs. Prince's pathetic picture of French rural life, "The Flail of Time"; and Miss Dupuy's humorous and pathetic "In a Mutton-Ham Boat," furnish an interesting variety, both in style and subject. In "His Brother's Brother," Colonel T. W. Higginson writes delightfully about the late John Holmes, the less famous, but to many minds not less able, younger brother of the Autocrat.

IN the AMERICAN MONTHLY REVIEW OF REVIEWS for August the editor comments on educational conditions in the South, with reference to the future of both the white and colored races. In the same magazine is the address delivered at the Capon Springs, W. Va., conference in June by Dr. J. L. M. Curry, one of the foremost educational leaders of the South, and an active executive officer of the Peabody and Slater funds.

In "The Progress of the World," the questions connected with the Manila censorship and Secretary Alger's resignation are discussed, and also the differences between Secretary Gage and the Civil Service Reform League.



EPHRAIM B. EWING.

The Green Bag.

VOL. XI. NO. 10. BOSTON. OCTOBER, 1899.

EPHRAIM B. EWING.

BY CHARLES W. SLOAN OF THE MISSOURI BAR.

SAID the "St. Louis Republican" editorially, on the morning of June 22, 1873: "The announcement of the death of Judge Ephraim B. Ewing of the supreme court of this State will carry sorrow to every heart. This is the close of a life full of honors and crowned with the best fruits of honest toil, the universal love and respect of his fellowmen. Judge Ewing had long been identified with the legal profession of Missouri and the West, and had fairly won the highest distinction his profession could confer. Last fall he was elected to the supreme court by a majority that attested the esteem of his fellow citizens, and resigned the circuit judgeship of St. Louis county to take his seat on the supreme bench. There are few men in public life whose withdrawal by death could leave a more deplorable gap in the ranks of eminence than is made by the death of Judge Ewing. There are none who will be more widely and sincerely mourned. In these times, such characters as his are unfortunately rare among public men. It is no time now to draw comparisons, but it is not altogether unmeet to say that the lives and records of jurists, such as he, become doubly precious in times when there is need of shining virtue in that branch of governmental system. Of Judge Ewing's public life and acts there is nothing to be said but eulogy, and in this community where he has so long lived and wrought, and where he was known so widely and so well, eulogy is almost superfluous. Nothing could be said that could heighten the esteem and veneration in which he was held; nothing could be written that could deepen the sincerity wherewith his death will be deplored. In social life his eminence was like that he had won in his profession, faultless. No hospitality was less ostentatious or more genial than that of his home. No greeting was more hearty than his, and no friendship truer or more unselfish. The qualities of sincerity of word, purity of motive and integrity of act that embellished his public career, made his social life utterly without reproach and a lasting honor to the society in which he moved. His fine honor, his wide experience, his thorough culture and his broad and liberal mind, all fitted him to stand at the head of his profession, and in the leadership of society; and his taking away so suddenly is a calamity that falls upon the whole community as one man."

Judge Ewing was born in Todd County, Kentucky, May 16, 1819. He was the youngest son of a family of twelve children. His father was the Rev. Finis Ewing, a distinguished minister of the Cumberland Presbyterian church; who together with two other ministers founded that church about February, 1810. His mother's maiden name was Margaret Davidson, a daughter of Gen. William Davidson, who was killed in battle, February 1, 1781, while opposing the passage of the army under Lord Cornwallis in crossing the Catawba River, North Carolina. She was also a niece (General Davidson's wife being a Brevard) of Dr. Ephraim Brevard, who is referred to in "Johnson's Encyclopædia" as "a forcible and energetic writer, a graduate of Princeton"

and "as the distinguished author of the Mecklenburg declaration of independence" adopted at Charlotte, North Carolina, in May, 1775.

The parents of Judge Ewing removed from Kentucky to Missouri about 1820, where, in due course of time, the latter received such advantages as were afforded by the common schools of that period. He was afterwards sent to Cumberland College at Princeton, Kentucky, where he took a classical course and completed his education. "After this," says Judge Bay, in his "Bench and Bar of Missouri," "he commenced the study of the law under Judge Buckner, a distinguished lawyer from Kentucky, who taught for awhile a private law school in St. Louis." He then went to Richmond, Ray county, Missouri, and completed his legal studies in the office of his brother, Robert C. Ewing. He was admitted to the bar in 1842, and immediately formed a partnership with his brother. It was but a short time, however, before we find him a member of the legislature from his county. In 1848 he was a presidential elector on the Democratic ticket. "The following year," says Judge Bay "he was appointed by Governor Austin A. King, Secretary of State, and continued in that office during Governor King's administration. The position was very responsible and laborious, for he was, ex-officio, superintendent of common schools.

In 1856 the triangular fight for governor took place. Colonel Benton was the candidate of one wing of the Democratic party, Trusten Polk of another, and an opposition convention in St. Louis nominated Mr. Ewing's brother, Judge Robert C. Ewing. The subject of this sketch was nominated for attorney general on the ticket with Polk. It was a most exciting contest, and the two Ewing brothers frequently met on the stump, in opposition, not permitting however their affectionate relations to be disturbed. The State was most thoroughly canvassed and the ticket headed by Governor Polk elected. In this somewhat memorable campaign, on one occasion, while Robert C. Ewing was speaking, he was asked by some one in the audience why it was he and his brother differed so widely, politically. "Oh," said the judge, "Ephraim is joined to his idols."

During his term of office as attorney general, he was often call upon by the legislature as well as other officials, for opinions on legal questions. It is known that many of these opinions elicited high compliments from such able jurists as the late Gov. H. R. Gamble and others.

The attorney general was looked upon by his friends as the probable candidate for governor in 1860 on the Democratic ticket; but an event occurred which made possible his selection to a position more congenial to his tastes. When in 1859 Judge John C. Richardson resigned from the supreme bench a strong call was made by the bar on the attorney general to become a candidate to fill the vacancy. He was elected in August of that year, although his competitors were Hon. Washington Adams (afterwards on the supreme bench), and Judge William A. Hall, two very eminent lawyers of the State. Judge Ewing held this position until the fall of 1861, when he voluntarily retired from office to resume the practice of his profession in Jefferson City, where he then resided. In 1864 he removed to St. Louis and engaged in practice there until 1870, when, at the urgent call of the bar, irrespective of party, he was induced to become a candidate for circuit judge.

He was elected in November of that year to this position, which he held until January 1, 1873, when he resigned to accept a place on the supreme bench, to which he had been elected in November preceding, for a term of eight years. The call to become again a candidate for the supreme bench was signed by more than two hundred and fifty of the leading lawyers of the State, irrespective of party. In the Convention held in July, 1872, when nominated he received

a most flattering vote, which testified to his great popularity throughout the State. Judge Thomas A. Sherwood, who has ever since continued on the bench — one of the most distinguished jurists of the country — was nominated and elected at the same time with Judge Ewing.

It seemed peculiarly characteristic of Judge Ewing's family to be successful in being elevated to positions of trust and honor. His father was a great personal friend of President Andrew Jackson, as well as of Senator Thomas H. Benton. President Jackson prevailed on the minister at one time to accept the office of register of the land office, at Lexington, Missouri. The latter was somewhat criticised by some of his brethren for accepting the office; but he justified himself and his conscience by devoting the emoluments derived from office largely to deeds of charity. He gave liberally of his means for the education of poor, worthy, young preachers.

His eldest son, Gen. L. D. Ewing, after leaving the Kentucky home, located in Illinois, where he became the compeer of A. Lincoln. He was a successful lawyer, and held several offices in that State. In 1839 he and Lincoln were opposing candidates for speaker of the House of Representatives in Illinois — Ewing being a Democrat and Lincoln the Whig candidate. Ewing was successful. He was afterwards for a short time United States senator. So impressed was he with the great ability and political sagacity of Lincoln, that as early as 1841 he predicted that Lincoln would one day become president. When the late Gen. James Shields once challenged Lincoln to fight a duel, Mr. Ewing acted as the friend of Shields; but happily for all an amicable adjustment of the difficulty between the parties was effected and the duel averted.

Judge Ewing was married in 1845 at Richmond, Missouri, to Elizabeth Allen, daughter of Dr. Thomas Allen, and a sister of the late Henry W. Allen, governor of Louisiana at the close of the war between the States. Of this marriage seven children were born; the eldest, Mrs. Anna Ewing Cockrell, a bright and accomplished lady, and wife of United States Senator F. M. Cockrell, died in Washington City in January, 1894.

The opinions of Judge Ewing while on the supreme court were terse, clear, logical and well sustained by authority. Judge Bay says of him, "he seldom made a citation which did not directly bear on the subject discussed." He was painstaking and untiring in the discharge of his official duties; indeed although he was not of robust constitution, he had wonderful energy, had absolutely no idle hours. He scarcely knew what it was to take a rest or vacation. By reason of the great strain on his physical powers, for lack of the vacations he should have taken, like Rufus Choate, it is believed, he died the victim of overwork.

His briefs, made while in active practice, testified to his industry as well as to his ability and skill. As a speaker he did not lay claim to great powers of oratory; but his arguments before court or jury were clear, forcible and convincing. He did not waste time on immaterial points, but directed his argument to the controlling and strong points involved in a case. He had a clear, pleasing voice which created a good impression on the hearer; and so utterly free was he from cant and demagogism, his language so pure, his manner so earnest and sincere, that his speeches were very persuasive and effective in bringing conviction.

His memory of decided cases was wonderful. Alexander Garesche, a prominent lawyer at the St. Louis bar at one time, used to say, that if in doubt about where to find an authority settling a certain legal proposition, he could always rely on practical aid if he applied to Judge Ewing; that the latter would say he thought the question had been decided in a certain case, to be found in a certain volume of reports, naming it. Invariably, Mr. Garesche said, he found the

authority as stated. To worthy young lawyers in their struggles for success at the bar, he was ever kind and helpful. Patient in listening to them when appealed to for assistance or advice, he took as much interest in advising them about a case as if it were his own. In person he was slightly over six feet in height, slender and erect in his carriage, with hazel-gray eyes, a fresh youthful face, with some color, contrasting with the prematurely gray hair, and regular features; altogether his appearance was rather handsome and commanding. His very walk on the streets impressed one with the dignity of his character. He had a kind word for all, a courteous recognition for the humblest citizen he met.

The accompanying portrait was taken when he was hardly forty years old. It was perhaps a matter of wonder with some, that one so free from the arts of the mere politician should have been so successful in all his aspirations for public favor. It may be accounted for by the fact, that the people of the State where he was so well known had unbounded confidence in his integrity and ability to fill any office to which he aspired. Said one who sustained very close and intimate relations with him, "He was the most elegant and cultured gentleman I have ever known. I never knew him to make use of a coarse or inelegant word or expression. There was such a happy blending of deep feeling with keenest sense of humor. I have seen him many times laugh until the tears came; and often turn aside to hide the emotion caused by some sorrowful story or incident." His own tastes and habits were simple, and he cared nothing for money, save for the use to which he could put it for others; he was ever the prey to the beggar and impecunious.

Although not a member of any church, he was a man of religious convictions. His mother was a lady of great piety, and of remarkably strong character; and it was but natural that the son should have inherited from his parents religious tendencies. Said the distinguished minister, Dr. Linn, who preached the funeral discourse on the occasion of his death, "He was a uniform attendant upon public worship, identifying himself earnestly with all the interests and enterprises of the church. He was a man of prayer and holy charity."

The writer, who studied law under him, and saw much of him in his home, recalls especially the model husband and father. He had an extensive private library, and it is remembered how, far into the night, faithful student that he was, he often toiled. His reading was very extensive; he sought diligently to inform himself on all lines of thought, and his conversation on every subject was exceedingly interesting and entertaining. In the education of his children he took a deep interest. He endeavored to give them every educational and social advantage. He made companions of them and entered with perfect freedom into all their work and pleasures; talked with them about books, their studies, and kept constantly in touch with their advancement. Said one of his accomplished daughters, in speaking of her father to the writer; "His companionship, his sympathy with his daughters was so rare and delightful; he talked with us about books, our pleasures and companions, everything in fact. He always liked to see me when dressed for a party; and many, many a time he has come to my door with glasses on, and law book in hand, to see me before the wraps were on; and never failed to say, if my dress were of any color, 'Why did you not wear white?'"

It is believed that the lives of such men may be remembered with profit and interest by the profession of which he was an honored member, and indeed by every one; that such a character and the memory of his traits and deeds, are worthy of being perpetuated along with the acts and deeds of other gifted and noble men who have passed away.

OLD LAWS CONCERNING DEBT.

By George H. Westley.

THE problem of poor debtor is one which has exercised the minds of legislators for many centuries, and it is interesting to note the ways in which the various nations have tried to solve it, particularly under the earlier conditions of civilization.

In ancient Rome, to begin with, a debtor who refused or neglected to pay his creditor was summoned to appear in court, when, if he failed to justify his conduct, he was enjoined to satisfy the plaintiff within a period of thirty days. At the expiration of that time, the creditor was empowered to lay hands upon him and take him by main force, if necessary, before a judge. If he then failed either to produce the money or to find sureties for its payment, he was delivered over to his creditor, who kept him in chains for sixty days, exposing him to the public gaze on three successive market days. When that term had also expired, the creditor was entitled to seize upon the property of his debtor up to the full amount of his claim; and if it proved insufficient he could then either sell his victim into slavery or put him to death. If there were several creditors, the letter of the law permitted them to cut their debtor to pieces, sharing his body in proportion to their claims. There do not appear to have been any public prisons for debtors at Rome, and each creditor, consequently, was the jailer of his own debtor.

Previous to the time of Solon, the Athenians were also very severe on debtors. Those who were unable to meet their obligations became the bondsmen of their creditors, together with their unmarried daughters, their sisters, and their sons under age. In many cases debtors were not only deprived of their liberty, but sold to foreign slave dealers and sent across the seas, while others only preserved their freedom by bartering that of their children.

In ancient Greece, the law at one time gave no assistance to creditors in recovering debts; those who sold had to choose between transactions for cash and upon honor. Theophrastus mentions a law against credit, as follows: the buyer was to give earnest to the seller, and a piece of money to three neighbors, who were to remember and bear witness to the bargain. The earnest was forfeited unless the whole of the price was paid the same day; while if the seller did not fill his agreement, he was liable to a fine equal to the price agreed upon.

According to Herodotus, the ancient Egyptians entertained peculiar notions on the subject of loans. Every man who had occasion to borrow money was required to pledge the embalmed body of his father; and until this was redeemed he was incapacitated from performing the funeral rites of any of his own children; and in the event of his death, his body was denied burial. This singular custom must have proved particularly inconvenient to those whose fathers were still alive; but possibly they contrived to elude the letter of the law by giving a *post obit* bond to surrender the body of their respected parent as soon as it should be in a fitting condition to be received in pawn.

It was an ancient Hindoo law that, if a debtor was unable to find either money or security, he was liable to be sold into bondage, together with his wife and children, and even his grandchildren if they were living under the same roof with himself. He could demand, however, that a fair valuation be placed upon himself and family, at which they should be redeemable by his relatives.

In like manner, a price could be set upon any landed property he might possess; but the power of redemption did not extend to cattle, horses, elephants, or other live or dead stock. Whoever denied a just debt was not only fined, but sentenced to receive in open court from five to fifty cuts with a rattan, in the presence of his wife and family. A borrower of copper, iron or grain was liable to pay cent per cent if he did not return the loan within twelve months.

These people had a peculiar method of collecting debts, a method which has survived down to our own century. The creditor would sit *dharna* at the debtor's door or gate, until some arrangement or instalment was extorted by his importunity. Lord Teignmouth gives us an interesting description of the process of sitting *dharna*, and the principle involved. The Brahmin creditor proceeds to the door of his debtor and there squats himself, holding in his hand some poison, a dagger, or other instrument of suicide, which he threatens to use if his debtor should attempt to molest him or pass by him; and as the inviolability of a Brahmin is a fixed principle with the Hindoos, and to deprive him of life, either by direct violence or by causing his death in any way, is a crime which admits of no expiation, it will readily be seen that the debtor is practically under arrest in his own house. "In this situation," concludes Lord Teignmouth, "the Brahmin fasts, and by the rigor of etiquette the unfortunate object of his arrest ought to fast also, and thus they both remain till the institutor of the *dharna* obtains satisfaction. In this, as he seldom makes the attempt without the resolution to persevere, he rarely fails; for if the party thus arrested were to suffer the Brahmin sitting in *dharna* to perish by hunger, the sin would forever lie upon his head."

A hundred years ago British law interfered with this practice, though it could not wholly stop it. It was enacted that: Whoever voluntarily causes any person to do anything which that person is not legally bound to do, by inducing that person to believe that he will become by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, shall be punished with imprisonment.

The Chinese practiced a much more sensible variety of *dharna* than the Hindoos. Intead of starving themselves to death, and broiling in the sun or shivering in the rain, creditors simply quartered themselves and their families upon their debtors, and the latter were generally glad to get rid of their unwelcome guests by scraping together and paying off the amount due. A debtor who was unable to meet his obligations could be compelled to wear a yoke round his neck in public, the hope of the creditors being that the man's friends or relatives would pay off his debt in order to save him from a prolongation of this terrible disgrace.

Sitting *dharna* is said to be practiced in Persia to this day. A man intending to enforce payment of a demand by fasting, begins by sowing some barley at his debtor's door, and sitting down in the middle. The idea that the creditor means to convey to his debtor by this is, that he will stay where he is without food, either until he is paid, or until the barley-seed grows up and and gives him bread to eat. Something similar to this *dharna* was known in ancient Ireland. One of the Brehon laws enacted that a notice of five days was to be served on a debtor of inferior grade, and then distress was to be taken from him. But if the defendant was a chieftain, a flaith, a bard, or a bishop, the plaintiff was obliged to "fast upon him" in addition. The Troscead, or fasting upon one, consisted in going to the debtor's house and waiting at his door a certain time without food. The law ran: "He who refuses to cede what should be accorded to fasting, the judgment on him is that he pay double the thing for which he was fasted upon." If, however,

the debtor offered a pledge or security for his debt, and the creditor stubbornly refused to accept it, he, the creditor, forfeited his entire claim.

If Tacitus is to be believed, the ancient Germans had no laws on this matter. In their intercourse they never dreamed of deriving a profit from the necessities of their neighbors. They freely and with pleasure gave presents to one another, but never fancied for a moment that the recipient was thereby laid under obligation to the donor; and as loans were unknown among them, they had no need to legislate for the recovery of debt, or for the punishment of debtors.

The Saxons had stricter rules in their dealings one with another. No traffic of any kind was permitted, except in the presence of witnesses, four of whom were required by the laws of Canute for any purchase exceeding in value the sum of four pence. A creditor was required to make three demands in the court of his hundred, before he could even apply to the shiregemot, or county court, to fix a final date for the payment of his claim; on the expiration of which he became at last entitled to levy a distress on his debtor's property. In Russia, before the Empress Catherine's time, indebtedness was punished as a criminal offense. Insolvent debtors were often employed by the government as slaves, but were allowed a small sum for their labor, which went towards the liquidation of their liabilities. Private persons likewise hired debtor-prisoners as slaves, but were answerable for their due appearance when called for. In prison their condition was sufficiently pitiable, their maintenance depending almost entirely on the alms dropped by charitable passers-by into little boxes placed outside, for the government undertook to supply only the prison and fuel.

I glean the following quaint remarks from an old Welsh law book. "If there be surety for a debt, and before time of payment the surety die and leave a son, the son ought to be responsible for the father's debts. Some say that if the son willeth to deny his suretyship over the grave of his father, the legal denial is to be given. We say it ought not to be; for the learned say that the law of this world can affect a person, whether he be gone to heaven or to hell, only until he goes to this earth. The cause is, that although there be law between man and man upon this earth, there is no law between devil and devil, and there is no law between angel and angel, only the will of God."

A method of procedure for debt in good King Howel's time is described thus: "Let the two parties and the surety come before the Judge, and the Judge is to seek an acknowledgment whether yonder man be a surety or not. 'A surety, God knows,' says the creditor. 'Not a surety, God knows,' says the debtor. Then it is right for the Judge to ask the surety, 'Art thou a surety?' 'I am,' replies the surety. 'It is wholly denied,' says the debtor . . . Then it is right for the Judge to take the relic in his hand and say to the debtor: 'The protection of God prevent thee! and the protection of the Pope of Rome! and the protection of thy lord! do not take a false oath! . . . If the surety counter-swear to the debtor let him counter-swear while the debtor is putting his lips to the relic, after he has sworn . . . 'By the relic that is there, I am surety for thee . . . and thou hast perjured thyself . . . and I will have the judgment of the Judge.' And then it is right for the Judge to go out to give judgment." But after all this, such was the law's delay in those times, judgment was deferred until the following Sunday week, when the verdict was pronounced in church, "Between the 'Benedicamus' and the distribution of the sacramental bread."

Under the reign of Charles II, prisoners for debt were treated in every respect as felons, and were even denied the privilege of hearing Divine service and the preaching of God's word.

In the time of Edward I, the Parliament of Acton Burnell registered the celebrated Statute of Merchants. The object of this law was to protect the commercial interests of the country. Its preamble relates how poverty had fallen upon merchants from the want of a speedy remedy for recovering debts, and the consequent desertion of the realm by merchants with their merchandise: and it was therefore enacted that a merchant who wished to deal securely should cause his debtor to come before the mayor of the town, and in his presence acknowledge the debt. If after this he failed to pay the bill, he could be imprisoned in the Tower, there to remain until he settled up. If at the end of three months he had not done so, his land and goods were handed over to his creditor. The creditor who confined his debtor under this law, was bound to furnish him with bread and water.

In France also the creditor had to furnish aliment to the imprisoned debtor, and not only that, but he was compelled to advance a month's food in order to make the imprisonment effectual. If he did not do so, the prisoner was set free.

Imprisonment for debt was abolished in England in 1869, or, rather, a law was passed in that year to that effect. As a matter of fact, however, thousands of persons are sent to jail for debt there every year. As a prominent English judge remarked concerning this law, "it merely mends the procedure as regards imprisonment, but in no wise ends it."

Judge Chalmers, in an interesting article, printed a few years ago, relates some of his experiences with poor debtors who appeared before him. A frequent excuse of these unfortunates for not paying what they owe, is that their children are ill and in need. One, a wretched-looking lad of twenty, was brought before him for a debt of £2. On being asked why he did not pay it, he replied that "all the children had been ill." It appeared that he had married at sixteen and had three children. When the judge asked him what made him marry at that age, his answer was: "Because I was out of work." His sweetheart was doing something and he saw nothing for it but to marry her and share her wages.

Another case was where a woman was summoned for refusing to pay a balance due on some furniture. She declared that the last time the plaintiff's collector had called, he agreed to forgive her the sum due if she would commit adultery with him. She had complied and so considered herself freed from the debt. "But," said the judge, "how can you get rid of a debt against the plaintiff by committing adultery with some one else?" She argued that the man with whom she had committed adultery was acting as the plaintiff's agent. "Yes," replied the judge, "he was the plaintiff's agent to collect debts, but not to commit adultery."

In another case, the defendant, a molder of brass, gravely objected to pay for the expenses of his wife's funeral, on the ground that she was no longer of any use to him.

LEAVES FROM AN ENGLISH SOLICITOR'S NOTE-BOOK.

By Baxter Borret.

I.

THE STORY OF A CLAIM TO A PEERAGE.

ABOUT thirty years since, a retired captain in the English navy asked me if I would take up his claim to an extinct Irish peerage. Being young and not overburdened with work at the time, and being greatly taken with the appearance and charming manners of my would-be client, I readily agreed to read up his case, and, if it seemed capable of proof, to carry it in to the House of Lords for him.

The incidents attending my own investigation of his claim were so extraordinary that I think they will form a story interesting to the readers of The Green Bag.

I shall call the old captain "the claimant"; for obvious reasons I suppress the real title of the peerage, and substitute fictitious names for the various parties to the history.

The claimant was no base-born impostor; at our first interview he proved to demonstration, with certificates of births, marriages, and deaths, that he was the eldest lineal grandson of an old man who died in the Fleet prison, London, in the year 1820, at the age of eighty. The sole question was, who was the old Fleet prisoner?

The claimant told me that he had spent many happy hours with the old man in his room in the Fleet; who had, time after time, told him he was entitled to be called Lord X, but that, for reasons connected with his former life, he was precluded from doing so; but whenever he should die, the claimant, as his grandson, ought to make good his claim; he would find all the necessary proofs in a pocket-book which the old man carried in his breast by day, and put under his pillow at night. The old man also told the claimant that he had been committed to prison for contempt of court, Lord Eldon having once ordered him to pay over some money to some person who, he thought, was not entitled to it; and he had snapped his fingers in the face of the learned Lord Chancellor, and told his lordship he would see him d——d first, whereupon he had been ordered into custody, and had remained in the prison ever since. He was visited in the prison by members of the aristocracy, and had every comfort supplied to him, and seemed always to have plenty of money. As to his early life, the old Fleet prisoner told his grandson, the claimant, that he had no recollection whatever of his mother, and only a very faint memory of his father, who had married a second wife; and he, the claimant, never could get on with his stepmother, who was not a lady by birth; when he was a young lad his father had got him into the Royal Navy as a midshipman, he had been guilty of some serious offense on board ship, for which he had been sentenced to be shot, but the admiral of the fleet, to save his life, contrived that he should be secretly landed at some foreign port, and had supplied him with money to take him back to England; from that time he had led a life of adventure, and had not returned to England till long after his father's death, and it was only quite late in life he had learned he was the real heir to the peerage. This was the history of the old Fleet prisoner as told by him to his grandson the claimant, and told by the claimant to myself.

The old Fleet prisoner, his son (the claimant's father) and the claimant himself bore

the same name, and used the same coat-of-arms, crest and motto as the noble family of X.

One of the first thoughts which occurred to my mind was that, as the old man had died in prison, there would, by the law of England, have been an inquest held on his body in the prison, and that the record of the inquest might throw some light on the question of his identity. With some trouble, I procured access to the record of the inquest, kept in Newgate; I found that the record made no mention of any evidence being given of his identity — a most extraordinary omission.

I now pass to the noble family of X, one of the oldest families in English history, a former ancestor having played a prominent part in an historical event which occurred in the reign of Henry the Second. The title of Lord X was originally created in the reign of one of the Stuart kings, and had descended from father to son for four generations till the year 1752, which is the first important date in this story. In that year William, the eldest son of Charles, the fifth Lord X, died suddenly (killed accidentally, I think) in his father's lifetime. A few years later on, Charles, the fifth Lord X, died, and Thomas, his second son (as the eldest surviving son), succeeded to the title and estates, and held them till about 1780, when he died without male issue: thereupon Henry, the third son, succeeded, and he too died without issue about 1790; thereupon Philip, the fourth and youngest son, succeeded, and held the title and estates till 1798, when he died, leaving an only child, a daughter named Helen, who inherited the estates; but the title became extinct. Helen, the heiress, married a rich commoner, Mr. Z, who held the estates in right of his wife, and was living at the date of the death of the old Fleet prisoner.

The certificate of the burial of the old Fleet prisoner showed that he died in the year 1820, at the age of eighty. He was born in 1740, therefore; and it was within the category of possibilities that he was a a son of William, the eldest son of Charles, the fifth Lord X. Assuming this as a fact, and also assuming the story of the old Fleet prisoner to be true, William must have been twice married — first, before 1740, to the Fleet prisoner's mother; and, a few years later, to the Fleet prisoner's stepmother.

Having started on this double assumption, I proceeded to put it to the test of proof by comparing the histories given in the various peerage books published between 1750 and 1820, which I hunted up in the reading-room of the British Museum. I can only give the general result of my search. I found that, though the earliest books stated that William died unmarried, later books stated that he left a widow, whom he married in 1750, and that he died childless (a very unusual expression), and that his widow lived to the second decade of the present century. Obviously, the old Fleet prisoner could not have been the lawful issue of this marriage. Then the thought occurred to me that he might have been the base-born issue begotten of William by this or by some other union. I kept the thought to myself, and proceeded to search for the entry made of the marriage of 1750 in the register of the parish church where the marriage was solemnized. There I found that William was described as a widower, and his second wife as the daughter of a blacksmith — a strange corroboration of the old Fleet prisoner's story, that his stepmother was not a lady by birth — a fact which might account for the suppression of all mention of the marriage in the earlier peerage books, though another explanation might be forthcoming.

At this point a friend of mine, a professional genealogist, informed me that some few years before the union of Ireland with England all Irish peers were ordered to make to the Irish Herald's College a return of their families, with all dates and circumstances relating to their succession to the

peerage. Following up this hint, I found that the return of the X family was made by Thomas, the sixth Lord X, some few years before his death; that he made no mention of his elder brother William having left a widow; and that the dates therein given of his brother William's death and of his own father's death, and consequently of his own succession to the peerage, were incorrect by several years when compared with the actual dates, as given in the parish registers, of their burial. I asked myself, as I now ask my readers, does a man of birth and education lightly forget the date of the death of an elder brother which made him heir-apparent to a peerage and to valuable family estates, and the date of the death of his own father which brought him into actual enjoyment of these? The discrepancies in dates were very extraordinary, and I never could account for them satisfactorily except on the theory that, on William's death, Thomas, knowing that William had a son abroad, did not in his own mind become heir-apparent; and so, when his father (the fifth Lord X) died, Thomas knew that he only held the estate as *locum tenens* for his elder brother's absent son, the rightful heir. I found out that it was not until many years after his father's death that Thomas took his seat in the Irish house of peers. I may also state here that, with all my searching, I could never discover that William left any will, or that letters of administration, in default of a will, were ever taken out to his personal estate. This would be inconsistent with the old Fleet prisoner's being a base-born son of William, for whom naturally William would wish to make some provision; but it would not be inconsistent with the Fleet prisoner being a lawful son, who would, under the law of entail and settlement, become entitled in possession to the estates on the death of the fifth Lord X, and also to the personal estate, subject, as to both estates, to the widow's dower and thirds.

I must now relate an extraordinary circumstance told me by the claimant, namely, that, immediately he heard of the death of the old Fleet prisoner, he went with his father (who died soon after) to the prison, and that they saw a strange gentleman leaving the chamber of death; that they made inquiry as to who he was, and learned that it was Mr. Z, who had married Helen, the heiress. The claimant and his father searched every nook and cranny of the room for the old man's pocket-book, but it was nowhere to be found, and never came to light afterwards. I asked myself, and I ask my readers, how was it that Mr. Z was on the spot before the old man's son and grandson? What was the old Fleet prisoner to him, or he to the old Fleet prisoner? and had his early presence in the death chamber anything to do with the loss of the pocket-book? and what interest had he in the contents of the pocket-book? But if the old Fleet prisoner's story were true, and if the old man lying dead in that chamber was the rightful peer, and the rightful owner of the estates, to the knowledge of Mr. Z, who was then enjoying the estates in right of his wife; and if (as was probable) the old man had boasted to others besides the claimant (for instance one of the warders of the prison) that the proofs of his title (such as a certificate of the marriage of his parents) were in his pocket-book, and this boast had reached Mr. Z's ears, — his presence in the death chamber, and the abstraction of the pocket-book, which otherwise would be unaccountable, are no longer insoluble mysteries; for Mr. Z would have the liveliest interest in destroying all evidence which would enable the old man's son to lay claim to the title, and to the estates also.

All the energies of my mind were now directed to discover legal proof of the first marriage of William the widower, the eldest son of the fifth Lord X, and of the birth or baptism of the old Fleet prisoner. I got the claimant to repeat again to me his recollections of his conversations with the old

Fleet prisoner; and I eagerly fastened on one statement, viz., that the old man's early childhood had been passed in the house in which Tyndale had worked on his translation of the Holy Scriptures. I had no great difficulty in locating the house, and I reasoned to myself that it was probable that the old Fleet prisoner had been baptized in the parish church of the village in which the house stood; that possibly his mother had belonged to that parish, had been married in that church, and had been buried in the burying-ground attached to it. Acting on that reasoning, I wrote to the clergyman of the parish, asking him to search his registers between the years 1738 and 1748 for the entries of any baptism, marriage or burial of any person by the name of X. In those days parish registers were not kept with the same care with which they are kept at the present time, and births, marriages and deaths were often entered in the same book; every genealogist will know this to be the fact. I received a most courteous reply from the rector of the parish, that his registers embraced the period I mentioned, and, indeed, went very much farther back; that he found no entry of any marriage, baptism or burial of any person of the name of X, but that the book had been mutilated, and the pages for the years 1739 to 1742 had been cut out; but he added that he knew a duplicate of the register book was kept at the diocesan registry, from which, perhaps, I might get supplied with the evidence which I wanted. I lost no time in writing to the diocesan registrar, and his reply gave me the same result; his duplicate register had also been mutilated, in the same manner and for the same period. Was it an unreasonable presumption on my part, from these premises, that the mutilated registers contained entries of the marriage of the old Fleet prisoner's mother, William's X's first wife, in the year 1739, of the baptism of the old man, their child, in the following year, and of the burial of the mother in 1742; and that the mutilation of the books was the work of Mr. Z, who, by means of the contents of the abstracted pocket-book had learned where to go to carry out his purpose?

And now I must disappoint my readers. Had I been writing fiction I might have drawn upon my imagination, and produced a highly-colored *dénoûement* of this interesting story. But I am chronicling actual facts, and I have in these pages given a faithful record from memory of a deeply interesting investigation made by me for a client, professionally, some thirty years since. I must close this story precisely at that point of the drama at which the curtain was rung down by the Supreme Manager of that little stage on which each of us poor players struts and frets his little hour, and then is heard no more. At this point of the drama I received news of the sudden death of my client, the claimant; with his death, my work — which had had, as my readers may suppose, an irresistible fascination for me — came to an end.

THE LAW AND LAWYERS OF THACKERAY.

THACKERAY'S connection with the law and with lawyers began in the year 1831. After leaving Cambridge (and without taking a degree), he travelled on the Continent for a few months, being rather undecided as to what profession he should adopt. At Weimar, where he met Goethe, he read a little civil law, which he "did not find much to his taste." Nevertheless, in obedience to the wishes of his friends, he decided to read for the bar, and, in November, 1831, he entered the chambers of one Taprell, at No. 1, Hare court, Temple, there to be initiated into the mysteries of special pleading. Thackeray looked forward to the law, not as a pleasure, but rather "as a noble and tangible object, an honorable profession, and, I trust in God, a certain fame." As might have been expected, he did not find himself happy in the legal *milieu*. His somewhat indolent temperament rebelled against the constant "grind." And so we find him writing in rather a melancholy strain to his mother as follows: "The sun won't shine into Taprell's chambers, and the high stools don't blossom and bring forth buds. I do so long for fresh air, and fresh butter I would say — only it isn't romantic." Comfortable armchairs, as Mr. Eyre Crowe remarks in his excellent little article on "Thackeray's Haunts and Homes," are now the rule in lawyers' chambers, but in the thirties high stools were considered quite good enough for pupils. In this letter Thackeray sketched himself perched upon a very high stool, with a clerk vainly endeavoring to reach him by means of five folios and a step-ladder, while an old gentlemen with an umbrella (presumably a client) placidly surveys the scene. In the same letter there is another sketch of himself asleep upon a pallet bed, while a dream procession passes, with Thackeray leading in wig and gown, followed by the Lord Chancellor in a gorgeous carriage, while — characteristic touch! — at the foot of the bed stands Death. In another letter we have his well-known dictum on legal education as it was in the thirties: "One of the most cold-blooded, prejudiced pieces of invention ever a man was slave to. A fellow should properly do and think of nothing else than *Law*. Never mind." But although, while he was in Taprell's chambers, Thackeray seems to have been a fairly industrious pupil, occasionally he had lapses, and "did think about something else than *Law*." For instance, just a month after he wrote the above letter, we find him so far from Hare court as Cornwall, where he was helping Charles Buller in his candidature at Liskeard. This occurred in June, too, when he certainly ought to have been at chambers.

Thackeray soon tired of special pleading. In a year or so he shook the dust of Taprell's chambers from off his feet, and went to Paris to study art. No one can regret Thackeray's rejection of the law as a profession. No doubt, with his faculty of clear vision and keen insight, he would have made an excellent judge, whose decisions would have been models of lucidity and style; but we have had many excellent judges, and — it is a truism, of course — only one "Vanity Fair." On the other hand, no one can regret the time spent by Thackeray in the chambers of the estimable Taprell. To it we owe that charming and unforgettable picture of Temple life which he has given us in the immortal pages of "Pendennis." Thackeray's legal experiences, however, were not closed by his departure from Hare court. It is not generally known that the novelist was called to the Bar in the year 1848 at the Middle Temple. Probably he had some thoughts of obtaining

a magistracy, through the influence of his friend, Monckton Milnes, in which case he would have followed the precedent of the author of "Tom Jones," who was a magistrate at Bow-street.

Thackeray is never happier then when describing the Bohemian, journalistic-legal life which centres in the Inns of Court. Glimpses of this kind of life he gives us again and again in his books, but the fullest and best description is, of course, to be found in "The History of Arthur Pendennis." Let the layman who wishes to understand the ways of an Inn of Court as they were in the middle of the century, and, indeed, *mutatis mutantis*, as they are to-day, read chapter thirty in "Pendennis." And if any member of the bar has attained to the years of discretion without having made the acquaintance of the same chapter, let him repair the omission as soon as possible. It is difficult for the ardent Thackerayan to speak of "Pendennis" without enthusiasm. The characters are so life-like that they become the reader's friends, and one resents as a personal insult any depreciatory reference to them. For our present purpose we need only slightly indicate the plot. Arthur Pendennis comes up to London to make his way in the world. He decides to read for the bar, joins the "Upper Temple," and takes chambers in "Lamb court" with his chum, George Warrington. The description of Lamb court must appeal to those who know the Temple in November. "If it was dark in Pall Mall, what was it in Lamb court? Candles were burning in many of the rooms there — in the pupil-room of Mr. Hodgeman, the special pleader, where six pupils were scribbling declarations under the tallow; in Sir Hokey Walker's clerk's room, where the clerk, a person far more gentlemanlike and cheerful in appearance than the celebrated counsel, his master, was conversing in a patronizing manner with the managing clerk of an attorney at the door; and in Curling the wig-maker's melancholy shop, where, from behind the feeble glimmer of a couple of lights, large serjeants' and judges' wigs were looming drearily, with the blank blocks looking at the lamp-post in the court. Two little clerks were playing at toss-halfpenny under that lamp. A laundress in pattens passed in at one door, and a newspaper boy issued from another. A porter, whose white apron was faintly visible, paced up and down. It would be impossible to conceive a place more dismal." This is the introduction to what we like to think is the most fascinating picture of Bohemian life in the language. Chapter thirty is full of portraits of typical Templars, most of whom are familiar to us. The great parliamentary counsel on the ground floor, "who drives off to Belgravia at dinner-time, when his clerk, too, becomes a gentleman, and goes away to entertain his friends"; Doomsday, who has lived fifty years in the Inn, and whose brains are full of books of law; Paley, the enthusiast, who reads and notes cases till two in the morning, "bringing a great intellect laboriously down to the comprehension of a mean subject"; and, of course, the two young men, Warrington and Pendennis, who live on the top floor, and are a trial to the sedate lawyers below. Arthur Pendennis was never meant to be a barrister-at-law. His love of pleasure and joviality "deterred him from pursuing his designs upon the bench or woolsack with the ardor, or rather steadiness, which is requisite in gentlemen who would climb to those seats of honor." So he becomes a journalist and popular novelist, and never appears in court in wig and gown. George Warrington, however, was different from Pen, to whom, indeed, we always preferred him. When we are first introduced to him, he has just been called to the bar and "knows law pretty well." He is a great contrast to the elegant, dandified Pendennis, for, when he first appears on the scene, he is sitting on the table, dressed in a ragged old shooting-jacket, unshaven, and smoking a short pipe. "He was drink-

ing beer like a coalheaver, and yet you couldn't but perceive that he was a gentleman."

But poor Warrington was quite devoid of ambition, legal or otherwise. He was quite content to earn his bread by contributing to the "Law Review" and doing miscellaneous newspaper work. Warrington might easily have climbed high in the legal world, with his strong sense and scholarship, but for the false step which ruined his life. Two or three other barristers appear in the pages of "Pendennis" — Percy Sibwright, that young gallant, whose wig Miss Laura Bell tried on upon one occasion; and Mr. Bangham, who "did not come to chambers thrice a term, and went a circuit for those mysterious reasons which make men go circuit." We take leave of "Pendennis" with regret. To the real lover of Thackeray, the memories of the Temple which come first to mind are not those of Goldsmith, or Johnson, or Lamb, but of Arthur Pendennis and George Warrington, and the rest of the little circle which gathered in the dingy old chambers in Lamb court.

"The Adventures of Philip" is not one of Thackeray's great novels. It contains much good work, and has all his old charm of style, but it has many faults, both technical and artistic. Thackeray did not care to invent a new type of hero, and so Philip Firmin is really only a combination of Clive Newcome and Arthur Pendennis. Like Clive Newcome in appearance (tawny beard, blue eyes, etc.), he resembled Arthur Pendennis in that he, too, was a member of the legal profession, who dabbled in literature for daily bread, and refused to take his law seriously. "Like many another gentleman who has no intention of pursuing his legal studies seriously, Philip entered at an Inn of Court, and kept his terms duly, though he vowed his conscience would not allow him to practice. His acquaintance lay among the Temple Bohemians." It was not his conscience, we fear, but his indolent, easy-going temperament which was the obstacle. In due time he was called to the bar, and we have an account of his call supper in Parchment Buildings. But Philip was not the man to settle down to a steady "grind." True, he got one brief at the parliamentary bar, which nearly scared him to death! He passed a night of frightful torture in the committee-room. During the night, he says, his hair grew gray. His old college friend and comrade, Pinkerton, coached him on the day previous; and, indeed, it must be owned that the work which he had to perform was not of a nature to impair the inside or outside of his skull. A great man was his leader: his friend Pinkerton followed; and all Mr. Philip's business was to examine half a dozen witnesses by questions previously arranged between them and the agents." Philip Firmin was destined never to become a shining light of the law, and we heave a sigh of relief when, in the last chapter, he obtains possession of a fortune. "The Adventures of Philip" also contains an account of police-court proceedings. The Rev. Tufton Hunt, when arrested for being drunk and disorderly, complains to the magistrate that a bill of exchange, accepted by Philip Firmin, has been stolen from him. (The bill was forged by Philip's father, and was actually abstracted from Hunt by "the little sister.") Philip deposed that he had not accepted any bill of exchange, and the case was dismissed.

Turning for a moment to Thackeray's miscellaneous works, it will be remembered that "The Book of Snobs" is, on the confession of the author, incomplete. The great deed was too great for one man, and many varieties had to be passed over. It is just possible, of course, that there are no snobs in the legal profession, but we rather think that Thackeray on "Legal Snobs" would have been very good reading. As it is, he merely hints at the snobbishness of lawyers' ladies in the following passage, taken from the chapter on "Continental Snobs": "That

overgrown lady with the four daughters and the young dandy from the University, her son, is Mrs. Kewsy, the eminent barrister's lady, who would rather die than not be in the fashion. She has the peerage in her carpet bag, you may be sure; but she is altogether cut out by Mrs. Quod, the attorney's wife, whose carriage, with the apparatus of rumbles, dickeys, and imperials, scarcely yields in splendor to the Marquis of Carabas's own chariot." On the other hand, Thackeray gives us in "The Book of Snobs" a very sympathetic portrait of a young barrister in the person of Raymond Grey, Esq., "an ingenuous youth without the least practice," who lived in a very tiny mansion in a very queer, small square in the airy neighborhood of Gray's Inn, and who gave such an unconventional dinner to the great Goldmore. As a result of this dinner, Grey began to get on in the world, and shortly afterwards appeared before the Privy Council in the celebrated case of Buckmuckjee-Bobbachee *v.* Ramchowder-Bahawder, when Lord Brougham complimented him on his curious and exact knowledge of the Sanscrit language. In the Bedford-row conspiracy we make the acquaintance of another young and briefless barrister (Thackeray was fond of the type), John Perkins, Esq., of the Middle Temple. John was a connection of the house of Perkins, Scully, & Perkins, solicitors, Oldborough, who managed to obtain all the business in that little town by cultivating both establishment and dissent, a manœuver that is repeated in almost every country town in England. John resided in the classic vicinity of Bedford row, whence he would wander forth o'nights to think of his little Lucy of Mecklenburg square, while the moonbeams slept softly upon the herbage of Gray's Inn gardens, and bathed with silver splendor Theobald's row. John was optimistic. "I have talents, sir," he told his uncle, "which I hope to cultivate, and am a member of a profession by which a man may hope to rise to the very highest offices of the State." His uncle: "Profession, talents, offices of the State! Why, do you think if you *had* been capable of rising at the bar, I would have taken so much trouble about getting you the place? No, sir, you are too fond of bed and tea-parties, and small talk and reading novels, and playing the flute and writing sonnets. You would no more rise at the bar, sir, than my messenger." So John gave up the bar, and settled down to work at the Tape and Sealing-wax office. Thackeray was fond of hitting off the foibles of the Irish, and the speech of the Irish junior, Mr. Mulligan, in "Cox's Diary," is very humorous reading. "Standing here upon the pidestal of secred Thamis — seeing around me the armymints of a profession I rispect — having before me a vinnerable judge and an enlightened jury, etc." His lordship tells him to keep to his brief. Mr. Mulligan did; and for three hours and a quarter, in a speech crammed with Latin quotations and unsurpassed for eloquence, he explained the situation of me and my family . . . the state of Ireland — the original and virtuous poverty of the Coxes — from which he glanced passionately for a few minutes (until the judge stopped him) to the poverty of his own country; my excellence as a husband, father, landlord; my wife's as a wife, mother, landlady. This is excellent fooling, to be sure; but it is a little too absurd, even for burlesque.

No reference of any importance to law or lawyers is to be found in "Vanity Fair." When Rawdon Crawley became bankrupt his wife settled his affairs herself. Mrs. Crawley employed no lawyer in the transaction . . . and Mr. Moss complimented the lady upon the brilliant way in which she did business, and declared that there was no professional man who could beat her. Then, of course, we have the well-known picture of Mr. Moss's sponging-house in Cursitor street, Chancery lane, where Rawdon Crawley was confined for debt. In the "Newcomes" our old friends Warrington and

Pendennis appear again, but only, for the most part, in the capacity of chorus.

Altogether it will be seen that Thackeray's early connection with the law tinged his literary work to a considerable extent. For the lawyer pure and simple, with his somewhat narrow outlook and complete absorption in his profession, Thackeray, it is to be feared, had but scant admiration. Most of his barrister heroes, therefore, are Bohemians and men about town first, and lawyers afterwards. — *The Law Times.*

WITNESS-BOX WIT.

A GREAT outcry was raised some seven years ago, says the "Irish Law Times," against the methods of the bar in the cross-examination of witnesses. It followed what was known as the great pearl case, in which the present lord chief justice, then the foremost advocate at the bar, was alleged to have treated a certain witness with great unfairness by adopting a line of cross-examination that insinuated that the jewel had been stolen by him. The only result of this long discussion upon the ethics of cross-examination was the vague conclusion that, although some members of the bar were occasionally tempted to make reckless conjecture the basis of cross-examination, every barrister of repute observed the famous dictum of Sir Alexander Cockburn, that an English advocate should maintain his client's cause "with the sword of a soldier, not the dagger of the assassin." The conclusion that an advocate ought not to seek to damage the testimony of a witness by making him the subject of reckless insinuations was rather too obvious to be of much value; but the discussion was not altogether in vain, since it enabled the late Sir Frank Lockwood to tell a story that deserves to be remembered. His contribution to the discussion, which proceeded at length in the columns of the "Times," was a tiny epistle beside the elaborate letter sent by the late lord chief justice, but it was certainly not less valuable.

"I have read with interest," he wrote, "the various letters on the subject of cross-examination. It appears to me that, in the general condemnation of counsel, your contributors have lost sight of one side of the question, namely, the grave difficulty in which counsel is often put by the — I fear I must use a word which savors of harshness — impertinence of witnesses. Let me illustrate what I mean by a personal experience. I was engaged in conducting the defense of a person charged with cattle stealing. For obvious reasons I do not give the name. A witness deposed to seeing the 'beasts,' as he called them, in the custody of the accused. On cross-examination, I ascertained that he was some distance from the animals, and so asked, 'How could you tell they were beasts?' Answer: 'Because I could see 'em.' Question: 'How far off can you tell a beast?' Answer: 'Just about as far off as I am from you.' Now, surely, sir, counsel should have some protection from outrages such as this. I distinctly remember that upon the occasion quoted I received sympathy from neither the bench nor the public — nor, indeed, the bar."

The wit that shines from the witness-box has usually a strong flavor of impertinence. A witness in a recent police court case, who contradicted the evidence of a policeman, was asked whether he was prepared to describe the constable as a liar. "No," he answered, "I won't exactly say the constable is a liar, but I don't mind sayin' he's 'andled the truth most carelessly." This answer

displays a delicacy of feeling which is absent from the great majority of retorts from the witness-box.

Sir Frank Lockwood was not the only advocate who questioned a witness as to the measurement of distance and found the task an unpleasant one. A witness, being cross-examined as to his distance from a particular place, answered very promptly, "I was just four yards, two feet, and six inches off." "And how came you to be so exact in the matter?" asked the counsel, with a significant look upon his inquiring countenance. "Because," came the unexpected reply, "I expected some fool or other would ask me, and so I measured it."

Humor in the witness-box is not nearly so plentiful as it used to be, if one may judge from the stories told in the memoirs of the leading advocates of days gone by. Probably one reason for the decline is that the present generation of counsel adopt towards witnesses a more conciliatory tone. The most successful cross-examiners are those who have most thoroughly grasped the meaning of the familiar saying that honey catches more flies than vinegar. A witness requires to be provoked in order to be witty, he scarcely gets a chance unless he is bullied. This opportunity, now grown rather rare, was always at hand when the "badgering" process was common in the courts. Baron Alderson once remarked to an advocate who was notorious for the personal nature of the questions he addressed to witnesses, "Really you seem to think that the art of cross-examination is to examine crossly." Such an impression was apt to lead to very unpleasant results for the advocate who lay under it.

One of the neatest instances of the tables being turned upon a bullying counsel was afforded by a clergyman, who gave evidence at the Worcester Assizes in a horse-dealing case. He gave a somewhat confused account of the transaction in dispute and the cross-examining counsel, after making several blustering but ineffective attempts to obtain a more satisfactory statement, said, "Pray, sir, do you know the difference between a horse and a cow?" "I acknowledge my ignorance," replied the reverend gentleman. "I hardly know the difference between a horse and a cow, or between a bull and a bully — only a bull, I am told, has horns, and a bully" — here he made a respectful bow to the advocate — "luckily for me, has none."

Quite as palpable was the hit of the farmer who, though severely cross-examined on the matter, remained very positive as to the identity of some ducks which he alleged had been stolen from him. "How can you be so certain?" asked the counsel for the prisoner; "I have some ducks of the same kind in my own possession." "Very likely," was the cool answer of the farmer, "those are not the only ducks I've had stolen."

Sometimes the witness has scored off the judge, but here again the cause of his humor has usually been a display of rudeness on the bench. A witness, whose veracity bore no resemblance to the reputation of Cæsar's wife, once deviated into the truth. "Ah," said the judge, "he's telling the truth now. I can see it by his natural embarrassment."

It is related that a Quaker went into the witness-box at Guildhall without the characteristic costume of his sect, and that Lord Ellenborough, having inquired if he was really a Quaker, and received an answer in the affirmative, said, "Do you really mean to impose upon the court by appearing here in the disguise of a reasonable being?" It is difficult to imagine any living occupant on the bench making such observations as these. In Lord Ellenborough's day the attitude of the bench towards the witness-box was far less considerate than at the present time, and it was easy for a conflict to take place in which the judge got the worst of it. Such an experience once befell Lord Ellenborough himself. A bricklayer appeared before the distinguished judge in clothes

that were covered with his trade marks. "Really, witness," observed his lordship, "when you have to appear before this court, it is your bounden duty to be more clean and decent in your appearance." "Upon my life," replied the bricklayer, "if your lordship comes to that, I'm thinking I'm every bit as well dressed as your lordship." "How do you mean?" Lord Ellenborough demanded angrily. "Why, faith! you come here in your working clothes, and I come in mine."

Witticisms are a favorite resource of the prevaricating witness, but they usually prove to be no laughing matter to the person in whose interests they are perpetrated. The experienced cross-examiner does nothing to discourage the impertinence of such a witness, because he knows that it leaves upon the minds of the jury a strong impression that the witness is trying to keep something back from the court. Perhaps no better instance can be given of this flippant style of testimony than the following account of a dialogue which took place between a female witness and a well-known member of the bar at an Old Bailey trial, at which Mr. Justice Grantham was the presiding judge: "What are you?" the cross-examining counsel asked. The witness was silent. "What are you?" he repeated. "A woman," she slowly replied. "What is your occupation?" "I do my housework." "And after that — when you have done your housework — what do you do?" "I go into the park." "And that is how you occupy your time?" "No," answered the witness, amid one of many bursts of laughter. "It is no laughing matter," said the counsel sternly. "I should be sorry," replied the woman, "to laugh at you." "How do you live? Do you do needlework?" "Sometimes I do." "Is that your answer?" "Yes." "How do you support yourself?" "How do I support myself?" repeated the witness, "Yes," said the counsel. "Do you mean," inquired the witness, "How do I live?" "Yes, yes," interrupted Mr. Justice Grantham. The witness answered slowly and dramatically, "I eat and I drink." This is the kind of "humor" which creates much amusement in the court, but it is terribly mischievous to the cause which the witness has come to support, and gives, therefore, no trouble whatever to the counsel whom it is supposed to baffle.

A far more difficult person to manage is the witness who thinks it funny to pretend to a greater stupidity than he actually possesses. "Did you see the defendant throw the stone?" a witness was asked in an assault case at the York Assizes. "I saw a stone, and I'm pretty sure the defendant threw it, was the reply. "Was it a large stone?" "I should say it was a largish stone." "What was its size?" "I should say it was a sizeable stone." "Can't you say exactly how big it was?" "I should say it was a stone of some bigness." "Can't you give the jury some idea of how big it was?" "Why, as near as I can recollect, it was something of a stone." "Can't you compare it to some other object?" asked the persistent advocate. "Why, if I was to compare it," answered the witness, "I should say it was as large as a lump o' chalk." Such stupidity is too grotesque to be genuine.

A NOTED LAW FIRM.

By the late A. Oakey Hall.

THE law directories of London and of large American cities, seem to show a preponderance of law partnerships over individual practitioners. But in older times, law firms were infrequent. Their establishment came about when the practice of law in the business growth of the world assumed more the trappings of a trade than the ancient robes of the profession that Cicero adorned, and when increase in variety of litigation, through the expansions of commerce and of business, suggested to attornies that one practitioner might not be versatile enough to concentrate in himself the legal care of estates, patents, copyrights, admiralty pleadings, jury trials, arguments in banco and office advice to clients; and that several lawyers in partnership could better attend to such a variety of matters, and, by division of labor, yet working to one end, secure individuals special attention. So that when a client invoked legal advice or aid, a legal partnership could turn him over to the member best equipped by special learning or experience to consider his case. Readers of that matchless legal novel, "Ten Thousand a Year," written by Samuel Warren, an English Q.C. of earliest Victorian times, will recall how this division of labor was distributed in the fictitious firm of Quirk, Gammon and Snap; and how Quirk the senior was the spider lawyer who trapped clientular flies; how Snap the junior attended to the mint, anise and cummin of law practice in minor and criminal courts; and Oily Gammon supervised expediency, drawing-room practice, distributive tact, fine phrasings and winning courtesies among clients or barristers, Q.C.s and judges.

Among the score of notable law firms which, during the seventies, did large business in litigation and the *componere lites* affairs of life, was that of Vanderpoel, Green & Cuming, in New York City, and now to be considered in its separate individualism. Associated in its business, without especial nomenclature in the partnership style, were, as a junior, Almon Goodwin, and another who might be termed a special partner, Augustus L. Brown, who had been the Caleb Quirk of a preceding firm in which were all the individuals just named. Of the firm in question whose names were used, Aaron J. Vanderpoel and Robert S. Green have deceased, as has also the Caleb Quirk Brown. A new partnership has risen in its place, composed of the son of the elder Vanderpoel, of Almon Goodwin and of James R. Cuming, under the style of Vanderpoel, Cuming & Goodwin.

Of the three in the departed firm, Aaron J. Vanderpoel, whose intellectual portrait in oil greets every one entering the Manhattan Club of New York City whereof he was long president, may be justly described as a born lawyer, who, in his birthplace at Kinderhook (made famous by the life residence of President Martin Van Buren), while yet a juvenile, had compromised school-boy strifes, had taken the part of the weak, and had aided in redressing juvenile wrongs; while being also a vigorous spokesman in sports or studies. When yet a school boy, two of his uncles were judges — one, James Vanderpoel, a circuit judge in Albany, and the other — after whom he was named — Aaron Vanderpoel, on the bench of the superior court of the city of New York. Such professional family affiliation naturally, as well as his own mental trend, led young Vanderpoel into embracing the legal profession, that is composed "of sparks gathered from the ashes of all the sciences." After early school training in the famous Kinder-

hook Academy, he passed four years in the New York University, where he had for college associates, such scholars as Robert Ogden Doremus, now the world-renowned chemist; George H. Houghton, the veritable Saint John of the now historic "little church around the corner," in New York City; George H. Moore, long curator of the Lenox Library; William Allen Butler, now the poet lawyer; William A. Wheelock, now a great Knickerbocker banker; George J. Adler, afterwards compiler of the great German and English dictionary bearing his name; Samuel Oakley Vanderpoel (elder brother), long, in after life, health officer of the port of New York; and scores of other college mates who graduated from the university at the time when it was in its college zenith and before it became overshadowed, and placed in the scholastic rear, by its rival, Columbia. Young Vanderpoel was also under the instruction of a grand college faculty, which numbered at its head Theodore Frelinghuysen — who during the year when Vanderpoel graduated, was made a vice-presidential candidate on the ticket with Henry Clay — and also Caleb S. Henry the eminent professor of Logic and Rhetoric; John W. Draper, the greatest chemist of his era, who first utilized the discovery of Daguerre toward fixing the human face on the cameratic plate, and Taylor Lewis, the professor of Greek, who seemed to continuously live in a metaphorical classic Athenian temple, expounding the language of Homer to students. Amid such excellent scholastic surroundings, young Vanderpoel could not refrain from becoming well prepared for a legal novitiate, and after dropping cap and gown with an A.B. from the top of the alphabet to crown his surname towards its end, he entered the law office of Mr. Smith Bryce, now retired to become a social nestor at Newport, and there, amid its breezes, in his grand old age, to read the "North American Review" that his son directs. This elder Bryce — whenever visiting his favorite Manhattan Club where he is Sir Oracle (but not the one described in Shakespeare) is often observed by members to pause before the portrait of his old pupil, and sometimes tells how often he was obliged to chide that pupil, far back in the forties, against overstudy; so enthusiastic was Vanderpoel in delving into legal first principles and tracing them into the reports. When admitted to practice, Vanderpoel, through an argument, attracted the attention of one of the greatest *nisi prius* lawyers of New York City, Nathaniel Bowditch Blunt. The latter enjoyed a large and varied practice but had just been elected district attorney, which office proved to work a hindrance to his care of private clients; therefore he invited Vanderpoel to aid him with them. Although

AARON J. VANDERPOEL.

only a few years past his majority, he did not hesitate to accept the responsibility. Then came, what alas, so many clever young lawyers miss, opportunity, which he embraced to the full; and at *nisi prius*, and on appeals, he rapidly rose, eliciting approvals from clients, juries and judges. District Attorney Blunt became so fond of his official duties that his civil practice fell entirely to the supervision of his junior partner. In a few years, however, the senior, worn out with public work, fell ill and died; when Vanderpoel founded a new firm, which for nearly a quarter century he guided into exceptional eminence and full pecuniary reward.

Next, on the retirement of two other later inducted partners, he formed a new firm of Vanderpoel, Green & Cuming: which is the great law firm under contemplation in this sketch. The latter had been only a young office boy for the Blunt & Vanderpoel firm, but his habits of thought, phenomenal judgment and studious turn of mind in one so young, had enlisted the sympathetic attention of his elders, so that they soon made him the chief law clerk of their office. Hence his association in the new firm came as a perfectly natural event.

Robert Stockton Green came also of a legal family. He and his brother Ashbel Green (now best known to the profession as author of a learned treatise upon the doctrine of *ultra vires*) were at the New Jersey bar; and they had been valued Princetonians. He had more graces of oratory than Vanderpoel, who was persuasive in a more conversational or colloquial tone with jurors and the Bench, although when deeply interested or excited by topics he could rise into eloquent utterances. Vanderpoel was the most logical of the two. Green was disposed to be what the Bench term "a case lawyer"; the other, while never neglecting fortifications from the reports, argued *a priori* from principles rather than *a fortiori* from decisions. After cracking any litigious nut Vanderpoel would, with a logical pick, separate the skin from the fruit and dig into the very core, extracting all its delicate points. He was a firm disciple of the maxim *eadem ratio ibidem lex*. So was Cuming — a rigid moralist of the Scotch and Irish Presbyterian Church who always first sought the just side of the litigation in hand. He was fonder of equity; but Vanderpoel and Green were devoted disciples of general common law and its statutory *aides-de-camp*. Vanderpoel was a champion brief-maker and Green was a champion exemplificator of briefs after these were made. Cuming was a delver for both partners and became their "devil" — as London Q.C.'s name their junior assistants. Many an English Lord Chancellor, chief-justice and attorney-general has expressed indebtedness to his "devil," who, in time, on his bookish and thought-mining deviltry, himself became eminent. Cuming was executive, painstaking and patient. He knew the value of Longfellow's line in his psalm of life — "still achieving, still pursuing, learn to labor and to wait." He, like Green, had a more judicial cast of mind than Vanderpoel, who was rather the aggressive advocate. Green was not a lawyer of detail; Vanderpoel was such, yet his share and also what ought to have been Green's share of detail fell upon Cuming, who, if he had lived in the time of Alexander, might have untied and not have severed the Gordian knot. Green was impulsive and would have cut that knot like the impetuous Macedonian. Vanderpoel might have also finally cut it, but he would first have at least endeavored to untie it. Green and Cuming had many literary tastes, but Vanderpoel few. Turn the first two upon the shelves of a great public library, and they would have rummaged into history, fiction, poetry and biography as well as into legal volumes. But Vanderpool, if in it, would have first visited the calfskin and have neglected marble edges, perhaps, entirely. He lived like Coke surrounded by a

perpetual atmosphere of law, and not like him who became Sir William Jones.

Vanderpoel seldom alternated his atmosphere of more or less legal fog with a secondary atmosphere of *belles lettres* and poesy. I doubt if Vanderpoel ever read poetry or fiction except as they were sometimes discovered in the law reports in his exceptionally large private library of law books which — like that of Chief-Justice Charles P. Daly as already noted in a previous number of THE GREEN BAG — began with the Year-books, or Plowden, and came down serially to the very last edition of Kent or the last volume of Federal Reports. Yet by the aid of "Reviews" Vanderpoel kept neck and neck with current literature, and became "enough up in it" for illustration in argument. Vanderpoel was a master of cross-examination. He possessed at times just the rasping voice that could stir a recalcitrant witness into confusion whenever occasion so demanded. Green was more at ease before a questioning and interrupting judge than confronting the witness chair. And yet there have been few lawyers who like Richard Henry Dana and Rufus Choate, for instances, could bestride the scales of justice and there equally balance the beam both at *nisi prius* and *in banco*. One partner fully realized his Knickerbocker name — meaning when translated from Low Dutch into English, "of the pool"; for the pool is one thing in tranquil July and another during brusque November: similarly Van-der-pool could be either tranquil or brusque. But it seemed foreign to Green's nature to be ever brusque, so also to partner Cuming. Vanderpoel was a good actor: the which Green was not. Nor Cuming, who was as gentle by nature as the poet Keats, whose portrait he much resembled. The intercourse between the three partners was ever sweetly cordial, and indeed, affectionate. It is doubted whether a cross tone or a splenetic look was ever exchanged among the trio, or ever a jealousy engendered. Each was as much a part of partnership machinery as are the pivots and wheels of a Waltham or Waterbury watch. They all became popular with judges, court habitués and associates. I fancy that the word "pettifog," or the phrase "sharp practice" was never heard inside or outside of the well-appointed offices in the Tribune building of Vanderpoel, Green and Cuming, to be applied to any of them. I also fancy that if Judge Brown of the Federal District Court of New York City, or Henry W. Bookstaver, now judge of the State Supreme Court, or the dashing advocate John J. McCook, or the shrewd Francis Lynde Stetson, — partner of Grover Cleveland during the latter's recess from office, or Gen. Stewart L. Woodford, the distinguished and ornate orator, or Morris Phillips who exchanged law for journalism, or William

J. R. CUMING.

Edelstein, now retired from practice — all of whom were law pupils of Vanderpoel in their younger days — could be approached as to all of the foregoing statements they would heartily echo them.

There was always a grateful look of recognition on the faces of the judges of a court when they saw Vanderpoel rise to make an argument. Judges are fond of hearing facts concisely summarized and logical positions taken and enforced. There never yet was a judge who was bored by Vanderpoel. If the latter was thought to be sophistic there was an ingenuity in it. If he quoted a case the judges knew that it fully bore upon the controversy and was not stated as a mere makeweight. If he stated a fact they felt sure that it would be sustained on reference to Case or Bill of Exceptions. Vanderpoel was as accurate in speech as in thought. It seemed ever a race between him and Cuming which of them should best respect the ethics of the profession. Green construed those ethics more liberally than they, and being almost a born politician could skillfully steer his legal bark, freighted with points or argument, between the Scylla of doubtful representation and the Charybdis of evasion. He excelled the other two in policy, and thought more than they of success in a case through an end justifying means.

ROBERT S. GREEN.

I have said Green was a born politician; while yet a young lawyer in his native New Jersey he locally entered the jousts of Democratic politics and sought and obtained a local judgeship. This was previous to his entering the partnership just outlined. Nor did the new phase of duty dull his keenness for politics. While practicing mainly in New York City he continued his residence in Elizabeth City, New Jersey, and a practical suburb of the former metropolis, where he remained industrious in politics. He was elected to Congress and served in it one term, but like many other parliamentary lawyers from the time of Erskine down, he did not shine in the national forum with lustre equal to that which he exhibited in the legal forum. But, although interrupted by politics, his contributions to the work of the firm continued, yet his absences threw more of its burdens upon Vanderpoel and Cuming and gave opportunity to Almon Goodwin — a silent member in the firm style — for greater public appearances and a winning of experience. After his congressional career Green was elected governor of New Jersey, which brought practically his retirement from the firm. That old State has been ever happy in its lawyer governors — more so than in those chief magistrates whom it has selected from business circles, and these have been many. Green completed an admirable trio of legal governors for New Jersey, as witness, Joel

Parker, Leon Abbott and Green. Prohibited by the State constitution from serving a second successive term, he was then selected by his successor to fill a vacancy in the vice-chancellorship. His incumbency of this was interrupted by his decease in 1895, after several years of distinguished and popular service. He made a model jurist in that office. It was even a delight of the bar whenever the chancellor's discretion remitted an equity case for hearing before Bob Green, as he was affectionately called by all lawyers at their mess-tables. It was a common phrase to hear in the court house at either Trenton or Jersey City, as an answer to the question what's going on upstairs, to hear, "Oh, the two Stocktons are at law with each other." The name of the attorney-general was Stockton which was the middle name of Vice-Chancellor Green. This meeting of Bar Stockton and Bench Stockton was always in legal purview highly interesting. He of the bar — as fine an orator as were Frelinghuysen, Bradley, the two Parkers and Keasby in their day — was animated, emotional, and in fiery earnestness presented a curious contrast to him of the bench, whose statuesque calmness and punctilious attention were never disturbed by eloquent speech, although his enkindling eyes might manifest a gratified interest. In Vice-Chancellor Green, Advocate Green had been wholly merged. The even judicial character of his nature had now found full scope. The policy for politics of the old advocate had vanished, and the ethics of the jurist and the equity of the controversy came into exclusive play. Partner Vanderpoel was never allowed, as Partner Cuming was, the pleasant duty of practicing before his old partner as vice-chancellor. Worn out by zealous devotion to his profession — indeed its very slave — Vanderpoel sought temporary rest and health abroad only to die in Paris of apoplexy, suddenly. Green survived him a few years when he also succumbed to hard work and to his inherited disorder of gout. Both left sons who were then already at the bar. The junior Vanderpoel was made partner by Cuming in a new firm of Vanderpoel, Cuming and Goodwin, and by them their predecessor elders are remembered with never-ending affection. And to this memorial I am sure all their legal compeers will say Amen!

WILLIAM CAMPBELL PRESTON.

By Walter L. Miller of the South Carolina Bar.

II.

ABOUT the year 1817, Preston visited Europe for the purpose of completing his education and enjoying the advantages of foreign travel. He was fortunate in having for his companions on his voyage across the Atlantic a number of young men of good family and of fair education, who like himself were going abroad to finish their educational course. Among them, we are informed, were Everett, Bancroft, Irving and Prescott. In his old age, he is said to have referred to this voyage with great pleasure, and to the delightful hours he had spent with his companions on it.

He had a charming time seeing the sights of Europe, he had *entrée* to the best society, and he was privileged to meet many of the most distinguished men and women in the European world of art and letters. Among the notable characters whom he met were Hamilton Rowan, Lady Morgan, Lockhart, Walter Scott, Wilson, Thomas Campbell and Rogers. He met the poet Campbell in London, and had a very pleasant intercourse with him. It was through Campbell that he made the acquaintance of Scott, — a privilege which Mr. Preston enjoyed very much and appreciated very highly. He not only visited London, but he went over into France also and spent several months in Paris. His journey also embraced Switzerland and Italy. After seeing the sights there, he returned to Edinburgh, where he spent the winter attending several courses of lectures in the far-famed university located there. At Edinburgh, he met Hugh S. Legare, who was also at the university taking a postgraduate course, and, while there, they roomed together. In this way was started, established and cemented a beautiful friendship between two kindred spirits, which was to last through life and I trust beyond. The lectures, which Mr. Preston attended at this university, were those of Playfair, Brown and Irving, on civil law. Mr. Preston stored his mind with knowledge during his stay in Europe. He embraced this opportunity to see its sights, to visit its local spots of interest, and to meet with its celebrities, both in the literary and social world. He attended the theatres and heard some of the world-renowned actors. At Edinburgh he had the benefit of the lectures of men of letters and of science, whose reputation for learning and scholarship was unsurpassed. After Mr. Legare's death, Mr. Preston, at the request of the city of Charleston, delivered an eloquent eulogy on him. Much that he said of Legare was descriptive also of himself. Indeed, there was a marked kinship in their lives and characters — a striking similarity of thoughts and ideas. I will now quote a passage or so from this eulogy, which will not only serve to illustrate Mr. Preston's disposition and taste, but will also give to the reader some idea of the great advantages which he enjoyed during his stay abroad.

In his eulogy on Legare, he says: "The most attractive objects to him were the galleries of fine arts and the theatres. The former somewhat shorn of their beams, in 1818, were yet glorious with the rich, though diminished spoils of Italy and Holland. His cultivated imagination found the counterparts of its images on the canvas or in marble; and while they filled him with delight, furnished him with more exalted, and at the same time more definite, conceptions of grace, beauty, and sublimity. The theatres

were then in the highest state of perfection, and Mr. Legare, being well acquainted with the French drama as a literature, studied and enjoyed its representations on the stage with intense delight. Talma and Duchenoise had brought tragic acting to perfection, and Mars was inimitable in polite comedy. To Mr. Legare, their representations were not only amusement, but a study. The theatre was to him, what it was when Bolingbroke applauded a play of Addison, or Johnson the acting of Garrick. It was, however, illustrative of a trait in his character, that he frequently sought and enjoyed the rich farce of Potier, or the *naïveté* and idiomatic finesse of the vaudeville — for although his general demeanor was grave, and sometimes even austere, yet there was a vein of fun running through his character, with a keen perception of the ludicrous, which not unfrequently manifested itself in the presence of his intimate friends. At such moments, his joyousness, his entire abandon, and a rich play of a riotous imagination, afforded an amusing, and not unpleasing contrast with his habitual reserve. . . . From Paris he went by the way of London to Edinburgh, to attend a course of lectures at the university, then adorned with the names of Playfair, Leslie and Brown, while the presence of Scott shed a glory over the city, which almost obscured the lustre of Jeffrey, the Wilsons, Alison, and others, who, of themselves, by their science, learning, and social position would have made Edinburgh the most intellectual and agreeable city in Europe, to any foreigner who had claims to denizenship in the republic of letters."

And now the plan of education, in its main features mapped out by Francis Preston for his son William's training, has been acted on and completely carried out. What a splendid plan it was! An admirably equipped teacher for the academic years — one thoroughly trained in the classics and well versed in polite literature; Washington College, with its then high prestige, for a few months, and then the South Carolina College, with a reputation, at that period, vieing with the great universities of the East; a winter at Richmond, the home of southern chivalry, refinement, and culture, and at Washington, the capital of the nation, with its atmosphere of eloquence, learning, and statesmanship; a season in the office of perhaps the most eminent lawyer of his day; an extensive tour on horseback through the leading States of the "Far West"; a voyage across the water, and, finally, a tour through England, France, Italy, Switzerland and Scotland, embracing in it a stay for a while in London, the metropolis of the world, a sojourn of several months in Paris, leading the cities of the world in beauty, gayety, and fashion; and culminating with a winter at Edinburgh in attendance upon the lectures delivered in the celebrated university located there — an institution at that time eclipsing all others in learning and scholarship, — such was the plan of Preston's education. Where can we find it equalled, not to say surpassed? Can the president of Yale or Harvard, in this year of our Lord, 1899, improve upon it? I have read some able articles advocating travel as a substitute for a collegiate course. I see every now and then propositions advocating the abolishment of the classics from the college curriculum and the substitution of the sciences therefor, I hear a great deal about co-education; — but, after all, in my humble judgment, the educational equipment and training of Preston were admirable and we have yet to see suggested an improvement upon them. Mr. Preston returned to this country in 1819 and was admitted to the bar in Virginia, in 1820. It was in 1819 also that he was married "to that beautiful and excellent lady, Miss Maria Coalter, to whom he had become attached while in college."

It seems that both Mr. Preston and his wife concurred in selecting Columbia, South Carolina, as their home and place of resi-

dence for the future. Consequently, we find them settling there in 1822, and during the same year Mr. Preston was enrolled as a member of the Columbia bar.

He at once formed a co-partnership for the practice of the law with D. J. McCord, Esq., the law reporter of South Carolina and one of the editors of "Nott & McCord's Reports." Mr. McCord was a lawyer of prominence and had a considerable practice. Through this partnership and the business which it had in the courts, Mr. Preston was at once brought before the people, and was afforded a fine opportunity for displaying his professional skill and legal learning, without having to pass through that unpleasant ordeal, so trying to the patience and so depressing in influence, — waiting for clients. I presume Mr. McCord, his partner, by reason of his age and his longer experience at the bar, must have somewhat overshadowed him at first, for, years afterwards, we hear of Mr. Preston's referring to his early experience at the bar and playfully mentioning the fact that he was at that time called "Mr. McCord's young man."

Judge O'Neall, in his "Bench and Bar of South Carolina," tells us that Mr. Preston made a speech before the South Carolina House of Representatives, in 1823, in favor of the claim of Asa Delozier, which was "remarkable for its eloquence and argument." In 1828, he defended Judge James, when the latter was impeached, and made an eloquent argument in the latter's behalf, all, however, without avail. Says Judge O'Neall: "Mr. Preston wrote the beautiful address of Judge James when called to the bar of the Senate for sentence. It will be found in the sketch of Judge James. It is a perfect gem, radiant with eloquence, and full of claims for sympathy in behalf of the venerable sufferer."

In 1829 he represented his county in the State legislature. During the same year he lost his wife, who left surviving her an only child, a daughter. He was also returned to the legislature in 1830 and 1832.

Dr. Laborde tells us that soon after his admission to the bar he was employed "in a case of contested election before the Senate, between General Geddes and William Crafts, which was the occasion of great excitement in the legislature and the State. In this trial he bore himself with spirit and ability and, among other compliments, it may be mentioned that he so excited the admiration of Colonel James Hamilton, that he sought an introduction to him at the close of his speech, which soon ripened into an intimacy that, amid the many changes of fortune, never suffered the slightest diminution."

In 1836 he became a United States senator, taking the place of Stephen D. Miller, who had resigned. He remained a member of that body until 1839 or 1840, when he also resigned. He served his State with great distinction in that body, reflecting high honor upon it by his brilliant eloquence and wise statesmanship.

In the exciting political campaign between Martin Van Buren and William Henry Harrison for the presidency, Mr. Preston was a Harrison man. During that year, 1840, he and General Waddy Thompson both made speeches in favor of Harrison, among other places at Lomax's Old Field, Abbeville county, South Carolina, and a respectable minority of the substantial people of the county approved of their course, though a majority of the voters, led by Hon. Armistead Burt and Judge D. L. Wardlaw, the two leaders of the Abbeville bar, supported Van Buren.

A distinguished alumnus of Wofford College says: "In my college days there were traditions of a great campaign (1840), in which Preston and McDuffie spoke on alternate nights to crowds in Columbia, 'Whig and Democrat.' Preston was alluded to as the 'vagrant politician,' 'the strolling orator,' 'the mountebank statesman.' And,

on the next night, Preston paid it back in characteristic style. McDuffie's last speech was closed with powerful effect, by his quoting, with all his passionate energy, the lines from Addison's Cato,

> 'O Portius, is there not some chosen curse,
> Some hidden thunder in the vault of Heaven,
> Red with uncommon wrath to blast the man,
> Who owes his greatness to his country's ruin!'"

Mr. Calhoun was Mr. Preston's colleague in the Senate, and there was a good deal of friction between them on some of the political questions of the day. Mrs. Preston, the wife of the subject of this sketch, *née* Miss Penelope Davis, kept a journal during the closing months of her stay in Washington. In it we find some interesting comments on the political situation at that time.

In speaking of a dinner, where she met Mr. Webster, Mrs. Preston says: "Mr. Webster was allotted to me, and made himself very agreeable during our session. He tells me he is in a quandary, that in replying to Mr. Calhoun he wants to attack nullification (for Mr. Calhoun has in some sort involved subtreasury and nullification), but, as Mr. Preston is on his side (anti-sub), he does not wish to worry Mr. Preston by attacking nullification. I replied you must be aware, Mr. Webster, nullification has nothing to do with the subtreasury scheme, that, though it might be Mr. Calhoun's wish to involve the two together, in point of fact there was no kinship, and why should he (Mr. Webster) cater to Mr. Calhoun's wish, and thereby place Mr. Preston in an awkward position. To all of which Mr. Webster lent a polite and sensible hearing, and I do not think he will touch upon nullification."

She also refers to a speech which Preston made on the Texas resolutions as follows: "Mr. Preston spoke finely to-day, I understand, with less ornament, and in a more argumentative style. Mr. Buchanan stepped up and said, 'I always knew you could make the finest figures of speech of anybody in the Senate, Mr. Preston, but I now see you can make the best argument.'"

To a spirited debate in the Senate, in which Calhoun, Clay and Preston all took part, Mrs. Preston refers as follows: "To-day Mr. Calhoun replied to Mr. Clay. The whole house, galleries and doorways presented nothing but masses of human heads, and, so excited was I, that I did not feel tired, though I sat from one till five. Mr. Calhoun made a grand speech — occasionally his voice so choked with passion you could hardly hear him. Nothing personally insulting, but sometimes Mr. Calhoun twitted Mr. Clay as severely as Mr. Clay had him. Clay's reply was, for the most part, loose and disjointed, and right bald. However, now and then, his blows were both heavy and keen, and the sympathies of the galleries were with him, for they laughed at all his jokes. Mr. Clay wantonly assailed nullification, and Mr. Preston, weak and exhausted as he was, rose and replied in the most earnest manner. He said he had before supposed Mr. Clay brought about the compromise between the government and our gallant little State from broad patriotism, and not from any narrow personal and petty view; but that the senator from Kentucky had been pleased to leave this high and holy position, and he must remain where he had placed himself. Mr. Preston rebuked him severely for saying that he had felt interested in saving from ignominious death such nullifiers as were in this city in reach of Jackson. Mr. Clay, in a few remarks, tried to do away with the taunting jests on South Carolina nullifiers, but we all still owe him a grudge."

In another place in her journal Mrs. Preston makes the following interesting reference to Mr. Preston: "Nothing interesting in the way of politics. The Georgia news seems to trouble Mr. Dawson. I told Mr. Clay that Mr. Preston would be killed in South Carolina, by having his name appended as vice-president on the Clay ticket.

Some foolish editor has started it, and I believe it would be agreeable to the Whigs. My husband has no wish or say in the matter; but Mr. J. C. Calhoun and his friends are filled with jealousy towards him. If Mr. Calhoun had acted with magnanimity or justice toward Mr. Preston, he would have found himself nobly sustained by him, whenever there was a chance of Mr. Calhoun being elected."

Although, at times, Mrs. Preston's journal is critical with reference to Mr. Calhoun, still, after all, there are a number of complimentary allusions to him, and it is easy enough to read between the lines, that both Mrs. Preston and her husband held Mr. Calhoun in high regard as an orator, patriot and statesman.

I have always been impressed with the nobility of character and the magnanimity of soul displayed by Mr. Preston towards Mr. Calhoun, on one occasion, in the Senate. The Ashburton treaty was under consideration by that body, and Mr. Calhoun had just made a great speech upon that subject. Preston and Calhoun were not on friendly terms at the time, but Mr. Preston had too big a heart to allow that to restrain him, — he felt bound to give expression to his patriotic emotions. After the death of Mr. Calhoun, Mr. Holmes, in the beautiful eulogy on Calhoun, which he delivered in the House of Representatives, made the following touching reference to this incident: "When the treaty was before the Senate, it was considered in secret session; and I never shall forget that, sitting upon yonder side of the House, the colleague of Mr. Calhoun — who at that time was not on social terms with him — my friend, the honorable Mr. Preston, whose heart throbbed with an enthusiastic love of all that is elevated — left his seat in the Senate and came to my seat in the House, saying, 'I must give vent to my feelings; Mr. Calhoun has made a speech which has settled the question of the northeastern boundary. All his friends — nay, all the senators — have collected around to congratulate him, and I have come out to express my emotions, and declare that he has covered himself with a mantle of glory.'"

When Mr. Preston found that he could not conscientiously support the views entertained by South Carolina on national politics, the State favoring Van Buren's election to the presidency, while Mr. Preston was for Harrison, he resigned his seat in the Senate. That was about 1839 or 1840. He then returned to the bar and devoted himself to the practice of his profession. He was tired of politics and had no disposition ever to enter them again. In 1845, he was elected president of the South Carolina college. He was nominated for that high office by his friend and classmate, Judge O'Neall. It was the very place for him. "The presidency of the South Carolina College suited better his time of life, his health, and his tastes. Though not an erudite *savant*, he was better, for his position. His genial sympathy with young men won them to his influence; while the fascination he possessed for them, bringing him *en rapport* with all that was highest in their nature, conduced to its finest development."

His administration was a successful one. Attracted by the splendid reputation which Preston had for eloquence, character, and scholarship, young men flocked to the South Carolina College from all parts of the South. In speaking of the election of Mr. Preston to the presidency of the South Carolina College at a time when the people of the State were opposed to his political views, the "Charleston Courier" of May 24, 1860, said: "It is, indeed, a singular circumstance of deserved felicity, on which the surviving friends of the great and gifted orator will dwell with pleasing recollections, that he outlived and conquered all political asperities and prejudices. Passing through an ordeal of unparalleled trial, and a political crisis in which a man's foes were, in many

cases, of his own household, he had the good fortune, deservedly, to re-conquer the confidence and esteem even of those who were most bitterly opposed in political conduct and preferences. The call of William C. Preston to the presidency of the South Carolina College was as honorable to the State as to himself. It elicited a signal tribute and compliment from John C. Calhoun, who, for the first time, sent a son to the South Carolina College, in consequence of Mr. Preston's accession to the presidency.

Mr. Preston retained this place until 1851, when he resigned it on account of failing health. His resignation was received by the board of trustees with great regret. He was for many years a trustee of the college. His interest in the college did not cease with the dissolution of his official connection with it. "The college is as much as ever the object of his affections. He loves to linger amid its delightful groves; to look upon the temples dedicated to knowledge, and to call up the memories of those days when he personally mingled in the stirring incidents of college life. The cordial greeting which he always receives from the students upon his occasional visits to the halls at times of public exercises, but attest the impression which he has left behind him, and the admiration of his genius and services."

In the tribute of respect paid to him after his death by the faculty of the South Carolina College, we find the following: "Nearly fifty years ago, he entered the college as a student, and throughout this long period preserved an almost unbroken connection with it as trustee and president. Few have exhibited as large an interest in its welfare, and none have contributed more to its honor and reputation. The last active portion of his life was spent in its service, and the last occasion on which he attended a public assembly, was in the college chapel."

Among other public positions, which Mr. Preston filled, was the office of mayor of Columbia.

Mr. Preston was married twice. In O'Neall's "Bench and Bar" we find the following: "In 1830 or 1831, he fortunately replaced the wife of his youth by the amiable, beautiful, well-informed and accomplished lady, Miss Penelope Davis, the second daughter of Dr. James Davis, of Columbia." She died some five years before Mr. Preston.

"The sere and yellow leaf" found Mr. Preston's condition peculiarly tender, touching, and pathetic. He was then an old man, crippled and paralyzed. The wife of his bosom, who had been his stay and his companion and who had loved him tenderly and devotedly, was gone. Sally Campbell Preston, his only child, "a beautiful and accomplished girl," had died some years before, just as she was budding into womanhood. He had laid aside his political armor, had doffed his professorial robes, and was calmly waiting for the summons to come up higher. Solitary and feeble is he, "and yet a mellowness of glory seems to be floating round these gray hairs as a nimbus; and we almost seem to hear from his lips the words: 'Earth no more, but heaven!'"

Mr. Preston's death occurred in Columbia on Tuesday, May 22, 1860, and the opening words of the editorial of the "South Carolinian" edited by Franklin Gilliard, announced that sad event on the next day in the following words: "It is our mournful duty to announce the death, yesterday, of the Hon. William Campbell Preston, at the residence of his brother, John S. Preston, Esq., in this city. In his sixty-sixth year, a severe and suffering illness from disease of the heart has taken him from amongst us, but he bore his trials with a cheerful submission to the will of the Almighty, and full of the rich hope of the eternal inheritance which is promised to the faithful Christian."

The funeral obsequies were imposing and were described by the "South Carolinian" as follows: "The body was borne from the house of Col. John S. Preston, accompanied by the following pall-bearers; Major Theo.

S. Stark, A. R. Taylor, F. W. McMaster, Thomas Taylor, C. R. Bryce, W. K. Bachman, J. G. Gibbes, B. W. Means. Next came the family and connections, among whom we recognized the venerable form of Judge King, of Charleston, and Gen. Waddy Thompson, of Greenville; then the physicians, Drs. Trezevant and Gibbes; then the servants; then the trustees, faculty, and students of the college; next the citizens, followed by a long line of carriages. When the procession reached Trinity Church, already a large number of persons had there assembled, and it was utterly impossible that all could be accommodated. Not only were the seats occupied, but the aisles were filled by persons standing. The solemn service was performed by the Rev. Mr. Shand. The whole ceremony was a profoundly impressive one. The beautiful and touching hymn 'I would not live alway,' was appropriately selected. On no occasion could it have been sung with more of solemnity, because of the peculiar propriety of the application. It was a requiem over one whose earthly career had been brilliant and illustrious. There was none of his great compeers who, in the combination of burning eloquence, cultivated and refined appreciation, and eloquence of diction, was his equal. He had lived a life much beyond that allotted to man. He was loved, honored and admired by those who knew him, and honored and admired by those to whom his name only was familiar. Disease had incapacitated him for further usefulness as a public man, affliction had blasted his nearest and dearest domestic ties, and religion had allured him from life and smoothed his path to the grave. The requiem fell upon the ear of all who heard it with solemn and soothing symphony, for they felt that life's battle was over with the wearied warrior and the boon of peaceful repose had been granted him. After the ceremony, the body was then interred in the family burying-ground, where rest also his two wives and his daughter."

AT PETTY SESSIONS.

By Edward Porritt.

ONE of the smaller towns is the place at which to see the English county magistrates at work. Such a town is not large enough to have a borough police force and a bench of borough magistrates. It is consequently policed by the county constabulary, and summary justice is administered by the county magistrates. In a town of this character the county magistrates meet once a week or once a fortnight in what are known as petty sessions, and when so assembled deal with offenders under the Summary Jurisdiction Acts, and act as a court of first instance in respect to graver charges which have to be determined at quarter sessions or assizes.

These duties in petty sessions are now the only important ones left to the county magistrates; for in recent years the county magistrates have been deprived of some of the functions which were exclusively theirs, before democracy became supreme in all departments of English local government. Until 1888, the local government of counties was in the hands of the magistrates. They met then in quarter sessions to administer all the civil affairs of the county. They had charge of the county jails, of the insane asylums, of the county police force, and of the main roads and county bridges; and in their hands was all the official patronage con-

nected with these various departments of the civil life of the county.

Then, as now, the county magistrates were appointed for life by the Lord Chancellor; and, in respect to the civil affairs of the county, they had no constituents to whom they were directly responsible, or to whom they had to go for reëlection. In those days, county ratepayers had no control over county affairs. All that they had to do was to pay the county rate, levied by the magistrates to meet the expenses of administering the several departments of county government, In this respect, people who lived in rural England were then at a political disadvantage as compared with those who lived in the cities or boroughs; for, from 1835, all householders in cities and boroughs had votes at municipal elections, and were eligible for election. In 1888, county government was taken completely out of the hands of the county magistrates, and put on as democratic a basis as in the cities, and there were then left to the magistrates only their functions in connection with the administration of justice and the licensing laws. It is to discharge these duties that county magistrates meet in petty sessions.

While in recent years county magistrates have thus lost their hold on county government, as a body they are still as exclusive as in the days when they were supreme in county affairs, and were in possession of all the official patronage of the county. They are still appointed by the Lord Chancellor, and hold office for life; and now, as when their duties were both civil and judicial, no man can be of the county magistracy unless he is of the landed classes. The old freeholder qualification is no longer necessary to a vote at a Parliamentary election in a county division. Candidates for Parliament for two generations past have needed neither a landed nor a moneyed qualification to make them eligible for election; but, as regards the county magistracy, the eighteenth century landed qualification still survives, and the county magistracy is now almost the only office for which a man must hold land to make him eligible.

A magistrate need not be a large landowner; but he must possess an income, derived from land, of at least £100 a year, or live in a house assessed for taxation at £100 Laws of long-standing settle this; and long social usage has set up the negative qualification that a man who has been engaged in retail trade must not be appointed to the county bench. This is a relic of the days of small things in retail trade, of the days when even the most prosperous tradesmen lived over their stores. The conditions of English trade and commerce, even of retail trade, have enormously changed during the last thirty years, but the old usage, excluding men who have been in retail trade, still survives in connection with the county bench. A brewer, who is the owner of perhaps a hundred squalid beershops at which his agents retail beer in penny pots, can be of the county bench; but the old usage as to retail tradesmen would be still sufficient to exclude from the county bench the owner of a great dry-goods store who had made an ample fortune and had possessed himself of a landed estate in the country.

It is in this one respect that the county bench is now different from the borough bench. The Lord Chancellor appoints to both; but in the case of the borough benches, the Lord-Lieutenant, the Queen's representative in the county, does not stand between the Lord Chancellor and the men to be appointed. In the county he does, and it is in connection with the Lord-Lieutenant's recommendation or veto, that the social usage, blackballing men who have been engaged in retail trade, comes into play. There is no such usage in connection with the borough benches; and it often happens that the mayor of a large city who presides over the borough magistrates, returns to his

store when the business of the court is at an end.

It is not necessary that either county or borough magistrates should be learned in the law. They make no pretense to such learning. For each petty sessional division, and for each borough, there is a magistrate's clerk, who is always a lawyer of high standing; almost invariably of the solicitor's branch of the profession. When the magistrates are assembled in petty session, they sit at a long desk raised above the level of the court room. The chairman, who is the mouthpiece of the court, occupies the centre position, and immediately below the chairman sits the magistrates' clerk, who is constantly in communication with the bench, and who retires to the magistrate's room with the bench when any legal point has to be determined. As many as ten or twelve magistrates attend petty sessions. Three form a court, and would do as well as a score; but petty sessions serve as a pleasant reunion, and as most English country gentlemen are not overburdened with business, there is usually a full attendance. The court assembles at ten o'clock. In a division in which there is a large population, it is often in session until two or three o'clock in the afternoon.

Except in cases of more than usual gravity, the divisional superintendent of constabulary acts as the prosecuting officer and marshals the evidence for the police, A petty sessional division is a part of the hundred into which English counties are still divided for the administration of criminal justice, and of the licensing laws. Petty sessions is the court for the division; quarter sessions is the court for the hundred. The police force of the whole county is under the command of the chief constable. Superintendents are in charge of the constabulary in the petty sessional divisions. At every village in the petty sessional division, there is stationed a constable. He lives in a house belonging to the county, to which are attached two or three cells for the detention of prisoners. When the sessions are several days off, a man who is arrested is taken before the nearest resident magistrate within twenty-four hours of his arrest. He is marched, handcuffed by the constable, to the home of the magistrate, who hears only sufficient evidence to justify a remand to petty sessions. Unless the accused can find bail he is held in custody until the sessions.

By far the greater majority of cases which come before petty sessions are under the highway laws, the game laws, the licensing laws, the poor laws, and the elementary education laws. All these cases are disposed of summarily. The charges under the licensing laws, the highway laws and the game laws are mostly preferred by the police; and in all these cases the superintendent of police, who sits at the table with the magistrates' clerk, acts as public prosecutor. The most common offenses under the licensing laws are those of selling intoxicants to people who are drunk, or of selling after closing hours or during closed hours on Sunday. All over rural England, the hours of closing public houses are uniform; and both in the urban and rural districts public houses are closed on Sunday during the hours of church service. Exceptions are made in the case of bona-fide travellers, and to become a bona-fide traveller, a man must have journeyed three miles from the place where he slept on the previous night. Twenty or thirty years ago, offenses against the licensing acts were more frequent than they are to-day. An offense which is proved is endorsed on the license of the public house, and three endorsements may lead to the withdrawal of the license. As a license now-a-days adds anywhere from £300 to £5000 to the value of a house, and is correspondingly difficult to obtain, public-house keepers are increasingly careful not to transgress the licensing laws.

The rural policeman's greatest activity is in connection with the highway laws. He has always been alert in the enforcement of

these laws, and the magistrates seldom meet in petty sessions without having to impose small fines on men who have been drunk while in charge of teams, who have been found by the police asleep in their wagons on the highway, or who have been driving furiously. These fines are small in amount; they range from one shilling to two shillings and sixpence. With these fines, and the costs and fees, however, usually goes the loss of a day's work and a day's pay, for the delinquent teamsters; so that the known alertness of the rural police has a good effect, and accounts in a large degree for the ease and safety which usually characterizes vehicular traffic on English highways.

The bicyclist has of recent years become a new factor in the activities of English county policemen and a new personage at petty sessions. The rural policemen is as alert for the delinquent bicyclist as he has been for years for the drunken or careless teamster; and in a petty sessional division, intersected by main highways connecting large cities, the magistrates have always before them, when they meet in petty sessions, bicyclists who have been riding without lamps, who have trespassed on the footpaths, or have been caught scorching. From the time the bicycle came largely into use, there has been more or less antagonism between bicyclists and county police. Every rural policeman likes to have a case at petty sessions. It is a proof of his alertness, and adds to his local importance. By preference he likes to be there with a poacher; for county magistrates are often game preservers, and are traditionally down on poachers, and approving towards county policemen who bring poachers to justice. The county policeman's great standby, however, is the highway code, and it is a slow-going policeman who cannot between one petty session and the next, manage to pounce on either an offending teamster or a delinquent bicyclist. Next to poachers, the county magistrates' strongest dislike is for bicyclists. They are apt to incommode him when he is driving or riding, and they create a stir on Sundays in the country villages, with which he has no sympathy. When there is a choice between the word of a policeman and of a bicyclist, the case usually ends with a fine and costs for the bicyclist.

Rural policemen are not supposed to constitute themselves assistant gamekeepers. They are not supposed to go off their beats to help in the preservation of game; but they have powers to search people suspected of being illegally in possession of game; and many a poacher who has eluded the gamekeepers, finds himself at petty sessions on a charge under the game laws, through the alertness of rural policemen who have had reason to suspect his mission abroad after nightfall. No case gives a rural policeman better satisfaction than one in which he is able to bring home a charge of poaching, and to prove his case is able to load down the magistrates' desk-table with nets and snares and other impedimenta needed in hunting, as the poacher understands that art. When a poacher is convicted, all these impedimenta are forfeited and are regarded by the rural policemen much as a man-of-war's crew looks upon a prize ship. When it is known that an old poacher is to be charged at petty session, there is always a full attendance of county magistrates; and a policeman who has furnished many of the cases is invariably sure of a good word from the magistrates when his promotion is in question.

The poor law cases which come before the magistrates in petty sessions, chiefly concern affiliation orders, and cases of wife desertion or failure to contribute to the support of parents or children who have become chargeable to the local poor-law fund. When these offenders are runaways, they are arrested by the police; but the prosecution of these cases is in the hands of the poor-law guardians, whose clerks conduct the cases in the courts.

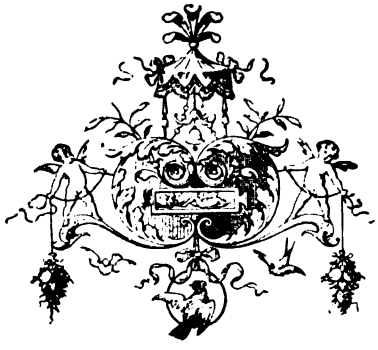
Most of the cases which come before

petty sessions are on summonses issued against the defendants by the magistrates. Only in the more serious cases, or in the case of persons without settled habitations do the defendants come before the court in custody. People of settled abode are proceeded against by summons. This is so with nearly all cases under the licensing laws, the highway laws, and the poor laws; and comparatively few defendants in such cases fail to appear on summons. If they do fail, the bench issues warrants for their arrest. Procedure in this way adds largely to the costs. People who get into trouble know this, and are generally on hand to respond to the summons when the case is called in petty sessions.

There is usually a full attendance of lawyers at petty sessions. Business in these courts is almost exclusively in the hands of solicitors, although occasionally, in cases under the licensing laws or under the labor code a barrister is retained. Even in trivial cases, solicitors are frequently retained beforehand; and at most of the petty sessional courts, lawyers habitually attend on the off-chance of picking up cases, and are ready to defend a drunken and disorderly case, or dispute a paternity order for a half-guinea fee.

One feature about these county petty sessional courts could not fail to impress an American visitor. There is nearly as much decorum in a petty sessional court, even if it is held in the assembly room of a country hotel, as there is at quarter sessions or assizes. The policemen who have cases to come before the court are stationed at the outer and inner doors, and in the aisles of the court room, and they promptly check any tendency to any levity of behavior.

The magistrates' clerk usually wears his gown; and he administers the oath to witnesses in a highway case with as much seriousness as in an assize court. Rules of procedure are much the same as in the higher criminal courts, as regards evidence and cross-examination; and generally the whole proceeding has an impressiveness which is not lost, either on the delinquents who are appearing before the magistrates, or on the spectators. It is only necessary to sit through a petty session to realize how much of the good order and respect for law which characterize English rural life is due to the county magistracy and the county police.



A QUAINT COURT.

By J. Ferguson Walker.

THE trans-atlantic traveler who, after strolling along the Thames embankment from Westminster towards the city, walks eastward along Queen Victoria street, will see on his left, shortly after passing the "Times" office in Printing House square, a red-brick building that may truly be described as one of the curiosities of London. There is nothing to distinguish it from its neighbors save a small court-yard in front, and probably its existence is unknown to the majority of the thousands who pass its precincts every day. Yet this building, the Heralds' College or College of Arms, contains much of legal and antiquarian interest. One of the oldest courts in Europe once sat within its walls, in the Grand Room on the north side of the court-yard. The court of the earl marshal of England, or court of chivalry, was held here, and the court-room is still swept and garnished daily, awaiting the time when a cause may yet be entered for trial. It is a quaint, picturesque chamber, decked with the arms of Charles II, the shields of successive earls marshal, the banners borne at the coronation of George IV, and ancient helmets brought from St. George's Chapel. The royal arms are placed above the earl marshal's throne, which is a solid and uncomfortable-looking structure.

The present building was erected in 1683 from the designs of Sir Christopher Wren. The former college, which was known as Derby House, and had originally been the town house of the Earls of Derby, was destroyed by the great fire in 1666, and the new college was built upon the same site. The valuable books and documents had, however, escaped destruction and are still preserved in the college.

The office of earl marshal is now hereditary, but originally it passed by grant from the crown. The title was formerly lord marshal, but Richard II altered it to earl marshal. At the same time this functionary obtained the right to carry a gold truncheon enamelled with black at the ends, and having the royal arms and those of the earl marshal himself engraved upon it. This is his sign of office. Under a grant made by Charles II, in 1692, to Henry, Lord Howard and his male heirs, the office is now held by the Duke of Norfolk and is hereditary in his family. It may be executed by deputy, and it entitles the holder to a pension of £20 a year payable out of the Hanaper office in chancery.

Although the earl marshal's court has become obsolete, the College of Arms is said to do a more flourishing business at the present time than for many years. The college has no longer any compulsory authority, but many persons are willing to submit to the decision of the heralds upon questions relating to coats-of-arms, and many applications for grants of arms are received at the college. Such a grant costs seventy-five guineas.

A writer of a recent article on the course to be followed in obtaining a grant says that when a man is in doubt as to his right to use arms he consults the college, who sometimes finds that he is wrong. When a man desires arms for the first time, they ascertain whether he is in a proper position to bear them. If he is a country magistrate, a colonel of volunteers, or a member of parliament, there is usually no question about that.

Then comes the selection of arms, and it usually happens that the applicant is anxious for arms which belong to somebody else. These he cannot have; the college does not

grant the same arms twice. The ultimate selection is a matter of careful arrangement, the object being to let the arms mean something applicable to the case.

There is less false pride about it than there used to be. A man whose grandfather made his money out of cotton does not object to a cotton hank on his spoons, nor a woolen manufacturer to a fleece. When Mr. Cubbitt, the contractor, became Lord Ashcombe, he was not too proud to have granted to him a mason and a carpenter as his "supporters."

The desire for ancestral distinctions is evidenced by the extension of heraldry in the United States, where there are several excellent genealogical societies and many persons are anxious to trace their pedigees and adopt the proper arms. Many an American of rank or influence can say like Miles Standish: —

"He was a gentleman born, could trace his pedigree plainly
Back to Hugh Standish of Duxbury Hall, in Lancashire, England,
Who was the son of Ralph, and the grandson of Thurston de Standish;
Still bore the family arms, and had for his crest a cock argent
Combed and wattled gules, and all the rest of the blazon."

The method of obtaining a grant of arms is as follows. The applicant employs any member of the Heralds' College he pleases, and through him presents a memorial to the earl marshal, setting forth that the memorialist is not entitled to bear arms, or cannot *prove* his right to do so; and praying that his grace will issue a warrant to the king-of-arms, authorizing him to grant and confirm to the applicant due and proper armorial ensigns, to be borne, according to the laws of heraldry, by him and his descendants. This memorial is presented, and a warrant is issued by the earl marshal, under which a patent is made out, exhibiting in the corner the armorial ensigns granted, and describing in official terms, the proceedings that have taken place, and the correct blazon of the arms. This patent is registered in the books of the Heralds' College, and receives the signatures of the Garter and of one of the provincial kings-of-arms. No prescription, however long, will confer a right to a coat of arms. Those that are not held under a grant, must descend to the bearer from an ancestor and be recorded in the books of the heralds' visitations, which down to 1686 were periodically made in every English county for the purpose of examining into the title of those who assumed to bear arms.

Grants are sometimes made to public companies, the most recent example being the case of the Great Central railway, which has just obtained a grant of arms, on which amid other devices, a "locomotive proper" is depicted.

The heraldic stationers compete very seriously with the college by designing arms for customers, and though these tradesmen will supply a coat of arms at a lower rate than the college, still anyone who desires his arms to be historically and artistically correct and in accordance with his name and ancestry, will prefer to make his application to the college.

The chapter of the College of Arms consists of three kings-of-arms — Garter, Clarenceux and Narroy, and six heralds — Chester, Lancaster, York, Somerset, Richmond, and Windsor, and four pursuivants — Rouge Croix, Blue Mantle, Rouge Dragon, and Portcullis.

The writer above referred to explains that names have nothing to do with the places. York herald has no connection with Yorkshire, nor Richmond with Surrey. Generally, the name of the office follows the title of the king who created it. Clarenceux perpetuates the memory of the Duke of Clarence, who had a fatal bath of Malmsey. Garter king is attached to the Order of the Garter, and carries the ensign to foreign courts. Norroy is king-of-arms for the north of England, Clarenceux for the south.

When in full uniform the officers wear a scarlet coat, embroidered with gold, and the quantity of gold proclaims the rank. A pursuivant's coat is merely embroidered; on the earl marshal's coat you can scarcely see the scarlet for the gold, the cords, and the tassels. All except the earl marshal wear a tabard, which is a loose skirt-like garment, blazoned with the royal arms back and front, and worn over the shoulders. Blue Mantle never wore a blue mantle, any more than Rouge Croix carries a ruddy cross.

The trappings are only worn on very great occasions, such as a coronation, or a state funeral, when Garter king proclaims the style of the deceased. At the two last funerals, Garter king, who grows older, was represented by Norroy king.

At Mr. Gladstone's funeral the public were denied, out of respect for the wishes of the family, a glimpse of the heraldic pomp. The officers were simply attired in black, with only a white wand to hint their exalted rank.

The daily work of the officers, if less picturesque, is not less interesting. They pass grants of arms, compile pedigrees, prepare patents of precedence, get evidence for the chapter in cases of succession to a peerage or a baronetcy, and pass royal licenses for the change of name or arms.

"The service of the pursuivants and of the whole College of Heralds," says Chamberlayne in his "Magnae Britanniae Notitia" "is used in marshalling and ordering coronations, marriages, christenings, funerals, interviews, feasts of kings and princes, cavalcades, shows, jousts, tournaments, and combats, before the constable and marshal. Also they take care of the coats of arms and of the genealogies of the nobility and gentry. Anciently the king-at-arms was solemnly crowned before the sovereign, and took an oath; during which the earl marshal poured a bowl of wine on his head, put on him a richly embroidered velvet coat of arms, a collar of SS, a jewel and gold chain, and a crown of gold."

The art of heraldry has a purely military origin, and it may be traced to the tournaments instituted by Henry the Fowler, who was emperor of the Holy Roman Empire during the tenth century. Their object was the maintenance of the military spirit during the comparatively brief intervals of peace in an age of strife, when military prowess was an essential condition of national existence. To apply the rules governing these contests, officers of various degrees were appointed under the title of heralds and kings-of-arms. In order to distinguish the competitors, who were clad in armor from head to foot, personal emblems were necessary, just as the jockeys of a later day wear their employers' colors. These emblems were depicted on the shield and were the earliest form of what are now known as coats of arms. The heralds among their other duties regulated the adoption and display of these distinctive devices, so as to prevent the confusion which would have arisen from similarity or the wrongful use of the arms of others.

It was not until heraldry had fallen into decay and its military origin had been forgotten, that the heralds and kings of arms were incorporated into colleges. This was first done in France, and Richard III, following the French example, placed the whole heraldry of England under their specific control by the incorporation of the Heralds' College, under the presidency of the earl marshal. The duty of the corporation was to take note, not merely of the arms used at tournaments as emblems, but to regulate the use of coats of arms upon all occasions; for by this time their adoption had become general. The college was to allow no one to wear a coat-of-arms without authority, and was to systematize the rules of blazonry.

Richard III gave the heralds as a place of residence and meeting Poulteney's Inn, described by an ancient chronicler as "a right fayre and statelie house" in Cold-

harbour in the city of London. They were dispossessed of this property by Henry VII, and they then removed to the hospital of Our Lady of Rounceval, at Charing Cross. They next removed to Derby House, which was granted to the heralds and their successors by Queen Mary in 1555.

The earl marshal was one of the great officers of state in the time of the Norman kings. As his name implies, he had the duty of marshalling the king's forces. He was responsible to the sovereign for the enforcement of feudal services. He and the lord high constable of England shared the command of the army and they were the judges of the court of chivalry. On the incorporation of the college of arms, this court in connection with the college took cognizance of all matters relating to the right to coats-of-arms, and the heralds proceeded in it against persons who infringed their orders. The earl marshal is the president of the court. His sole jurisdiction, however, never extended to life and member. Cases of this grave character had to go before the earl marshal and lord high constable sitting together. Only doctors of civil law had a right of audience in the court. The books relating to its proceedings are still kept in the college.

The court of chivalry was nearly as oppressive as the star chamber; for we read of its imprisoning and ruining a merchant citizen for calling a swan a goose. The position of the heralds in relation to the court is that of attendants upon it. They are under its orders and superintendence. They are nominated by the earl marshal but appointed by the sovereign. Even the royalty-hating Cromwell appointed his king-at-arms.

In 1521 the office of lord high constable was forfeited through the attainder of the Duke of Buckingham, and the question then arose whether the court of chivalry could be held by the earl marshal alone. This question has been answered in various ways, but has never been definitely determined. The court, however, survived the fall of the House of Stuart, and a few cases as to the right to bear arms were heard and decided last century, but its powers have now fallen into disuse. The court became obsolete, partly by reason of the doubt above referred to, partly by reason of the decay of the mediæval military system, and partly owing to the fact that the common law courts issued prohibitions against proceedings brought in it for the enforcement of the privileges of the heralds (Oldis *v.* Donmille, Show. P. C. 58; Russel's case, 1692, 4. Mod. Rep., 4 W. & M. 42). The designing of coats-of-arms was then taken in hand by heraldic stationers and seal engravers and others, who defied the authority of the heralds and the earl marshal's court. The only remedy open to these officers, was an action on the case for wrong done to them in their office, but such an action was never brought, probably on the ground that it afforded at best an uncertain remedy.

The courts of common law, although they issued prohibitions against proceedings brought in the earl marshal's court for the enforcement of the privileges of the heralds, yet did not consider themselves entitled to restrain proceedings brought in that court to restrain wrongs done to the lawful possessors of arms. But after the lord high constable ceased to be appointed, there was a doubt as to whether the earl marshal alone had jurisdiction in such cases, and proceedings in the court became more and more infrequent, until at last they died out altogether.

The Green Bag.

PUBLISHED MONTHLY, AT $4.00 PER ANNUM. SINGLE NUMBERS, 50 CENTS.

Communications in regard to the contents of the Magazine should be addressed to the Editor, HORACE W. FULLER, 344 Tremont Building, Boston, Mass.

The Editor will be glad to receive contributions of articles of moderate length upon subjects of interest to the profession; also anything in the way of legal antiquities or curiosities, facetiæ, anecdotes, etc.

LEGAL ANTIQUITIES

IN pre-Revolutionary days there was a woman public executioner in Virginia. At that time death sentences were respited on a condition that a criminal should perform this office. "Lady Betty," as she was afterward called, was [illegible] to death for murder. She offered instead to [illegible] public executioner, and held this office for [illegible] years. It is said that on the scaffold she officiated without a mask.

FACETIÆ.

IN a town up north an ex-judge is cashier of a bank. One day recently he refused to cash a check offered by a stranger.

"The check is all right," he said, "but the evidence you offer in identifying yourself as the person to whose order it is drawn is scarcely sufficient."

"I've known you to hang a man on less evidence, judge," was the stranger's response.

"Quite likely," replied the ex-judge; "but when it comes to letting go of cold cash we have to be careful."

A COLORED man was before the United States Court, in Philadelphia, recently, charged with some infraction of the law. He had no counsel, and the judge assigned Hampton L. Carson to defend him.

The government by the testimony of several witnesses established a strong case against the defendant.

The learned counsel for the prisoner said: "Now, Sambo! please take the witness stand and give your version of this affair."

The "man and brother" looked wise and quizzical and turning round for a moment said: "Boss! in these yeah circumstances, I guess it would be bettah for me to remain neutral."

MICHAEL JOSEPH BARRY, the poet, was appointed a police magistrate in Dublin. An Irish-American was brought before him charged with suspicious conduct, and the constable swore, among other things, that he was wearing a "Republican" hat. "Does your honor know what that means?" inquired the prisoner's lawyer of the court. "I presume," said Barry, "that it means a hat without a crown."

"How long is it going to take to get through with this case?" asked the client, who was under suspicion of housebreaking.

"Well," replied the young lawyer, thoughtfully, "it'll take me about two weeks to get through with it, but I'm afraid it's going to take you about four years."

A GEM from the records of a Missouri court, given in an address by Hon. William H. Wallace, is the following lucid verdict in a lunacy case: —

"We, the jury, impaneled, sworn and charged to inquire into the insanguinity of Hezekiah Jones, do occur in the affirmative."

LAWYER: You say the prisoner stole your watch. What distinguishing feature was there about the watch?

WITNESS: It had my sweetheart's picture in it.

LAWYER: Ah, I see! A woman in the case.

NOTES.

INTERESTING testimony as to the effect of education on crime was given the other day in London by Sir James Vaughan, of Bow street, who announced his coming retirement from the magistrates' bench. He is eighty-five years old, and

has served for thirty-five years as a justice in the principal London police court. Reviewing his career, says a London despatch to the "Sun":—

He noted the wonderful decrease in crimes of brutality and violence, but said there was an increase in the number of crimes for which brains and ingenuity were required. He ascribed this to the improved education given by the board schools. He was certain that unless means were taken to counteract the effects of education on the minds of the criminally inclined, crimes of a clever nature would greatly increase.

A NEWLY-RELATED jest of the late Sir Frank Lockwood is going the rounds of the press. In a debate in the Commons his friend, Mr. Birrell, had set a man of straw as a target for argument, which he named the Rev. Tobias Boffin, B.A. (London), and which, it is easy to guess, represented some amusing vagary of the non-conformist conscience. In half an hour Mr. Birrell had demolished Boffin, and he had nearly forgotten him, when, two or three days later, he received a letter from him, sharply resenting the attack in the house. He was the more surprised and perplexed when, not long after, he chanced upon Boffin's name in a list of those present at a conference of northern liberals in Leeds to consider the reform of the upper chamber. From Leeds, as a newspaper soon informed him, Boffin had apparently come to London, and attended a dinner in honor of Lord Kimberley. By this time Mr. Birrell was a little dismayed. Had he, by some pure accident given his man of straw a name that really had flesh and blood and some local influence in his own party behind it? The sudden prominence of Boffin, however, in paragraphs that were likely to catch his eye quickened his suspicions; inquiries confirmed them, and Sir Frank Lockwood found so much pleasure in his jest that he half admitted it. The Boffin of the speech had tickled the barrister's fancy and he had forthwith persuaded a friend or two in the press gallery of the house to place his name in paragraphs where it would most discomfort and perplex Mr. Birrell.

After the dinner to Lord Kimberley, Boffin seemed to return to the obscurity of his meeting-house; but from time time in the session, especially when Mr. Birrell was in the company of other members, the parson's card would come from the lobby with an urgent request for "an interview on private business." At the long vacation, Sir Frank went to his house in Yorkshire, and Mr. Birrell fancied he was done with his indignant pursuer. In November, however, when political meetings began to be frequent again, he received a clipping from a newspaper that purported to summarize the speech of a Liberal member in the North Riding. The speaker had mentioned Mr. Birrell, "Thereupon," the report proceeded, the Reverend Tobias Boffin, B. A. (London) came to the front and expressed in strong language his regret that Mr. Alfred Pease had thought fit to allude to Mr. Birrell, M. P., as his honorable friend and a good Liberal. He went on to say, amid considerable interruption, that for his part he would be ashamed to number among his friends such a man. The chairman asked Mr. Boffin to postpone his remarks and to allow Mr. Pease to continue. (Cheers and 'Sit down, Boffin!') Amid general disorder, Mr. Boffin quitted the platform." When he left the hall, he vanished completely and forever.

SAYS "The Monetary Times," Toronto: "England has at last recognized that the state has a duty in connection with the inebriate. A law has just gone into force under which an individual, after a fourth conviction for drunkenness, is to be treated as an habitual drunkard and confined in a reformatory at the expense of himself or his friends, if they be able to pay, or at the cost of the state if necessary."

DR. J. MARTY, a French criminologist, has recently made an examination of four thousand delinquent soldiers of the French army, and has found that in height, weight, breast measure, muscular power and general condition, they averaged much better than the well-behaved soldiers. Dr. Marty does not imply that criminals are by nature better physically than non-criminals, but suggests that the condition of criminal families is so much more wretched than respectable ones, that only the uncommonly strong survive.

A LAW was recently passed in Norway prohibiting the sale of tobacco to any boy under

sixteen years of age without a signed order from an adult relative or employer. Even tourists who offer cigarettes to boys, render themselves liable to prosecution. The police are instructed to confiscate the pipes, cigars and cigarettes of lads who smoke in the public streets. A fine for the offense is also imposed, which may be anywhere between fifty cents and twenty-five dollars.

OFFENSES against Kaiser Wilhelm's dignity in the one year 1898 were punished, taken altogether, with two thousand years of imprisonment, according to the "Nurnberger Zeitung."

THE United States court of the northern district of the Indian Territory is probably the only travelling court, including the court-room and all things and persons connected, in existence in the United States. United States Commissioner Harry Jennings, United States Marshal L. E. Bennett and a corps of assistants have adopted this novel plan of travelling over the district and holding court at several different places instead of at one place in the district, as heretofore. The northern district of the Indian Territory is large, and the towns are far apart, so that it is very hard for persons to travel to and from to attend court, as well as expensive. Commissioner Jennings has had a small house built on wheels, much resembling a mover's outfit, in which they travel, and also in which they hold court in the various towns over the district. They carry cooking utensils with them and have an expert cook, who prepares their meals, and also a servant who keeps their house in order. They go from place to place, wherever they are wanted, and they claim that they have saved the people considerable money, as it is much less expensive for the court to travel than for the people to travel in that country. Criminals can be reached more conveniently in this manner, as it is often dangerous to conduct criminals from town to town without a heavy guard, as their allies may attempt to rescue them. The travelling court of the Indian Territory is a success, and the people of that district are well pleased with it.

RECENT figures submitted to the mayor of Boston show that the cost of maintenance of those sentenced for drunkenness in the houses of correction of Suffolk County for the year ending January, 1898, was $115,000. It is estimated that about three thousand were sentenced to jail for the same offense, which would add at least thirty-five per cent to the figures stated above.

THE Court of Common Pleas, so late as the fifth W. and M., held that a man might have a property in a negro boy, and might bring an action of trover for him, "because negroes are heathens" (Ld. Raym. 147.) "A strange principle to found a right of property upon!" exclaims Christian (1 Bl. Cowan. 425, note).

CURRENT EVENTS.

WATER is a very good transmitter of sound. A scientist by the name of Calladon made some experiments on Lake Geneva, Switzerland, to demonstrate the power of sound to travel a long way in water. A clock was made to strike under the water, and was heard to a distance of twelve miles. In a second experiment the striking of a clock was heard to a distance of twenty-seven miles.

THE Hessian Diet has passed a measure requiring bachelors to pay twenty-five per cent more income tax than married men. It has also placed a tax of about a dollar per annum on bicycles unless they are used for business purposes. A proposal to doubly tax female bicyclists was defeated by a narrow majority.

THE Sahara desert is three times as large as the Mediterranean.

MORE men have died and are buried in the Isthmus of Panama, along the line of the proposed canal, than on any equal amount of territory in the world.

IN Denmark it is the law that all drunken persons shall be taken to their homes in carriages provided at the expense of the publican who sold them the last glass.

THE greatest depth to which a ship has been anchored is 2000 fathoms — considerably more than two miles.

COFFEE, the drink more highly regarded to-day than any other, was first used in Abyssinia in 785.

Thence it was brought to Arabia. A Greek first introduced it to England and made himself famous by the act.

THE weight of the brain bears little or no relation to the ability of its possessor. The brains of two idiots weighed respectively 57.5 and 59.5 ounces; while that of Gambetta weighed less than that of the average boy of seven. A weak-minded man had a brain weighing 70.5, while a dwarfed Indian squaw possessed one of 73.6 ounces.

LITERARY NOTES.

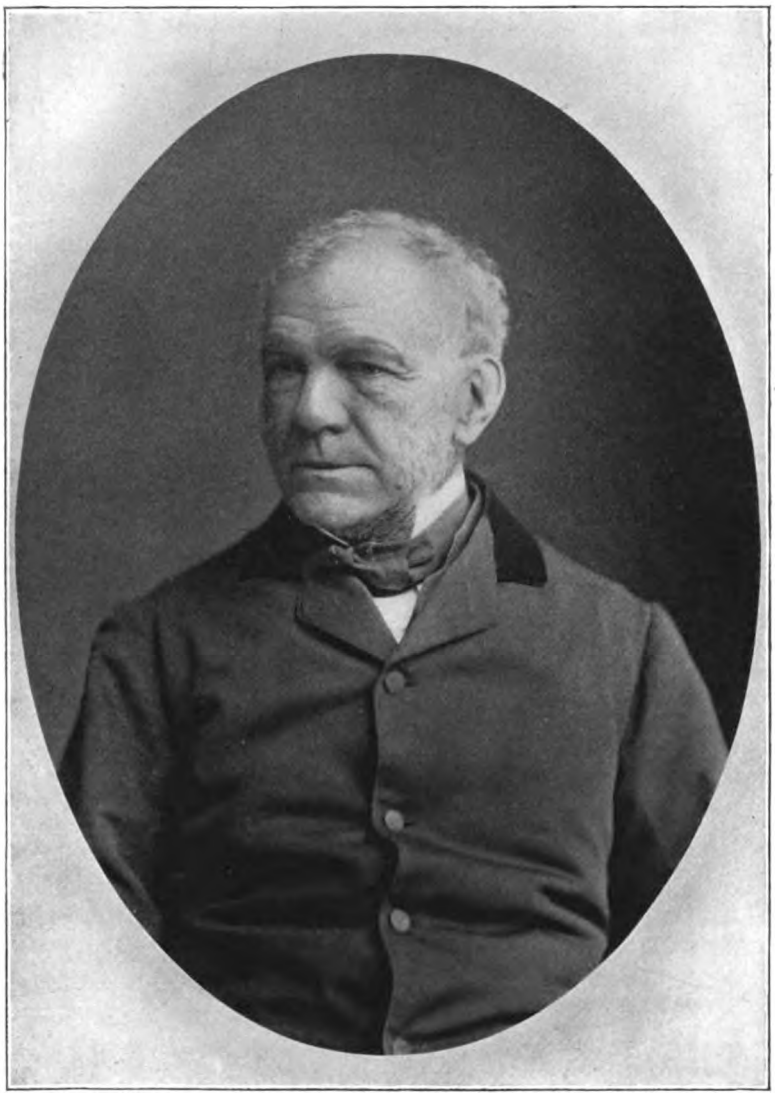
SCRIBNER'S for September has a number of articles with an outdoor flavor to them. It opens with an account by Frederic Ireland of what he calls "the finest canoeing country in the world." He made a five hundred mile journey from Mattawa to the headwaters of the Ottawa and Gatineau rivers, through a region abounding in fish and moose. There is also a short story of life and adventure in the Arctic regions by Albert White Vorse. It is entitled "The Education of Praed," and tells how a western college professor learned something of value from the Esquimaux. Charles Warren (who was private secretary to Governor Russell) contributes a short story describing how a governor went back to his old fitting school and spent a day with the boys. Grace Ellery Channing tells a love story of Southern California, entitled "Francisco and Francisca." W. C. Brownell contributes an appreciation of the paintings of George Butler. Lieut.-Col. J. D. Miley gives some inside history in regard to Aguinaldo's insurrection and the forces back of it.

MR. BAGOT'S discussion of the question, "Will England Become Catholic?" which THE LIVING AGE of July 29 translates from the Italian review, the "Nuova Antologia," is noteworthy for the emphasis with which it answers in the negative the question which it puts, and the facts which it presents in support of that view. Madame Darmesteter's recent essay on "The Social Novel in France" will be found in full in THE LIVING AGE for August 5.

THE leading article "Are we in Danger from the Plague?" by Dr. Victor C. Vaughan in APPLETON'S POPULAR SCIENCE MONTHLY for September contains a very important discussion of the problem presented to all civilized countries by the prevalence of the plague in the East. "Tuskegee Institute and its President," is the title of an interesting article by M. B. Thrasher. The conclusion of Appleton Morgan's study of "Recent Legislation against the Drink Evil" seems still more strongly to confirm his view that the result of legislative interference up to date has rather increased than diminished drunkenness. An attractive little natural history sketch is written by W. E. Cram, under the title "Hawk Lures." Prof. H. W. Conn, of Wesleyan University, contributes an important article on "The Milk Supply of Cities." "The Influence of the Weather upon Crime" is the title of a curious article by Edwin G. Dexter.

THE September CENTURY is a salt-water number. The special feature of the magazine is the first of a series of four papers in which Capt. Joshua Slocum narrates the story of his successful circumnavigation of the globe, alone, in a forty-foot sloop, the "Spray," constructed by himself. In "The Way of a Ship," Frank T. Bullen tells of the peculiarities of certain ships on which he has gone down to the sea; and in "Salvage," Morgan Robertson turns to a good account, as a fiction writer, the intimate knowledge of things nautical acquired in ten years before the mast. "The Atlantic Speedway," and the possibility of making it safer, engages the attention of H. Phelps Whitmarsh. "Where a Day is Lost or Gained," is the paradoxical title of an article by Benjamin E. Smith on the international date-line in the Pacific. The annals of Chinese piracy have been ransacked to good purpose by John S. Sewell, who writes of "The Scourge of the Eastern Seas;" and New England family papers have been turned to equally good account in Robert S. Rantoul's "Voyage of the Quero," the true story of how the news of Concord and Lexington was carried to King George. Winslow Homer, "A Painter of the Sea," is the subject of a critical paper by W. A. Coffin, and not less appropriate to a deep-sea number is Dr. Weir Mitchell's poem "The Sea-Gull." "An American Forerunner of Dreyfus" is the story of a gallant American naval officer whose life was made a burden to him, early in the present century, because of his Jewish birth and faith.

THE complete novel in the NEW LIPPINCOTT for September is entitled "The Duchess of Nona," by Maurice Hewlett. This is an Italian story of the picturesque and dramatic days of Cæsar Borgia. The short fiction of the month is made timely and brilliant by a story of Mrs. Schuyler Crowninshield. "Marta's Inheritance" is one of this gifted author's most characteristic Cuban stories. Ruth McEnery Stuart contributes "Picayune: a Child Study." "Donald Murray's Romance," by E. F. Benson, is a study of hope deferred in the heart of a lonely English bachelor. "The Volcano Goddess: a Legend of Hawaii," by Charles M. Skinner, is both exceedingly curious and seasonable.



SIR JOHN BYLES.

The Green Bag.

VOL. XI. NO. 11. BOSTON. NOVEMBER, 1899.

SIR JOHN BARNARD BYLES.

SIR JOHN BARNARD BYLES was born at Stowmarket, in the county of Suffolk, England, in 1801. He was the eldest son of Mr. John Byles of that place. He was called to the bar, at the Inner Temple, in 1831, after many years of preparation, and at once attained a prominent place in the profession. In 1857 he was made a queen's serjeant, and in 1858 was raised to the bench. On attaining the bench he was knighted, and upon leaving it in 1873 he was made a privy councillor. He died February 3, 1884.

The career of Sir John Byles was that of a most successful advocate at the bar, and a very learned lawyer as barrister and judge in one branch of legal study. "Byles on Bills" for accuracy and clearness is among the best law-books in the English language. Lawyers and judges have for years turned to it for information with absolute confidence. It is not too much to say that without it the codification of the law of bills of exchange would have been impossible. Sir John Byles took an interest in this book up to within a very few weeks of his death.

A question whether its copyright had not been infringed was referred to him to decide whether any and what proceedings should be taken. We believe the matter was amicably arranged, but the incident is curious as showing that one of his last acts was in vindication of the book, which in the future will be his chief title to fame. Sir John was thirty years of age before he was called to the bar, and up to that time, he had been in business. His business experiences, perhaps, suggested to him the production of a book on one of the most important branches of commercial law. The success of the book still further determined the bent of his legal studies and practice. He became a good commercial lawyer, but he never gained any great reputation in other branches of the law. His mind wanted that breadth and clear-sightedness which are essential to the intellectual equipment of a great lawyer, who is to lay down propositions of universal application. He will never take the place filled by James, Willes, or Jessel, but will always be known as Byles on Bills, a result to which the "artful aid" of alliteration conduces.

Many are the stories told of Sir John Byles when at the bar and on the bench. His horse figures in several of them. When he was at the bar he had a horse, or rather a pony, which used to arrive at King's Bench Walk every afternoon at three o'clock. Whatever his engagements, Mr. Byles would manage by hook or by crook to take a ride, generally to Regent's Park and back, on this animal, the sorry appearance of which was the amusement of the Temple. This horse it is said, was sometimes called "Bills" to give opportunity for the combination "There goes Byles on Bills," but if tradition is to be believed, this was not the name by which its master knew it. He, or he and his clerk between them, called the horse "Business": and when a too curious client asked where the serjeant was, the clerk answered with a clear conscience that he was "out on Business." When on the bench, Mr. Justice Byles' taste in horse-flesh does not seem to

have improved. It is related of him that in an argument upon section seventeen of the statutes of frauds he put to the counsel arguing a case, by way of illustration: "Suppose, Mr. So-and-So," he said, "that I were to agree to sell you my horse, do you mean to say that I could not recover the price unless," and so on. The illustration was so pointed that there was no way out of it, but to say, "My lord, the section applies only to things of the value of £10," a retort which all who had ever seen the horse thoroughly appreciated.

Instances of his astuteness in advocacy were numerous. His mode of winning cases was not by carrying juries with him by a storm of eloquence, or cross-examining witnesses out of court, but by discovering the weak point in his adversary's case and tripping him up, or by the nice conduct of such resources as his own case possessed. On one occasion he was retained for the defendant with Mr., afterwards Mr. Justice, Willes, whom he led at the bar, but who was afterwards his senior in the Court of Common Pleas, in a case of some complication tried before Chief Justice Jervis. At the end of the day (Saturday) Mr. Byles submitted that there was no case, and the judge rose to give his decision the next week. In the interval Willes asked Byles why he did not take a particular point which both had agreed in consultation to be fatal to the plaintiff's case. "I left that to the chief justice," said Byles, "I led up to it, and walked round it, so that he cannot miss it, but if I had taken it, he would have decided against us at once." And so it proved, for on Monday morning the chief justice gave an elaborate judgment overruling all the points taken, but nonsuiting the plaintiff on a ground which, he said, he was astonished to find, had not been taken by either of the very learned counsel for the defendant, but which, in his opinion was conclusive.

In another case Byles was for the plaintiff, and Edwin James for the defendant, in an action on a bond tried before Chief Justice Tindal. Byles was a long time in opening his case and examining his witnesses, until the chief justice became restless. Still more restless was Edwin James, who wanted to go elsewhere. Byles, seeing his impatience, whispered to him. "Give me judgment for the principal, and I will let you off the interest." Accordingly a verdict was taken for the plaintiff for the amount of the bond without interest. Afterwards Edwin James asked Byles why he had foregone the interest. "You need only have put in the bond," said he, "and you would have had both." "That was just the difficulty," said Byles, "the bond was not in court." In those days adjournments were not so easily granted as now, and in any case the costs of the day would have exceeded the interest. Upon one occasion when defending an important action, he asked the judge to exclude from the court all the witnesses for the plaintiff, except the one in the box. Observing that the plaintiff's solicitor, whose name was Fry, was moving in and out of court, and suspecting him of posting the witnesses he began his cross-examination of one of them as follows: "Well, my man, I suppose you have been well Fryed outside?" To which the witness quickly replied: "No, sir! and I don't intend to be Byled inside, either."

A reputation for successes like these made Byles a formidable adversary. On one occasion at Norwich he had for an opponent a counsel whose strong point was advocacy rather than law. Byles, who was for the defendant, went into court before the judge sat, and, in the presence of his opponent, he called to his clerk, "What time does the mid-day train leave for London?" "Half-past twelve, sir." "Then, mind you have everything ready, and meet me in good time, at my lodgings." "But, serjeant," said the plaintiff's counsel, "this is a long case, it will last at least all day." "A long case!" said Byles: "it will not last long;

you are going to be non-suited." The advocate, who stood much in awe of his opponent's legal skill and knowledge spoke to his client. The result was that the case was settled for a moderate sum, and Mr. Byles caught his train.

Mr. Justice Byles was a strong Tory, and he had a horror of judicature acts, the fusion of law and equity, and other modern innovations which were floating in the air in 1873. He declared that he would not remain on the bench an hour longer than his fifteen years. On the first day of Hilary term, 1858, he took his seat on the bench of the court of common pleas, and the first day of Hilary, 1873, his resignation arrived.

The moment was inconvenient for the appointment of a new judge, but the judge could not resign before, and he would not wait a moment. Of his career on the bench it is enough to say that he was acute, courteous, and upright, as he was kindly in private life. His name is not connected with many great decisions, but he took part in the case of Chorlton *v.* Lings, 38 Law J. Rep., C. P. 25, in which it was decided that women did not obtain Parliamentary votes by the representation of the People Act, 1867, in virtue of the new franchise conferred on "every man." His judgment is an example of his rather quaint and old-fashioned judicial style. "No doubt," he says, "the word 'man' in a scientific treatise on zoology or fossil organic remains would include men, women, and children as constituting the highest order of vertebrate animals. It is also used in an abstract and general sense in philosophical or religious disquisitions. But in almost every other connection the word "man" is used in contradistinction to "woman" . . . Women for centuries have always been considered legally incapable of voting for members of Parliament, as much so as of being themselves elected to serve as members. In addition to all which, we have the unanimous decision of the Scotch judges. And I trust their unanimous decision and our unanimous decision will forever exorcise and lay this ghost of a doubt, which ought never to have made its appearance!

FASHIONS IN THE LAW.

By Seymour D. Thompson.

WHAT is roughly termed "the law" is a matter of fashion almost as much as a man's hat or a woman's bonnet. Fashions change in law, as in every other human thing. Legal ideas, like other ideas, are discarded by common consent, often to be revived according to the exigencies of justice. It may happen that some powerful, ingenious, or learned lawyer of large reputation finds it necessary to revive, for the purpose of justice in a particular case, a discarded legal idea; and then it blossoms out and has a new run of popularity, so to speak.

The same human tendency develops fashions or "rages" in particular kinds of medicine, just as in particular kinds of legal doctrine. If medicine is a science, considered as a body or collection of learning, its practice does not appear to be much of a science to the druggist who, behind his glass case, compounds the prescriptions. Go and sit down on his stool some evening when nobody is in his shop, and get him to talking to you confidentially, and note the revelations which he will make. Some doctor from the country writes to a medical journal, "I had such and such a case [describ-

ing the symptoms], and I administered cocaine in such and such doses, with the following remarkably favorable results." Immediately nearly every doctor in town that has a case bearing any considerable resemblance to the case thus described, prescribes cocaine in the same doses, on the strength of this single "authority," and all this crystallizes under the eye of the druggist who compounds the various prescriptions.

Not many years ago the British government — I state this from general recollection — conceived the idea of cultivating the cinchona tree in India, with the view of manufacturing cheaper quinine for use in the British army in that hot and malarial country. They took from their native homes in South America some cinchona trees, and replanted them upon the hills of the island of Ceylon. The trees grew and developed; their bark was stripped and manufactured into what was supposed to be sulphate of quinine; but when the manufacturing chemists had completed their manipulations, it was found that it was not exactly sulphate of quinine. It was a different alkali of the cinchona principle, and they called it cinchonidia. Now, it would never do for the British medical staff to admit they had been mistaken; so orders were sent out from the war office in London to all the army surgeons to experiment in the hospitals with this new form of extract of the cinchona bark. These orders were tantamount to commands to make favorable reports where possible; and many surgeons, anxious to earn the pleasure, or, at least, not to incur the displeasure, of their official superiors in London, made favorable reports. These reports were collated and published, and, of course, a favorable impression as to the merits of this new extract of the cinchona bark soon took possession of the whole medical world. The result was that cinchonidia was a great "rage" for a time, and took the place of quinine. Nearly all the doctors prescribed it. The British surgeons had discovered that it possessed all the beneficial qualities of quinine without producing any of its evil effects, and American doctors continued to utter this twaddle until the use of the drug died to a great degree. It was found, and candor was obliged to confess it at last, that it was merely a weak form of quinine so far as its physical effects were concerned, and that, if the patient took a dose large enough, it would produce, in many cases, the usual ill-effects of quinine, including the buzzing in the ears.

Antipyrine had a similar "rage" until its evil after-effects were discovered. Cocaine, a few years ago, was "all the rage," and they prescribed it for nearly everything, and, like opium and hasheesh, it produced such happy temporary effects on overwrought nervous constitutions, that many of the doctors began to take it, and thereby to ruin themselves.

Many eminent judges can be named that have had that most valuable of all early training, the training of a boy on a farm. They can recall the case of a flock of several hundred sheep breaking into a field almost *en masse*. The day is warm and sultry; the sheep feel the effects of the heat. They trot along in an indifferent sort of a way behind some old bell-wether or other self-constituted leader, hugging the shady side of a "stake-and-ridered" fence as closely as they can. Suddenly the bell-wether discovers a rotten rail in the fence. He plunges through it with a short "blat"; instantly the whole herd follow him, and with such a vehement rush as to carry off on their backs all the superincumbent rails, whereby a whole length of fence is torn down, and the whole herd are instantly revelling in a rich clover-field. It is often the same way with judicial work. Some old judicial bell-wether determines that the court shall take a new departure. He gives the judicial "blat," and dives through the hole in

the fence, and the whole judicial herd follow him, carrying the fence in with them on their backs. That is one way in which law is made. That is one way in which it grows. That is one way in which the "wisdom of ages" is founded and built up. A great German poet, according to one translation, said: —

> "Laws, like inherited disease, descend,
> And slyly wind their way from age to age."

They do not always "slyly wind their way," but in some cases the entire judicial herd take a stampede in one direction, like a herd of frightened Texas steers, and proceed with such violence as to carry everything before them for the time. Legislation cannot keep up with them. The legislatures, that hold only biennial sessions of a few months, have not the time to undo the mischief which they commit, being always in session and always at work. They, on the other hand, in their work of superintending legislation, under the new doctrine of "judicial supremacy," have not the time, though constantly at work, to undo the mischief which the legislatures commit in their short biennial sessions.

The decision of the Supreme Court of the United States in Marbury *v.* Madison,[1] holding that where a judicial court is called upon to enforce a statute which has been enacted in disregard of a provision of the Constitution, the statute must give way and the Constitution must be sustained, was undeniably logical; since the judges were, by the very terms of their oaths of office, bound to support the Constitution, and were not sworn to support acts of the legislature. But it cannot escape attention that the power to declare a statute void as being unconstitutional, had never been in express terms conferred upon a judiciary. The exercise of it gave the judicial branch of the government a superintending control over the legislative branch, and thereupon the legislative branch ceased to be coördinate with the judicial branch: the one was dominant, the other servient. It is not to be wondered that this new doctrine was not accepted without a struggle. The appointed judges of England had never done anything for liberty. The growth of liberty, both in England and in the American Colonies, had taken root in the breasts of the people, and had been voiced in their free legislative assemblies. Nevertheless, the new doctrine took a foothold and became a fashion. Through the careless indifference of the people and their habit of electing incompetent and corrupt persons to their legislatures, and of endeavoring to curtail the mischief which the persons so elected might accomplish, by limiting their sessions to brief periods, the legislative power has sunk entirely beneath the judicial power. Incompetent and corrupt legislators, holding brief and hurried sessions, working under a sense of irresponsibility, growing out of the feeling that if their acts are unconstitutional, the courts will so decide, — do immense mischief and keep business men in a constant state of terror. The judicial courts, sitting all the time save a short summer vacation, have enough to do to uncreate the mischief which these turbulent popular bodies have created. The old doctrine was that acts of legislation would not be set aside unless they clearly appeared to be opposed to the Constitution. This doctrine is still professed; but exactly the contrary doctrine obtains in practice. The practice now obtains of setting aside solemn acts of legislation, in flippant judicial opinions, and on the most trivial grounds. The popular mind has become so accustomed to it, that in many of the States of the Union, an act of the legislature is regarded as "no good," until it has been "tested" in the courts. This seems to be one of the "fashions in the law" which, as the doctors say, "persists." Acts of sovereign legislation have sunk to the grade of corporate by-laws, and are constantly set aside because, in the

[1] 1 Cranch (U. S.) 137.

opinion of the judge, they are unreasonable.[1] This unreasonableness being often a question of fact, one court has advanced to the length of holding that it is competent for a judicial court to investigate the facts upon which the legislature acted in order to determine whether those facts justified its action; and thus we have the spectacle of the propriety of an act of the legislature being tried as a question of fact by a chancellor, or by a jury, according to the form of action.[2]

The growth and subsequent decline of the doctrine of the *Dartmouth College Decision*[3] furnish another striking illustration of "fashions in the law." The way had been paved for that decision in the collusive case of Fletcher *v.* Peck,[4] where it was held that the provision of the Federal Constitution that no State shall pass any law impairing the obligation of contracts, applies to contracts founded in public acts of legislation; in other words, to grants made by the legislature of a State. It was merely an extension of that doctrine by the court to hold, as it did in the Dartmouth College case, that it embraced grants of corporate franchises made by a State or other public authority. The court held that the principle protected the charters of eleemosynary corporations, but did not extend so far as to place the civil institution of the State beyond the control of the State itself, — in other words, did not extend to strictly public rights and consequently to strictly public corporations. The doctrine at once became fashionable. It had behind it not only the institutions of learning of the country, but generally the educated, the wealthy, and the powerful classes. It grew and spread like a prairie fire. Such extensions of it were made that the States lost control of their educational institutions, although created by their acts of legislation and endowed with public property or with money raised by taxation;[1] municipal corporations, created by the State for governmental purposes, acquired rights which the State could not control, — on the theory that a municipal corporation has a dual character of a public and a private corporation, and that rights acquired in its character of a private corporation are invested with the security of

[1] Reagan *v.* Farmers' Loan etc. Co., 154 U. S. 362, 399; St. Louis etc. R. Co., Gill, 156 U. S. 649, 663, 666; Smyth *v.* Ames, 169 U. S. 466, 523, 526.

[2] Priewe *v.* Wisconsin State Land &c. Co., 93 Wis. 534.

[3] Dartmouth College *v.* Woodward, 4 Wheat. (U. S.), 518.

[4] 6 Cranch, U. S. 518.

[1] The extent to which this "fashion in the law" proceeded, may be gathered from the following among other cases: — Vincennes Univ. *v.* Indiana, 14 How. (U. S.) 268, 276; Board of Education *v.* Bakewell, 122 Ill. 339, 344–345 (Normal University of Illinois a private corporation); Washington Home *v.* Chicago, 157 Ill. 414, 423 (Washington Home Association of Chicago a private corporation); Edwards *v.* Jagers, 19 Ind. 407, 413 ("County Seminaries" in Indiana private corporations, and not subject to be sold under a State law, and purchaser got no title); Kellum *v.* State, 66 Ind. 588, 597 (vested right of Vincennes University to maintain a lottery); State *v.* Carr, 111 Ind. 335, 337 (holding that the State University of Indiana is a private eleemosynary corporation); Louisville *v.* University of Louisville, 15 B. Monr. (Ky.) 642, 669 (holding that the University of Louisville was a private corporation, although a part of its funds were granted by the city or local public); Graded School District *v.* Bracken Academy, 95 Ky. 436, 443; Montpelier Academy *v.* George, 14 La. 395, 409; Trustees *v.* Bradbury, 11 Me. 118, 122, 124, 126; s. c. 26 Am. Dec. 515, 516, 517, 518, 519, 520 (holding that a public school, endowed by public lands, became a private corporation, and escaped the control of the State, because it had been placed in the hands of a board of incorporated trustees); Regents *v.* Williams, 9 Gill & J. (Md.) 365, 401; s. c. 31 Am. Dec. 72, 90, 92 (holding that the "Regents of the University of Maryland" were a private corporation); St. John's College *v.* State, 15 Md. 330, 374; Sheriff *v.* Lowndes, 16 Md. 357, 376; Cary Library *v.* Bliss, 151 Mass. 364, 378 (Free Public Library a private corporation); Williams *v.* Williams, 8 N. Y. 525, 533; Chegaray *v.* New York, 13 N. Y. 220, 229 (defining the word "seminary"); Ohio *v.* Neff, 52 Oh. St. 375, 404, 405; Liggett *v.* Ladd, 17 Ore. 89, 99–100 (making the concession that if the State were to endow a college out of a trust fund belonging to the State, the State would thereby acquire no authority to interfere with the charter of the college); Brown *v.* Hummel, 6 Pa. St. 86, 93; s. c. 47 Am. Dec. 431, 436; Grammar School *v.* Burt, 11 Vt. 632, 641; Franklin County Grammar School *v.* Bailey, 62 Vt. 467, 476, 477 (a grammar school endowed by public funds a private corporation). Compare Hale *v.* Everett (alias Everlasting) 53 N. H. 9–276, and Fuller *v.* Plainfield Academic School, 6 Conn. 532, 545.

other private rights;[1] even counties, which are mere political subdivisions of a State, created for local governmental purposes, acquired rights above the control of the sovereign which had created them.[2] In the face of modern progress and activity, municipal institutions thus stood still, incrusted and congealed, and covered with the mold and fungus of antiquity.

But worse than all, the sovereign power of taxation — the very right and power of the State to exist, surrendered to private corporations through the bribery and corruption of the temporary tenants of legislative power — was lost to the State forever and placed utterly beyond recall. Finally the people, not the lawyers, took alarm, and the mutterings of discontent became so loud that a corrective of the Dartmouth College decision was sought for and found in a new doctrine, that of the police power, which loomed up on the horizon and "like a comet blazed." It was a most convenient doctrine; for, from its nature, it could not be defined or accurately measured, but it rested in the judicial process of inclusion and exclusion. It could be appealed to to the end of suppressing the doctrine of the Dartmouth College case where the judge might think the suppression of that doctrine necessary to the purposes of justice; and in its turn could be minimized or suppressed whenever the judge might think otherwise. The use of it enabled a State to repeal a lottery franchise which it had granted;[1] a franchise to render, at a particular place the carcasses of dead animals could be vacated whenever the stench became too strong;[2] any other franchise granted by the State could be resumed in the exercise of its power of eminent domain;[3] but the sovereign power of taxation, once wheedled out of the representatives of the people, was gone throughout the endless cycles of eternity; — decisions of the same court, which taken together, might move the laughter of the gods. In short, the new doctrine of the police power was a doctrine which, like a pair of breeches or a politician's conscience, could be held up or let down for any convenient purpose. And so it is that our venerable friend, the Dartmouth College decision, has gone out of fashion. Not even "John Marshall's day" will serve to revive or to rehabilitate it, though there will be a great cackle among the attorneys of the corporations and monopolistic trusts to that end. In spite of all this,—

> "Its shadow fades away into Destruction's mass,
> Which gathers shadow, substance, life, and all
> That we inherit, in its mortal shroud."

The so-called doctrine of *ultra vires* was a "fashion in the law," and had a great run for a time. It blossomed out in the English courts at a time when nearly every judge was a stockholder in some railroad company, and when, although the company in which he was a stockholder may not have been a party to a particular case, yet

[1] Grogan *v.* San Francisco, 18 Cal. 590, 613; People *v.* Hurlbut, 24 Mich. 44, 104; s. c. 9 Am. Rep. 103, 112; State *v.* Foley, 30 Minn. 350, 357; Re Malone's Estate, 21 S. Car. 435, 449 (holding that a legislative grant of escheated property of the city of Charleston for the benefit of its orphan house, cannot be resumed by the State, even by a constitutional ordinance); Brownville *v.* Basse, 36 Tex. 461, 501 (holding that a grant of land by the State to a municipal corporation created by it could not be repealed); Milwaukee Town *v.* Milwaukee City, 12 Wis. 93, 103, 105, 108 (holding that the legislature cannot annex a portion of the land of one town to another); White *v.* Fuller, 38 Vt. 193; Montpelier *v.* East Montpelier, 29 Vt. 12, 19; s. c. 67 Am. Dec. 748, 751; Montpelier *v.* East Montpelier, 27 Vt. 704, 710; Woodfork *v.* Union Bank, 3 Coldw. (Tenn.) 488, 499; Pearson *v.* State, 56 Ark. 148, 152; s. c. 35 Am. St. Rep. 91, 92, 93; Louisville *v.* University of Louisville, 15 B. Monr. (Ky.) 642, 674. See also Terrett *v.* Taylor, 9 Cranch U. S. 43, 52. Read the dissenting opinions of Buskirk and Petitt, JJ., in Lucas *v.* Tippecanoe, 40 Ind. 524, 525.

[2] State *v.* Foley, 30 Minn. 350; Richland County *v.* Lawrence County, 12 Ill. 1; Milan County *v.* Bateman, 54 Tex. 153; Galveston County *v.* Tankersley, 39 Tex. 651, 657.

[1] Douglas *v.* Kentucky, 168 U. S. 488, 500; Stone *v.* Mississippi, 101 U. S. 814, 820.

[2] Fertilizing Co. *v.* Hyde Park, 97 U. S. 659.

[3] Greenwood *v.* Freight Co. 105 U. S. 13, 22.

he was interested personally in the principle declared, and was really sitting as a judge in his own case. This doctrine took such an extravagant form that the rights of the absent stockholder were set up and vindicated by his representative the judge, in cases where the stockholder had waived those rights himself, through his agents the directors, and otherwise, and in cases where to set them up was simply to sanction fraud and strike down the rights of innocent third parties dealing with companies on the faith of fraudulent representations, expressed or implied, by their directors as to the extent of their powers. The doctrine of *ultra vires* was in turn almost tomahawked and destroyed by the doctrine of *estoppel*, — a doctrine which is so large and copious that it can be trotted out on almost any occasion either to prevent or to confirm a fraud. On this doctrine of *ultra vires* the judicial pendulum has oscillated so frequently that no lawyer under heaven, no matter how much he has studied the English and American law of private corporations, can state with any confidence what that doctrine is, or what any court will hold concerning it in its next decision.

Twenty-five years ago it was "all the rage" for the Federal courts to open their doors to a single stockholder; and it is still the rage among the little Federal judges whenever they wish to seize, under the pretence of a diverse state citizenship, the jurisdiction of protecting, by their injunctions, the proprietors of coal mines, street railroads, etc., from their striking employés: a jurisdiction which belongs exclusively to the States in the execution of their ordinary criminal laws. Under this doctrine, as it first blossomed out, any irresponsible person could have five shares of the capital stock of a great railway company transferred to him, and could then come into court and bring and maintain a collusive suit in equity to foreclose a railway mortgage, in which the property would be taken into the custody of the court by a receiver, and operated for years, suspending the right of trial by jury in all cases of damage growing out of its operation, and, in general, substituting the report of a master in chancery and the mere discretion of a single judge for those regular processes which had hitherto passed under the designation of "the law of the land."

Nay, more: the Federal judges undertook to superintend the departmental officers of state governments in the valuation of railway property for taxation; and the spectacle was presented of the work of a State Board of Equalization revised by a Master in Chancery of the United States Circuit Court.

Then came the case of Hawes *v.* Oakland,[1] in which it was decided that a single stockholder could not come into court and file a bill in equity to redress grievances which, in the ordinary course of procedure, are properly redressed in an action by the corporation itself, without alleging and proving that its officers were committing breaches of their trust, and that the stockholder had exhausted all his remedies within the corporation in endeavoring to induce them to behave themselves in their offices. That doctrine, for a time, became "the rage," and every State court echoed it, and some of them are still echoing it. But it was found that it went too far for all cases. The gross injustice of turning a stockholder out of court because he had not presented a petition to a board of directors, which consisted merely of a conspiracy of knaves engaged in wrecking the corporation, asking them to bring an action against themselves, soon became apparent, and several courts have got back to the principle that there is no sense in requiring a stockholder to make a showing that he has endeavored to induce the official knaves in control of the corporation to sue themselves to remedy their own knavery, in order that he may maintain an action in equity to set that knavery at rights.[2]

[1] 104 U. S. 450, 460.

[2] 4 Thomp. Corp. § 4504.

Another striking illustration of fashions in the law is found in what is called "government by injunction." This is, for the most part, though not always, government by the Federal courts by the process of injunction, government by a non-elective judiciary, proceeding by methods wholly independent of State common law or State legislation — for the Federal courts when sitting in equity are totally independent of State control, — displacing the regular criminal process of the States, the remedy for public wrongs by indictment or information and by trial by jury, together with the constitutional guaranties which attend that mode of trial; and substituting in the place thereof process of contempt, where the procedure is founded upon the inquisitorial methods of the Roman law, where there is no trial by jury, and where the punishment rests absolutely in the discretion of the judge, who is sitting in a large measure as a judge in his own case, — in a case where his process has not merely been disobeyed, but where his personal dignity has been offended. This new remedy which, with all that has been or can be said against it, is better than anarchy, has been the product of the last twenty years. It is not a mere invention; it is a development — an evolution; for the germs of this remedy, largely as it has been developed, are undoubtedly found in the jurisdiction asserted by the English chancellors, — a jurisdiction so odious to our ancestors that some of the States — notably Massachusetts and Pennsylvania — did not adopt it until periods comparatively recent. This fashion has, in its turn, met with powerful political opposition, — in other words, opposition on the part of the people, more than on the part of the lawyers. The voice of that opposition is calling out, "hitherto shalt thou come, but no further; and here shall thy proud waves be stayed."

A still more modern instance of "fashions in the law" may be found in the recent decision of the English House of Lords in Allen *v.* Flood.[1] The doctrine which has been extracted from this remarkable decision is, that whatever a man has a right to do out of a good motive, he may do out of a bad motive, without incurring the liability to an action by anyone who has been damaged thereby. This doctrine was first received in America with a flutter of attention, and then with a great cackle of applause. The fact was overlooked that, in deciding it, a majority of the lords had disregarded the opinions of six out of seven judges whom they had assembled at their bar. The further fact was overlooked that, having reference to the number of judges who from first to last participated in its decision, it was a decision of *seven* judges against *thirteen*. A little reflection will serve to convince one, that such a doctrine can never maintain a foothold in an enlightened jurisprudence, for the reason that it is opposed to the common sense of justice of mankind. It could be pointed out, if there were time, that there are many things which a man may do from a good motive which he may not do for the mere purpose of private vengeance, or of insulting or annoying his neighbor. For example, in the law of libel a man may, in many cases, publish an unpleasant truth concerning another man, where he does it out of good motives and for justifiable ends; whereas he will not be allowed to publish it for the mere purpose of gratifying his private malice. So, a man may, in a populous community, lawfully carry on an employment which annoys his neighbors; whereas he would clearly not be allowed to do it for the mere purpose of annoying them. A man may, for example, erect on his land, in a given situation, an establishment for rendering the carcasses of dead animals; and this, although it annoys the inhabitants of the neighborhood, will be permitted for the sake of trade, for the sake of the general public health, and

[1] [1898] A. C. 1. See a review of this case, by the writer of this paper, in 30 Am. Law Rep. 463.

for the sake of the prosperity of the community at large. But will he be permitted to do it, not for these reasons, but for the mere sake of driving a particular neighbor out of the neighborhood? It is true that the law on this subject is not yet developed and settled, nor will it ever be until it is so settled as to conform to the ordinary sense of justice. On a hill in the city of San Francisco there is a so-called "spite-wall" erected by a rich man, surrounding on three sides the lot of a poor owner who had refused to sell his lot to the rich man. The right so to erect and maintain that wall may exist under the crude principles of the ancient common law; and it certainly exists under the doctrine of Allen *v.* Flood. But it is none the less a stain upon the memory of the man who erected it, and upon the character of his children who maintain it, and upon the jurisprudence of the State of California, — a State in which the little finger of a rich man is stronger than the loins of the law. If the wall had been erected to defend the windows of its author from the prying curiosity of his neighbor, or for any other purpose tending to promote the beneficial enjoyment by him of his own property, and not merely to destroy the property of the other proprietor or to prevent him from enjoying it, — then its erection would have been permissible under sound theories of law and right. Nor can the theories of the civil law be so entirely disjoined from those of the criminal law as the doctrine of this case requires. A man may not wantonly set fire to his neighbor's house without incurring the penalty of felony; but he may burn it down to arrest the spread of a conflagration, in conformity with the principle *salus populi suprema lex*, without incurring even a civil liability. It is treason to give aid and comfort to the public enemy. But how often is it innocently done, or done under compulsion? In both cases it is done without the *mens rea*, the criminal motive, which, in the criminal law is everything; and the actor is innocent, and the jury is allowed so to say. It is only in very early and crude stages of human development that the act is punished without any regard to the motive.

What is here said is not intended to be said in general disparagement of the law. It is not to be inferred from all this that the law is, on the whole, flighty, irregular, and uncertain. On the contrary, a general purpose of justice runs through it and inheres in it, which is the same from age to age, modified merely to adjust itself to the changing conditions of mankind. The law might almost be said to be

> "The ebb and flow of each receding age,
> The everlasting to-be, which hath been."

It moves forward with a progressive development, — not with a motion which is absolutely regular, not without undulations, not without occasional retrocessions, not without occasional spasmodic movements backward or forward, — but, on the whole, with a steady progression and beneficial evolution. New principles are formulated, but are found not to work well, and are abandoned, while the general symmetry, the eternal oneness of the law remains the same.

Nor is it otherwise with human fashions. The "plug" or "keg" hat worn by the gentleman, but derided by the rustic, is an old headcovering, though it changes slightly from year to year, under a policy of manufacturers and merchants, devised to promote their own profit. The female figures given in "Palgrave's History of the Anglo-Saxons," taken from the sculptured walls of ancient cathedrals, show that our remote maternal ancestors dressed very much as their modern daughters do. In every historic age, so far as I am aware, women have worn their hair long, and in a remote age it was regarded as a shame for them to wear it short.[1] The female bodies that were exhumed at Pompeii

[1] I Cor., ch. xi., v. 5 to 15.

and restored, show that the Roman ladies dressed their long hair into a "top-knot" just as some of our modern ladies do; and the sculptured female profiles on the Parthenon exhibit no great difference in the fashion of wearing their hair, between the Greek women who lived long before the time of Christ and the women of our day. Nor can we overlook the fact that the *breeches* which we wear was a garment worn by the Gauls at the time of Julian the Apostate, and that we get from those ancestors not only the garment, but the name. And so with new fashions in the law. Although sometimes discarded after experiment, they may, on the whole, be set down as progressive, and not as destructive changes.

EPIGRAM.

(*From the French.*)

By Hon. Russell S. Taft.

THE world is but a comic play
Where each one takes a different part;
There, on the stage, in costume gay,
Shine prelates, — generals show their art;
While we, vile people, sit below,
A futile herd of no account;
For us the actors come and go,
We pay to them a small amount,
And when the farce provokes no mirth
We hiss to get our money's worth.

LEAVES FROM AN ENGLISH SOLICITOR'S NOTE BOOK.

By Baxter Borret.

II.

A STORY OF PROFESSIONAL NEGLIGENCE.

AMONG my clients when I was in practice in Georgetown were two maiden ladies, sisters, Mary and Margaret Croome, who lived in a very pretty cottage, with gardens and orchard and everything to make it a charming homestead, on the borders of the beautiful forest of Dean, just where Gloucestershire adjoins Monmouthshire, separated only by the lovely river Wye. They called their cottage Croomedene, and once at least in every summer they expected me to pay them a visit to talk over their affairs, as they said; to me it was a visit looked forward to year by year as a delightful relaxation from the worry of professional life. Their habit was to invite me to come on the Friday afternoon, to devote Saturday to their business, and spend a Sunday in the peaceful quiet of their cottage home, leaving them on the Monday morning. But the most peaceful home in the land has its closet, and in it its skeleton; and these two sisters had their one sorrow, in the shape of a scapegrace brother, George, whose debts and delinquencies compelled him to live abroad; where he was kept from want by monthly payments made from his sisters' incomes, and remitted through my office. George had married, abroad, a dashing beauty who died in about the fifth year of their married life, leaving behind her an only daughter Dorothy. In the first weeks of his sorrow, George had paid a hurried visit to his sisters at Croomedene, bringing little Dorothy with him, and the kind hearts of the sisters had warmed towards the motherless little girl, so that they had eagerly assented when he asked them to make a home for her at Croomedene, only stipulating that he should not take her from them so long as either sister lived, and so Dorothy had grown up in their pretty cottage and become the tender object of their affection, and she, on her side, had become devoted to her old maiden aunts.

On one of my annual visits to Croomedene they had consulted me as to the wills which it behoved them to make, and I had advised that the two should make identic wills, each leaving everything to the other if she should survive her sister; but in the event of either sister surviving the other and then dying, the property of the survivor was to be vested in trustees for the sole benefit of Dorothy for her life, with power for the trustees to settle her fortune upon children in case of her marrying, and other proper provisions for securing Dorothy's fortune from reaching the hands of George or his creditors. I had carefully prepared these wills for signature by the two sisters, and had arranged to go down to Croomedene one Friday afternoon as usual, when at the last moment I was summoned unexpectedly to London by a business engagement which could not be put off. At that time I had in my office a very good young pupil, Cecil Harrington, the son of a medical man practising in the Forest of Dean, and Harrington was, as I knew, on terms of friendly intimacy with the two old ladies. Harrington was just finishing the last of his five years' articles in my office, and knew the position of affairs, and had, indeed, drawn the wills for me (under my own supervision of course); and in my dilemma I had to turn to him, and ask him to go in my stead to Croomedene to see to the wills being properly signed. As Harrington's father was the medical attendant of the two sisters, I had previously arranged with them that he should meet me at Croomedene on the Satur-

day and witness the wills with me. I therefore felt I should best save the old ladies trouble and worry by sending Harrington down in my stead. The signing of the wills without delay had been advised by Dr. Harrington, who had told me that the elder sister Mary suffered from a weak heart, and was liable to die suddenly. My business in London kept me there for the best part of ten days, during which time I received a letter from Harrington telling me that the wills had been duly signed and witnessed, and were locked up in their proper place of custody in the strong room of my office, so I thought no more of the matter. On my return Harrington confided to me that he had made the best of his opportunity, and had spoken to pretty Dorothy the tender words suitable to the situation, and that he hoped one day to make her Mrs. Cecil Harrington. And so the matter passed from my mind. Harrington left my office soon afterwards, passed his examination, was admitted, and started in practice in the town where his father lived.

About two years after this had happened I was shocked to receive a hastily written letter from Dr. Harrington, sent in by a special messenger, to tell me that the elder sister Mary had died very suddenly, and urging me to go to Croomedene at once to see after things, as the surviving sister Margaret was completely stunned by the sudden blow of her sister's death, and was lying, if not unconscious herself, at least incapable of attending to anything. I put everything else on one side, and getting the wills out of their place of custody hurried off by the first train to the little railway station two miles from the cottage. Seated alone in the railway carriage, and having a long hour's journey before me, I took the wills out of the envelope in which they had been folded, intending to refresh my memory by reading over the provisions taking effect on the death of the survivor, so as to see that all was right if the surviving sister should not get over this shock of her sister's death. I read on carefully and steadily, and congratulated myself on the way everything had been provided for. Before replacing the wills in the envelope I glanced at the signature and attestation clauses. *Horror of horrors! I found that by mistake Mary had signed the will prepared for Margaret to sign, and Margaret had signed Mary's will.*

This story of an actual incident happening to me in the course of my late professional career is written at the invitation of the editor of THE GREEN BAG, for the perusal of members of my own (late) profession. I feel I shall have the hearty sympathy of each reader, at the cruel position in which I found myself placed. After a fairly long professional life I may say with some pride that never up to that moment had I had any slur of professional negligence hanging over my office; close attention to the smallest details of my work had given me hitherto a rather good reputation as a careful, painstaking practitioner, and now after twenty-five years of more or less success in my profession I had been overtaken, by sheer misfortune, through no fault of my own. My position was a cruel one, and I am afraid that in the solitude of that railway carriage, like the old patriarch Job in the day of his accumulated trials, I bitterly cursed the day whereon I was born.

I hope my readers will forgive me if I plead guilty to having for a moment harbored a temptation which the evil spirit was not slow to open out to my mind. I certainly scrutinized very closely the signature to Mary's will to see if by careful manipulation the Margaret could not be altered, by erasing the last four letters so as to stand good for Mary.

The temptation was terrible, but a good Providence had made the suggested crime impossible of performance, the attestation clause in Cecil Harrington's own writing set out that the signature to the will headed the last will and testament of Mary, was signed

by Margaret, and so I had to face the situation.

On arriving at the railway station I found Cecil Harrington waiting for me. He was startled at my appearance, and asked me hurriedly if I had been taken ill on the journey down. I took him aside, and poured into his ear the full story of my trouble, brought on by his own negligence. I could not reproach him, his own grief and horror were no less than my own. We drove together to the cottage, where pretty Dorothy was waiting to receive me; a couple of glasses of wine (I am by habit an abstainer) were forced upon me, and I slowly recovered myself so as to be able to speak a few words of sympathy to the sorrowing niece, whose kind forethought had provided a meal ready for me on my arrival.

I learned from Dorothy that her aunt Mary, who was then lying dead upstairs, had been to the little village in the morning on some errand of mercy to a poor cottager, and had overtired herself walking in full sunshine of noon, and had sat down on a seat under the cool shade of a cedar tree which formed one of the beauties of the little cottage home, that Dorothy had been startled to see her fall suddenly from her seat, and hastening up to her had found her speechless and deathlike; she had been carried up to her room and Dr. Harrington had been sent for in haste, and on his arrival an hour later had said he feared the worst, and after the most careful examination he failed to detect any, even the faintest sign of any action of the heart, and had pronounced that she had died from sudden failure of the heart, brought on by over-exertion, about which he had more than once warned both the poor old ladies; in fact Dr. Harrington had told Dorothy the end was just what he had expected might have occurred at any time in the last three years.

The shock to the surviving sister had been very terrible, but she had borne up wonderfully, until the doctor had pronounced her sister to be dead, she then fainted off, and had been restored with difficulty, and was then lying in her own room only partially conscious, tended by her faithful old servant, Barbara.

When we were left alone I discussed with Cecil Harrington the legal position of the whole matter. There was clearly and undoubtedly an intestacy; and George as heir at law of the deceased took her half share of the cottage, which was a freehold, held by the two sisters as tenants in common; and George as one of the next of kin took half of the personal estate, sharing equally with the surviving sister. And, worst of all, George's English creditors could take all his share and interest, and so half of the fortune which was so carefully planned for Dorothy's portion in the future would be actually lost to her. Was there no help for it? Could a case be made out in which a Court of Equity would grant relief? a mutual agreement between two sisters to make identic wills; such an agreement being evidenced by the execution of documents which by sheer accident were inoperative as legal wills! Would a Court of Equity grant relief by declaring George a trustee for carrying out the unfullfilled agreement of the dead testatrix? But what would such a suit involve? years of litigation, untold cost, creditors intervening and rendering friendly compromise impossible. For myself only one result was inevitable; an unanswerable charge of professional negligence, a slur on my good reputation, confusion of face for the rest of my life. Truly my position was as cruel a one as ever an innocent man could be called upon to face.

Two points at least were settled between Harrington and myself before he left me, that nothing need be said till after the funeral; that George should not be summoned to Croomedene, and that I should take the best advice that Lincoln's Inn could afford me at the earliest moment. And so he and I parted, and I was left to bear my burden alone.

Night was now coming on. Barbara the faithful old housekeeper who had nursed Dorothy in her childhood, came in to tell me that the poor sorrowing sister had regained some degree of composure, and was settling down for the night, and it was hoped that a few hours of sleep would tend to restore her, and enable her to see me on the morrow, and so I sought the solitude of my usual bedroom, in which I had passed many happy nights of calm unbroken sleep in happier times, when I had no dread of the rising of an awful morning to disturb my peaceful slumber. Oh, how I longed and prayed for just a few hours of sweet dreamless sleep, to refresh my poor fevered brain and bring back the natural powers and energies of my mind. Sleep was out of the question, I could only toss on my bed, and hug my misery.

And, as I lay tossing upon my bed, I heard a slight sound as of some one moving along the passage. Noiselessly I opened my door and saw a sight enough to stagger the bravest of men. I saw the poor bereft sister stealing silently into the chamber of death. I followed her, as she stepped into the room, and heard her piteous appeal to the cold form on the bed, "O Mary, my own sweet sister, why has God taken you and left me alone! How can I live without you! O God, in mercy take me too! I cannot live alone." And then the poor old lady worn out with her grief, threw herself on the bed of death, with one arm round the neck of the cold sleeping form, and her aged head pillowed on the cold heart; and thus she sank off into sleep beside the form she had loved so well in life.

The sight unmanned me, I am not ashamed to own it; but the tears that now burst from my burning eyelids came as a merciful relief and the fever left my brain. I lay down on my own bed, and fell off into a soft sleep.

I know not how long that blessed sleep lasted, but I was startled by hearing a cry, a sudden cry from the death chamber, "What, Margaret, you here! Where am I? Is it all a dream? O, my own sweet sister Margaret, you here beside me!

Yes. It was no dream. The angel of pity had come down from Heaven and driven away the dark angel, who had at pity's command yielded up her prey. And Mary lived, and lay clasped in the fond arms of her sister.

Dr. Harrington had been wrong for once. He had mistaken syncope for death; the strong love of the sorrowing mourner which had led her to the dark chamber, even to placing herself by the side of the cold form, had brought warmth and life to her whom he had pronounced dead. And there was no intestacy. That point was settled once and forever before I left Croomedene; and my professional character was cleared. And when at last the grim old Reaper came with his sickle keen to reap his harvest, in mercy he took the two loving sisters within a few hours of each other, loving in their lives, and in death not divided.

And Dorothy, I beg your pardon, Mrs. Cecil Harrington, it was your sweet face that did all the mischief, and made that husband of yours neglectful of his duties, and of his master's reputation, and set him thinking that Mary and Margaret were all the same so long as Dorothy was Dorothy. But you must not let him do such a thing again in his practice, because there is an ugly name for it, "Professional Negligence."

THE LOVES OF THE LAWYERS.

THE average barrister is not, one need hardly say, a man of sentiment. He cannot harrow his feelings to order, in the facile manner of, for instance, the average poet, except, of course, when he is addressing the twelve shopkeepers in the jury-box, and for a very good reason. The profession of law brings one sharply into contact with the shady side of human nature, with its follies and its foibles, its passions and its prejudices, and so a lawyer "sees life steadily and sees it whole." He is not so easily moved as an ordinary man. Tears and the Virgilian *crinibus solutis* have little or no effect upon him. Yet, though lawyers do not wear their hearts upon their sleeves for daws to peck at, it would be a mistake to suppose that, in their case, the organ of affection is entirely wanting. History proves the contrary. Love and law seem to have a closer connection than the merely alliterative one. In reading the biographies of famous lawyers, one is struck by the fact that many of them fell in love as raw schoolboys do — head over ears. It was the minority who loved soberly and decorously, as behooved the lights of a learned profession. But all, or nearly all, were susceptible to what the newspapers are fond of calling the "tender passion" at some time or other in their lives.

Sir Thomas More fell a victim to it twice. On the first occasion Sir Thomas allowed compassion to outweigh love. The object of his affection was the second daughter of one John Colt. She was young, pretty, and we have no reason to doubt, returned More's love with interest. But she had an elder sister called Jane, and More, though he sighed for the younger, thought "it would be both great grief and some shame to the elder to see her younger sister preferred before her in marriage, and he then in a certain pity framed his fancy toward the elder," and married her. As to the younger sister's ideas on the subject, deponent is discreetly silent. Few men, we imagine, would be so sensitive and compassionate as Sir Thomas More. But we do not learn that he ever regretted having made Jane his wife; at all events, he seemed to have been very happy in the little house in Bucklersbury, where they lived after their marriage. The great Erasmus visited him here, and remarked on the harmony prevailing in the More *ménage*. But in a few years Jane More died, and Sir Thomas, pleased with his first experience of matrimony, thought he would try another. This time he married Alice Middleton. Alice, not to put too fine a point to it, was a tartar. She had both a tongue and a temper, and she led the poor chancellor a merry dance. She had absolutely no sympathy with her husband's ideals, and could not understand his resigning great honors and dignities because of a mere conscientious scruple. When Sir Thomas was thrown into the Tower, sweet Alice thought that things were going rather far. She pointed out to him all that he was forfeiting: freedom, a fine house at Chelsea, and her own charming society. And why! Because, forsooth, of some foolish ideas he had upon the subject of the legitimacy of the King's marriage. Alice gently but firmly told Sir Thomas that he was a fool. The ex-chancellor mildly replied: "Is not this house as nigh heaven as my own?" and proceeded with the writing of his "Utopia." Shortly afterwards he was beheaded on Tower Hill. Cynics have said that Sir Thomas More had two alternatives — the block and Alice. Like a wise man he chose the block.

Another great lawyer who had an unlucky experience of matrimony was Sir Edward Coke. Like More, too, Coke was married twice. History is comparatively

silent as to his first wife. We know that her name was Bridget Paston and that is about all. When Bridget was gathered to her fathers, an event which happened in June, 1598, Coke cast about for another. In November of the same year he married Lady Elizabeth Hatton, which was something in the nature of a general surprise. For a short time before Lady Hatton had refused no less a man than Bacon; and it was little wonder that the world stared when she accepted his comparatively insignificant rival Coke. What Lady Hatton's motive was we do not know. It is more than likely she married out of spite. It is also probable that Coke was influenced chiefly by the fact that Lady Hatton was grand-daughter of Burghley, and consequently a good "catch" for the ambitious lawyer. But never did a marriage of convenience turn out more disastrously. Lady Coke, of course, cared nothing for her husband, and openly set him at defiance. Family rows were alarmingly frequent. The most notorious squabble which took place between the ill-assorted couple was that over the marriage of their daughter. Sir Edward wished her, at the age of fourteen, to marry the brother of the Duke of Buckingham. Lady Coke objected, and absconded with her daughter to Oaklands. Sir Edward applied for a writ to regain possession of the girl, but Bacon, possibly to pay off an old score, refused it. Coke, however, went to Oaklands and took her away by force. Shortly afterwards Lady Coke left her husband — a separation which neither probably regretted.

The loves of the lawyers have not infrequently been tinctured with all the elements of a thrilling romance. The story of Spencer Cowper, sometime judge of the High Court, is a case in point. When Cowper was a junior barrister going circuit, a certain young lady, by name Miss Stout, fell violently in love with him. Her love, sad to say, was not returned by the unimpressionable juror, and, like a silly young woman, she determined to take her life. One morning she was found dead in a stream close to her parents' house. Now, it happened that Cowper had spent the evening before at the Stouts', with whom he had always been on friendly terms. Suspicion fell upon him, and he was actually indicted and tried for the murder of Miss Stout. Of course there was practically no evidence against him, and he was acquitted; but it is said that the experience made him very careful in after life, when, as a judge, he had to try men on the capital charge. Spencer Cowper married one Pennington Goodeves, and the author of "The Task" was their grandson. The other legal Cowper, William, the first earl, to wit, had a strange experience of a somewhat different kind. Cowper, like so many other famous lawyers, was married twice. His first wife was Judith Booth, concerning whom history recordeth little. But the curious thing is that the idea got abroad, and for a time was very prevalent, that Cowper had committed bigamy. Swift was the first to publish the story, and he attacked Cowper in his usual savage style in two numbers of the "Examiner." The Dean also instigated Mrs. Manley to wield her caustic pen in the same satirical manner. This she did in a little romance entitled "Hernando and Louisa," which the inquisitive may find in that sprightly lady's "Secret Memoirs from the New Atalantis." The story crossed the Channel and was adopted by Voltaire, who published it, with the substantial addition that Cowper had written a pamphet in favor of polygamy. Of course there was not the slightest truth in the statement that Cowper had committed bigamy. But men's sins, like chickens, come home to roost; and an early entanglement with a woman caused Cowper much annoyance and vexation in after life. When Judith Booth died, Cowper, still playing the mystery man, went through a secret marriage with one Mary Clavering. Many reasons, not altogether

satisfactory, have been assigned for this secrecy. But it is sufficient for us to know that Cowper afterwards acknowledged the marriage, and that Mary Clavering proved a very good wife to the first earl.

Romance was also a large ingredient in the matrimonial adventures of the Scotts. Everybody knows the romantic story of the wooing of John Scott, first Earl of Eldon; how his *fiancée* was the daughter of a Newcastle banker; how her father strongly objected to the match; and, how one winter's night the young lady escaped through her bedroom window, descended a rope-ladder into the arms of her lover, and fled with him to Gretna Green, and was promptly married. This marriage proved a very happy one. When, in after life, Eldon was asked why he did not go more into society, he replied that, as his wife had given up society for his sake when she was young, he had now given it up for her sake when she was old.

The marriage of William Scott, Earl Stowell, and brother to the Earl of Eldon, was a different affair altogether. Scott was an admiralty and ecclesiastical judge, and sat at the Old Bailey. On one occasion he had to try a young gentleman, a son of the Marchioness of Sligo, for enticing some naval men to desert and join his yacht in the Mediterranean. The marchioness happened to be in court when Sir William was delivering a homily to the young man on his duties and responsibilities as a citizen. So struck was she with the wisdom of the judge that she immediately jotted down an offer of marriage and handed it to him by the usher of the court. Sir William accepted it on the spot. This story, if not true, is at least *ben trovato*. Some doubt has, indeed, been thrown on its accuracy by various writers; but it is quite certain that the acquaintance between Scott and the marchioness arose out of the trial. We may, however, be discreetly silent as to the happiness or otherwise which followed on this impromptu match.

As an example of the eccentric in matrimony we might quote the case of Serjeant Hill. The serjeant was a very absent-minded man, and on the morning of his marriage went to his chambers as usual, having forgotten all about the ceremony. Some kind friends found him and brought him up to mark in time. He married a Miss Medlicott, who was as eccentric as her husband. By a special patent she retained her maiden name after her marriage, much to the good serjeant's disgust. "My name is Hill, madam," he used to say to her; "my father's name was Hill; all my ancestors were called Hill. Hill is a good name, madam, and while you are my wife, you *shall* be Mrs. Hill, madam." But Mrs. Medlicott did not see it in that light. After her death the serjeant used to say to condoling friends: "Yes, yes, she was a good wife, a very good wife; but, mark my words, *I'll never marry again for money*."

Other eighteenth century lawyers had more or less romantic marriages. Erskine's second marriage with Miss Mary Buck was a Gretna Green affair. Ellenborough married a famous beauty, Anne Lowry, whose attractions were the wonder of Bloomsbury and the talk of the town. Mansfield was a great favorite with the ladies, but, for a wonder, he only married once, Lady Elizabeth Finch, to wit, seventh daughter of the Earl of Nottingham. — *The Law Times.*

A SKETCH OF THE SUPREME COURT OF MISSISSIPPI.

By Thomas H. Somerville.

"HISTORY," says Lamartine, "is like the sibyl, and only reveals herself to time, leaf by leaf." Much that is valuable in the history of a state or nation can be found in the musty records of its courts and the neglected biographies of its judges. Mr. Marshall said, in the Virginia convention, "The greatest curse an angry and avenging God can send upon a sinning and disobedient people is a corrupt, an ignorant or a dependent judiciary."

COLLIN S. TARPLEY.

Mississippi, under both the elective and appointive systems, prevailing at different times, has enjoyed the blessing of able and efficient service in the department of justice.

Her first constitution, adopted on the 15th day of Aug., 1817, "Vested the judicial power in one supreme court, and such superior and inferior courts of law and equity as the legislature might from time to time direct and establish."

The judges of the superior courts, sitting in bank semi-annually at the capital of the State, constituted the supreme court, but the judge "whose decision was under consideration" did not constitute one of the court to determine the question on such decision. It was made his duty, however, "to report to the supreme court the reasons upon which his opinion was founded." This was an admirable provision in the interest of justice and liberty. The unfortunate convict could not, at that date, be hung upon the verbal affirmance of a verdict and judgment of "guilty" without explanation from his unhappy counsel as to the disposition of his "assignment of errors." The youthful advocate was not left in doubt as to whether his writ of error was "error indeed" as Judge Baldwin puts it in his "Flush Times." The supreme court would be supposed in such case to adopt the reasoning of the *nisi prius* judge. The judges held their offices "during good behavior," and "for willful neglect of duty, or other reasonable cause which shall not be sufficient ground for impeachment" the governor could remove any of them "on the address of two thirds of the General Assembly" on due notice and hearing. Provisions like the one last quoted are found in most of the state constitutions of early date where the judicial tenure was for life. Its closing terms are in significant contrast to those employed by Lord Somers in the reform secured on the accession of William

and Mary after the abdication of James II. The provision reported by Lord Somers was as follows: "Eighteen Judges' commissions to be made *quamdiu se bene gesserit*, and their salaries to be ascertained and established to be paid out of the public revenue only, and not to be removed or suspended from their office but by *due course of law*." (Campbell's "Lives of Lord Chancellors," vol. 4, page 103). English reformers, while they dreaded the oppression of such judges as Jeffries and his parasites, were not willing to trust the king with the power of removal. Mississippians lodged the power in their governor and representatives, and thus provided "a check and balance."

The judges appointed under the first constitution, and dates of their appointment, were as follows: John P. Hampton, C. J., W. B. Shields, John Taylor, Powhatan Ellis, Joshua G. Clark, 1818; Walter Leake, 1820; Livingstone B. Metcalf, 1821; Richard Stockton, 1822; Edward Turner, 1824; J. Caldwell, 1825; John Black, George Winchester, 1826; William B. Griffith, Harry Cage, 1827; Isaac R. Nicholson, 1828; William L. Sharkey, 1831.

Judge John P. Hampton was a native of South Carolina, and one of that family whose name adorns both the civic and military annals of that great commonwealth. His character was as pure as the ermine he wore. Another writes that "his conscience was so sensitive . . . that he seems subject to the criticism of endeavoring to enforce a standard of pure morality too lofty for practical use in the ordinary affairs of life." This tribute is doubtless due to his opinion in the case of Frazer *v.* Davis, Walker's Rep. p. 72, where he held that the purchaser's failure to communicate to the seller a rumor of peace between the United States and Great Britain, calculated materially to affect the price of cotton (the commodity sold), vitiated the sale. The correctness of the decision is controverted by the reporter in a note, and the converse opinion of the Supreme Court of the United States cited: Laidlaw *v.* Organ, 2 Wheaton, 178.

Judge W. B. Shields, a native of Delaware, was a man of culture and ability. He was a recognized leader of the democratic party. During the first year of his service he was called to the Federal district bench. In his residence the gifted S. S. Prentiss found his first home in Mississippi.

Judge Taylor, a native of Pennsylvania, came early to Mississippi, was a member of the territorial legislature, and of the convention which organized the State. He retired from the bench in 1820. He was a lawyer of ability, and was held in high esteem as a judge.

Powhatan Ellis was a Virginian by birth, and said to be a descendant of Pocahontas. Mr. Claiborne says he was a man of ordinary intellectual attainments and that "with his blood he inherited the characteristic indolence of his race." Mr. Lynch, in his "Bench and Bar of Mississippi," says of Judge Ellis: "He was never married and was therefore somewhat unorthodox in his views of the relations of husband and wife; hence it may not be surprising to find him in the case of Bradley *v.* The State (Walker, 156) holding to the old feudal doctrine that a man might chastise an obstreperous wife provided he used a rod no larger than his thumb."

Happily we can add that the members of the present court, as the generous representatives of the *barons*, have repudiated that doctrine and relieved the *femes* of such domination.

In 1825 Judge Ellis was appointed United States senator to fill the vacancy caused by the death of the Hon. David Holmes. He was elected to the same position in 1827, appointed United States district judge in 1832, and was later minister to Mexico. He returned to Virginia and died in Richmond during the war between the States.

Joshua G. Clarke was reared in Pennsylvania. He was a member of the territorial legislature and of the constitutional convention as the representative of Claiborne county. "He was not a brilliant lawyer, but was careful, well read, and his opinions quite creditable."

Walter Leake was a Virginian, a member of the Albemarle family of that name which has furnished so many able lawyers. He came early to Mississippi, was elected to Congress in 1817, appointed to the supreme bench in 1822, and was the same year elected governor of the State. He was a man of much intellectual power.

Richard Stockton was a native of New Jersey; educated at Princeton and learned in the law. "He was remarkably modest and unassuming in his manners."

EPHRAIM G. PEYTON.

The trial of Judge Stockton at the bar of the House of Representatives is the only instance, it is believed, in which a judge in Mississippi has been called upon to account for his decision. We have adverted to the constitutional provision for the removal of judges. In 1824 the legislature enacted a stay-law. The sheriff of Claiborne county was induced to apply the provisions of the act to an execution levied before the passage of the law. Judge Stockton, as circuit judge, held that the statute was not retrospective. On appeal to the supreme court his ruling was affirmed and judgment entered imposing on the sheriff a fine of one hundred dollars for "making undue and false return."

The House of Representatives, at its next session, 1825, adopted a resolution requiring the sergeant-at-arms to notify the judges of the supreme court to appear at the bar of the house and show cause why they should not be removed from office "because of their decision in regard to the debtor's act."

According to the account furnished by Mr. Lynch in his book, "The Bench and Bar of Mississippi," "Judge Stockton appeared and begged to exhibit in writing, a statement of the case," etc. He filed an elaborate brief, citing abundant authorities in support of the proposition that such legislation could have no retrospective operation, and contended that "the judges had been governed by pure motives and decided according to established law."

Pointed interrogatories were then put by the committee of the house touching the propriety of punishing a ministerial officer "for executing a law before the same had been declared unconstitutional by the court."

The committee was dissatisfied with the judge's response, and made a report which embraced statements: that "they *believed* that the opinion of the court as to the constitutionality of the law was erroneous; that they *could not believe* that any subordinate

officer ought to be punished for executing any process that emanated from competent authority; that it was his duty to execute and not to judge of its legality."

The report absolved the judges of any unworthy motive, but concluded with a recommendation that the judiciary committee be instructed to report a bill to provide against the recurrence of the evil. The report was received and laid upon the table. The same day Judge Stockton tendered his resignation. He subsequently removed to New Orleans, and, sad to relate, was killed in a duel. The law against this deplorable practice then, as now, was "Thou shalt do no murder." Many, however, high in rank and station, are not restrained by the thunders of Sinai, but deterred by the puny statute imposing a fine and making the offender ineligible to office!

Joshua Child came from New England to Mississippi about the date of the organization of the State. He was well educated and learned in the law, but soon fell into habits of dissipation and resigned.

Alexander Montgomery, of Adams county, is said to have been the first native Mississippian elevated to the supreme bench. He was a man of much native ability and moral integrity. He retired from the bench in 1832 and resumed the practice of the law at Vicksburg, where he died later at an advanced age.

Edward Turner was born in Fairfax county, Virginia, Nov. 25, 1778. He was educated at Transylvania University, Ky., and settled at Natchez, Mississippi. He represented Adams county in the legislature and held various other offices. His career was characterized by industry, fidelity and integrity.

In George Winchester, Massachusetts furnished Mississippi with an able exponent of the State Rights doctrine. He was educated at Harvard and was a fellow student of Judge Story. He presided over the Southern Rights convention held at Jackson in 1849, and was the author of the resolutions adopted by that body. He was a man of marked ability and was held in high esteem as a judge. Mr. Lynch relates that on one occasion the supreme court decided a case in which he appeared as counsel in "his favor, but not on the grounds upon which he had rested, whereupon he promptly moved the court for a rehearing."

Harry Cage, a Tenneseean, succeeded Judge Winchester. He rendered efficient service on the bench. He was in 1832 elected to Congress, where he served faithfully until 1834, when he resigned and retired to his plantation in Louisiana.

George W. Smyth was Judge Cage's successor, but only served during the December term, 1832, when the court was reorganized under the revised constitution.

Judge Black was a native of Massachusetts. He rendered valuable service on the bench from 1825 till 1832, when he was appointed to the United States Senate. He was elected to a full term in 1833.

Eli Huston was a member of the court for a few months prior to its reorganization in 1832.

Isaac R. Nicholson became judge of the newly-created fifth district in 1829, and hence a member of the supreme bench. His services were efficient.

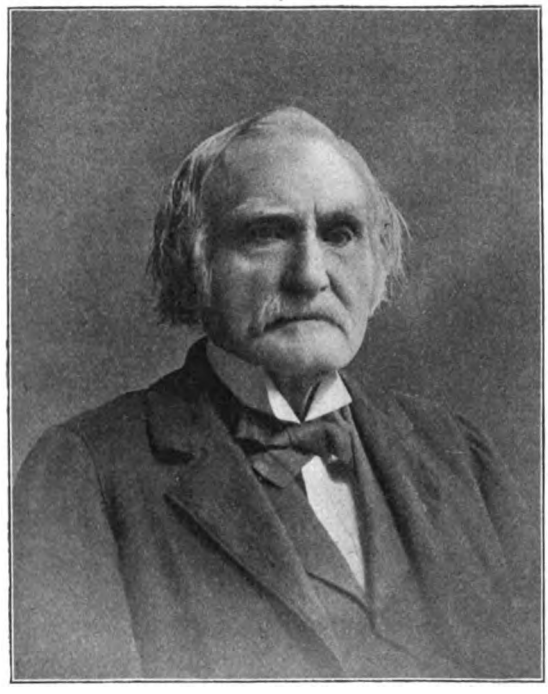
We have now traced the personnel of the bench down to the date of the revised constitution.

The constitution of 1832 provided for "The High Court of Errors and Appeals," to consist of three judges to be elected, one from each of the three districts into which the legislature should divide the State.

Section 3 reads: "The office of one of said judges shall be vacated in two years, and of one in four years, and of one in six years; so that at the expiration of every two years, one of said judges shall be elected as aforesaid."

By the constitution of 1869, the title of the tribunal was changed to the "Supreme Court of Mississippi" and the judges were appointed by the governor with the advice and consent of the Senate. The provisions of the constitution of 1869 are practically perpetuated in the constitution of 1890.

The first election under the constitution of 1832 placed upon the bench, William L. Sharkey, Cotesworth P. Smith, and Daniel W. Wright.



HORATIO F. SIMRALL.

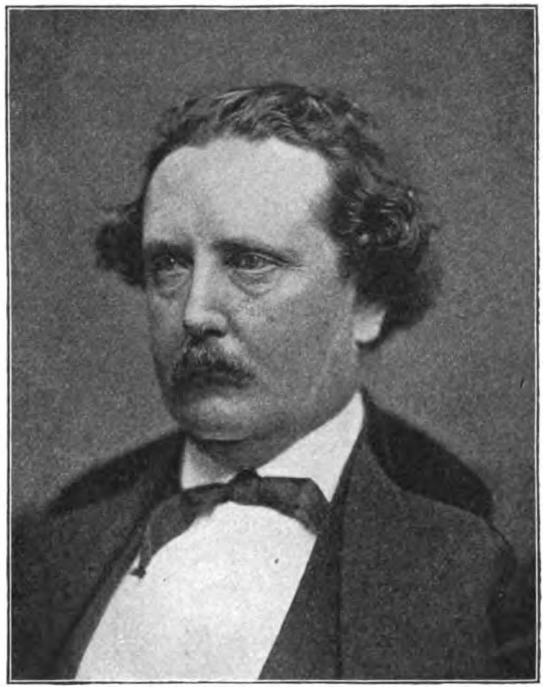
Justice Sharkey was born in Tennessee in 1797. His parents settled in Warren county in 1803. He began his career with "parts and poverty." With his own earnings, he attended school at Greenville, Tenn., and afterwards studied law at Lebanon. He was admitted to the bar at Natchez in 1822. He moved to Vicksburg in 1825, and was elected to the legislature in 1827. He was earnestly opposed to the clause of the constitution providing for the election of judges, and yet was promoted by election to the first bench, served there as chief justice for eighteen years, and, when the liability of the State for the payment of the bonds of the Union Bank was in issue, was triumphantly reëlected in the face of his declaration that the State was liable, over a lawyer of ability who entertained the opposite opinion. Judge Sharkey was a member of the Nashville convention held in 1850. President Fillmore then tendered to him the position of secretary of war which he declined. He remained opposed to secession, and was in 1865 appointed governor of Mississippi by President Johnson. He was afterwards elected to the United States Senate, but, with other southern senators, was denied his seat. He was one of the most able jurists who ever adorned the bench. He died in 1873, "full of years and full of honors."

Cotesworth P. Smith was a native of South Carolina. He came to Wilkinson county, Mississippi, in his boyhood, received a meager education, but, being endowed with fine natural talents, and possessed of much energy and ambition, turned his attention to the law and made rapid progress. He was elected to the lower house of the State legislature in 1826, to the Senate in 1830, and to the High Court bench in 1833. His term expired in 1837. In 1840, he was appointed to fill the vacancy caused by the death of Mr. Justice Pray, but was succeeded during the same year by Mr. Justice Turner. He was again elected to the bench in 1849, and was made chief justice. He delivered the opinion of the court in the famous case of the State of Mississippi *v.* Johnson, 25 Miss. R., holding that the State was liable for the payment of the bonds of the Union Bank. He died in 1863. The memorial resolutions adopted by the bar characterized him as "a judge without fear and without reproach, a citizen

conscientious in the discharge of every duty, and a man whose heart was open to every sympathy for the wants and sufferings of his fellow-men."

Daniel W. Wright was a native of Tennessee, was reared and educated in Alabama. He was an able advocate and possessed powers of oratory, but never wrote an opinion during his service of five years on the bench. He resigned in 1838, and retired also from the bar, and died a few years later.

Publius Rutilius Rufus Pray, a native of the State of Maine, and a ripe scholar, began the practice of law in Hancock county. He was president of the constitutional convention of 1832. He was elected to the bench in 1837 and held the position until his demise in 1839. "Mr. Pray resided at Pearlington, near the sea coast, where lands were held mainly under old French and Spanish grants. He attended the courts in New Orleans and thus acquired a taste for the civil law." He was empowered by the legislature in 1833 to revise the statutes of the State. In doing the work he was "ambitious of originality" and caused the code "to smack too strongly of the Roman law." This displeased the disciples of Coke and the proposed code was rejected.

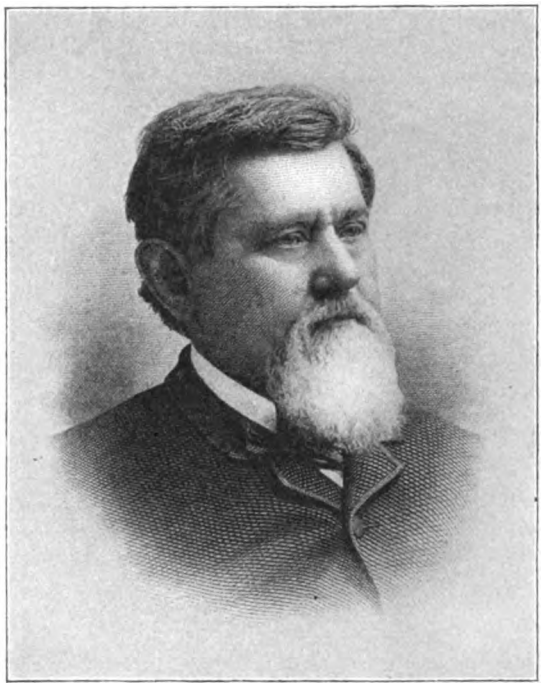


H. H. CHALMERS.

James F. Trotter, a Virginian by birth, removed first to Tennessee, and thence to Monroe county, Mississippi. He served during several terms in the State senate, and was, in 1833, elected to the circuit bench. In 1838, he was elected to the United States Senate to succeed Judge Black, who had resigned. Before taking his seat, Judge Trotter resigned his place in the United States Senate, and was appointed to the Supreme bench of his State, to fill the vacancy caused by the resignation of Justice Wright. He was in 1839 elected by the people to the same position for the term of six years, but resigned in 1842 and resumed the practice of law in Holly Springs. In 1860 he was elected to the chair of law in the University of Mississippi and served there for two years. On the reorganization of the courts in 1866 he was elected to the circuit bench and died a few months later. He was a lawyer of marked ability and much culture, and was devoted to his profession.

Joseph S. B. Thacher was a native of Massachusetts and was reared and educated in Boston. Mr. Lynch says: "He was a descendant of Oxenbridge Thacher, who was employed in connection with James Otis, by merchants of Boston, in 1761, to defend them against the *Writs of Assistance*, and whom John Adams says the advocates of the Crown hated more than they did Otis or Samuel Adams." In 1833, Mr. Thacher, attracted by the fame of Prentiss and others, settled in Natchez, and soon acquired a lucrative practice.

In 1843, Mr. Thacher became a candidate for the supreme bench, and, "after a spirited political contest, entirely incompatible with the nature and dignity of the high office," was elected for the term of six years. In 1849 he was a candidate for re-election, and during the canvass was charged with having procured, during his candidacy in 1843, the publication of articles highly disparaging to the character of his opponent,



JAMES Z. GEORGE.

The bar and others of Natchez procured from the editor of the Gallatin "Signal" his letter "arranging the terms and suggesting a schedule for the circulation of the articles." In consequence in part of this disclosure, Judge Thacher was defeated by Judge Cotesworth P. Smith, although the latter was a Whig and an avowed advocate of the payment of the Union Bank bonds by the State. "It is said that Judge Thacher's talents were more of the literary order than professional." He was devoted to science and wrote essays of considerable merit.

Gen. Reuben O. Davis was born in Tennessee, near Winchester. When five years old his parents moved to Alabama. He remained there until he was sixteen, and there attended the public schools. He first studied medicine under the advice of his father, but afterwards devoted his talents to the study of the law, and became one of the most successful criminal lawyers in the South. He was elected district attorney in 1835, appointed to the supreme bench by Governor Tucker in 1842, and served until the election of Mr. Justice Clayton in the fall of that year. He was colonel of a Mississippi regiment in the Mexican war. In 1857 he was elected to Congress. He was a brave, dauntless spirit. In 1861 he was appointed major-general of the state troops by Governor Pettus. He is the author of an interesting book, entitled "Recollections of Mississippi and Mississippians." He died suddenly while away from home in 1890.

Ephraim S. Fisher was born near Danville, Kentucky, and emigrated to Mississippi in 1833. After a brief sojourn at Vicksburg he obtained a license to practice law, and located at Coffeeville. He served in the legislature during one session, and declined reëlection. He attained high rank at the bar, and was in 1851 promoted to the supreme bench, where he served with industry and ability until a short time prior to the civil war, when he resigned his position to resume the practice of law. He was nominated for governor of Mississippi in 1865, but was at the time of his nomination in Washington city on professional business, and did not return till a few days before the election. In 1869 he was appointed to the circuit bench by Governor Alcorn. In 1876 he removed to Texas and died sud-

denly a few months later. He was an able and upright man.

Collin S. Tarpley was born in Petersburg, Virginia, in 1802. His family moved to Nashville, Tennessee, when he was ten years of age. By means of the most rigid economy his widowed mother managed to secure his education in the Cumberland University.

He subsequently taught school and then began the study of law under the tuition of Governor A. V. Brown and James K. Polk who were then partners. With their generous aid he secured a license and began practice in the town of Pulaski. In 1831 he removed to Florence, Alabama, and became associated with the Hon. John McKinley who was afterwards one of the justices of the supreme court of the United States. In 1838 Mr. Tarpley came to Mississippi and settled in Hinds county, where he formed a partnership with Judge Taylor. His firm enjoyed a large and lucrative practice. On the resignation of Chief Justice Sharkey he was appointed to the supreme bench by Governor Whitfield. There was some controversy as to the power of the governor to make the appointment, and Mr. Tarpley soon resigned and resumed his place at the bar. He was public spirited and took an active interest in agricultural questions. In 1859 he delivered a polished address before the Shelby County, Tennessee, Agricultural Association, in which he earnestly advocated the conversion of the Hermitage, then the property of the State of Tennessee, into an agricultural college. He is said to have been the originator of the scheme for the construction of the New Orleans and Jackson Railroad. He drafted its charter, was one of its directors, devoted much time to the enterprise, and lived to see the fruition of the project which was regarded by many "as the dream of a visionary." He was an ardent Democrat, was a member of the Baltimore convention of 1852, and earnestly advocated the election of Mr. Jefferson Davis as governor of Mississippi. He died in 1860.

William Yerger was a native of Lebanon, Tennessee. He graduated from the Cumberland University before he attained his majority, and was immediately admitted to the bar. In 1837 he removed to Mississippi and began the practice of law at Jackson. He was a profound lawyer and an eloquent advocate. In 1850, though a member of the Whig party then in the minority and opposed to most of the popular measures of the day, he was elected to a seat on the high court bench. Among his many great opinions is the famous one, concurring with Justice Smith, in the case of the State of Mississippi *v.* Johnson, 25th Miss., 625. Judge Wiley P. Harris, in presenting to the supreme court the memorial resolutions of the bar touching Judge Yerger's death, said: "It is not for me to attempt to measure the intellectual stature of William Yerger, nor to point out and define those traits of mind by which he built up a splendid and lasting reputation. I may refer, however, to the manifestations of his great powers which were obvious to us all." He then referred to his eminent service. Judge Yerger was truly a great and good man.

Alexander H. Handy was born in Somerset county, Maryland, on December 25, 1809. He was well educated. He came to Mississippi in 1836, immediately after his admission to the bar. He acquired a lucrative practice at Canton, and was in 1853 elected to a seat upon the bench of the high court. He was reëlected in 1860, and again in 1865, became chief justice in 1866. He resigned his office in 1867 in consequence of the subjection of the court to military power by the Federal government. He then removed to Baltimore and was elected to the chair of law in the University of Maryland which he occupied until his return to Mississippi in 1871. He was a Democrat and an earnest advocate of the

doctrine of State rights. He was a fluent speaker and a polished writer. He died at Canton in 1883.

William L. Harris was born in Elbert county, Georgia, July 6, 1807. He graduated from the University of Georgia at the age of fifteen, began the study of law and was admitted to the bar by legislative enactment before he attained his majority. In 1837 he settled in Columbus, Mississippi, and there acquired a large practice. In 1853 he was elected circuit judge. In 1856 he served as one of the three commissioners who compiled the code of 1857. In 1860 President Buchanan tendered him the appointment to a seat on the supreme bench of the United States but he declined "because of the impending secession." He was elected to the bench of the high court of errors and appeals of his State in 1858 and again in 1865; he resigned in 1867 because of the subordination of the court to military authority. He was learned in the law and possessed of great oratorical powers. He removed to Memphis and resumed the practice of his profession. He died in 1868.

THOMAS H. WOODS.

David W. Hurst of Amite county was in October, 1863, elected to fill the unexpired term of Justice Smith, but the courts were then closed and his occupancy of the bench was merely nominal.

Henry T. Ellett was a successful lawyer in Claiborne county. He was a democrat in politics. He was accomplished, learned and popular. He was in November, 1846, elected to succeed Col. Jefferson Davis in the Congress of the United States, and served until March, 1847, when he declined reëlection and resumed the practice of law. He was one of the three commissioners who framed the code of 1857. In 1866 he was elected to the bench of the high court. With his associates, Justices Harris and Handy, he resigned in 1867, and removed to Memphis where he resumed the practice of law and continued till his death which occurred in 1887.

Thomas G. Shackleford graduated from the school of law in the Transylvania University and settled in Mississippi. He was appointed to the bench in 1868 by General Ames, the military commandant, and performed most of the labor during his term. He was circuit judge for several years after his retirement from the supreme bench.

E. Jeffords, of Issaquena county, also sat by appointment under military rule in 1868. The opinions of this tribunal are found in the forty-second volume of the Mississippi reports. In criticising a case cited in that volume, as authority in the cause of Lusby *v.* Railroad Co., 73 Miss., 360, Justice Woods, speaking for the present court, says: "The case has no binding authority upon us, nor does the doctrine

of *stare decisis* have any application in the case referred to, nor in any other case found in the so-called 42 Miss. The opinions found in that volume are the utterances of a tribunal appointed by a military satrap who then ruled in a prostrate commonwealth, and have no other binding authority upon us than that each case therein must be regarded as *res adjudicata!*"

Ephraim Geoffrey Peyton was born near Elizabethton, Kentucky, in 1802. His ancestors were from Virginia. He was sent to college at Gallatin, but left school at the age of seventeen and came to Natchez, Mississippi, with an older brother. There he obtained employment as a printer, and later secured a small school in the forests of Wilkinson county where he began and prosecuted the study of law. In 1825 he obtained his license from the supreme court then in session at Natchez. He thereupon filled his saddle-bags with law books and went into the interior to practice. He located at Gallatin in Copiah county, and, with his earnings, soon thereafter established a large mercantile house at Grand Gulf in Mississippi. He served one session in the legislature and then "persistently refused to compete for any political office." In 1839 he was elected district attorney and served with fidelity and ability. He was a zealous Whig in politics and earnestly opposed the policy of secession. His antipathy to the measures of democracy led him into affiliation with the Republican party after the war. He was appointed to the supreme bench by General Ames, and upon the reorganization of the court under the constitution of 1869, was again appointed by Governor Alcorn. In 1870 he became chief justice, and held the position until the Democrats came into power in 1876. He was an accomplished lawyer and an able and impartial jurist and enjoyed the respect and esteem of the profession to the end, regardless of party fealty.

Under the constitution of 1869 the judges were selected by appointment of the governor with the advice and consent of the Senate. The first bench thus constructed consisted of Chief Justice Peyton, above mentioned; Jonathan Tarbell and Horatio F. Simrall, associate justices.

Mr. Justice Tarbell was from Washington city. He served from the date of his appointment in 1870 until 1876 when he returned to Washington and resumed his practice.

Horatio F. Simrall was born near Shelbyville, Kentucky, February 6, 1818. He attended a select school at Shelbyville and, at the age of seventeen, entered Hanover College (Ind.). He afterwards became a tutor in the school at Shelbyville, and in connection with his work, prosecuted the study of the law, his chosen profession. In 1838 he attended the law school of Transylvania University, and later obtained his license at Frankfort. In 1839 he settled at Woodville, Mississippi, where he enjoyed a large practice. He was a member of the legislature from 1846 to 1848. In 1857 he accepted the chair of law in the University of Louisville and filled it until the beginning of the civil war. In 1861 he returned to his plantation in Wilkinson county. In 1867 he removed to Vicksburg and continued the practice of law with success. He defended many persons who were under prosecution in the court martial over which Gen. Adelbert C. Ames, afterwards governor of the State, was the presiding officer. In 1870 the governor, impressed by the learning and skill which Mr. Simrall had manifested, tendered him a seat upon the supreme bench, and Judge Simrall, at the earnest solicitation of leading members of the bar of the State, accepted the commission and served nine years with marked ability and integrity, being chief justice much of the time. In 1870 he was appointed one of the trustees of the University of Mississippi by Governor Alcorn. In 1881 that institution conferred upon him the degree of LL.D. He is at present one of the lecturers of the law

school of that university. His familiarity with public men and measures invest his discourses on international and constitutional law with peculiar interest for the students, and it is pleasing to see them sitting at the feet of their venerable instructor.

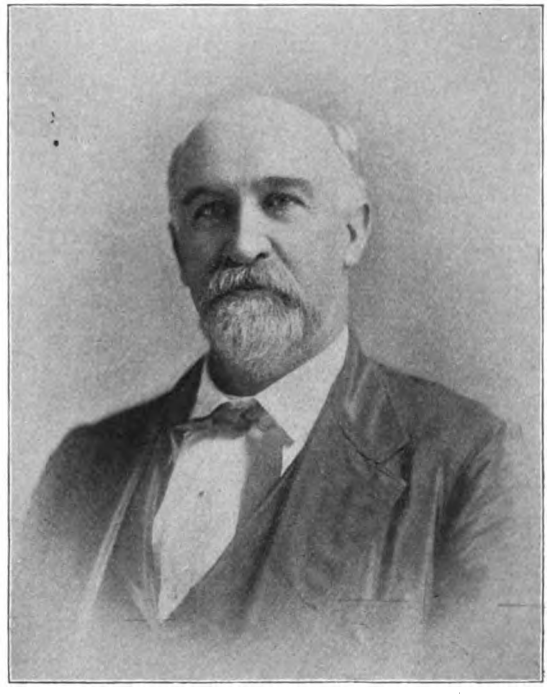
H. H. Chalmers was born in Halifax county, Virginia, in 1833. He graduated from the University of Mississippi in 1853, and began the practice of his profession in De Soto county. He was devoted to the law and attained a high rank at the bar. He was a profound student and a fluent speaker. He never sought or held office except in the line of his profession. He was appointed to the supreme bench in 1876, and re-appointed at the expiration of his term, and died suddenly Jan. 4, 1885. His opinions adorn the reports of the court.

ALBERT H. WHITFIELD.

Joseph A. P. Campbell was born in South Carolina, March 2, 1830. Judge Campbell was educated at Davidson College, North Carolina, and came directly to Madison county, Mississippi. He was admitted to the bar at Kosciusko, June 12, 1847, at the age of seventeen. He opened a law office at that place and conducted a large and profitable practice. He was elected to the legisture in 1851, when he had just attained his majority. In 1859 he was reëlected and then became speaker of the house. In 1861 when his State seceded, he was elected a delegate to the constitutional convention at Montgomery, Alabama. At the expiration of this service he enlisted in the Confederate army. He was made captain and afterwards promoted to the office of colonel. He was slightly wounded at the battle of Corinth. After the war he was elected circuit judge. In 1870, he served as one of the commissioners who framed the code of 1871, and in 1879, he performed like service in the construction of the code of 1880. He was appointed to the supreme bench in 1876, and served continuously until 1895, when he declined re-appointment. He is forceful, eloquent and learned. He was chief justice during much of the period of his occupancy of the supreme bench. He is yet a practitioner, but only accepts retainers in cases of interest or importance.

James Z. George was born in Monroe county, Georgia, October 20, 1826. When he was eight years of age, his mother, then a widow, removed to Noxubee county, Mississippi, and thence, two years later, to Carroll county, where he received his education in the common schools. He enlisted as private in the first regiment, Mississippi volunteers, in the Mexican war, under the command of Colonel Jefferson Davis, and participated in the battle of Monterey. On his return, he studied law and was admitted to the bar in Carroll county. In 1854 he was elected reporter of the high court of errors and appeals, and served in that ca-

pacity until the outbreak of the civil war. He prepared ten volumes of the reports of that court and a digest of the decisions of the appellate courts from the date of the admission of the State into the Unionuntil 1870. These works are monuments to his learning in the law. He was a member of the convention which adopted the ordinance of secession and signed that memorable document. He was captain of the twentieth regiment of Mississippi volunteers and was promoted, successively, to the offices of colonel and brigadier-general in the Confederate service. He was chairman of the Democratic executive committee of his State in 1875–6. In 1879, he was appointed to the supreme bench and made chief justice. In February, 1881, he resigned his seat on the bench to take the place to which he was elected in the United States Senate. He was reëlected in 1886, and again in 1892 and declined reëlection in 1896. He was the leader in the Constitutional Convention of 1890. In all these relations, with his strong arm and great brain and sympathetic heart, he wrought much for the cause of liberty and good government. His career is a part of the history of the country. He died, honored and lamented, on the fourteenth day of August, 1897.



SAMUEL H. TERRILL.

Tim E. Cooper was born July 5, 1843, in Copiah county, Mississippi. He entered the University of North Carolina at Chapel Hill, but his studies were interrupted by the call to arms, and, at the age of seventeen, he enlisted in the Confederate service, and was a gallant soldier throughout the war. At its close, he studied law in the office of Judge Yerger, and later, with Messrs. King and Mayes, at Gallatin, and was admitted to the bar at the latter place in 1866. He subsequently removed to Crystal Springs and there prosecuted his profession with success until 1872, when he removed to Hazelhurst and there likewise acquired a large and lucrative practice. He was appointed to the supreme bench in 1881, to succeed Chief Justice George. In 1896, he resigned his place, and removed to Memphis, where he is now engaged in the practice of his profession.

James M. Arnold was an able member of the Columbus bar. He served on the circuit bench for a number of years with eminent satisfaction. He was promoted to the supreme bench in 1885, and served there with ability and impartiality until 1889, when he resigned his place to resume the practice of his profession. Justice Arnold was a man of much learning and many accomplishments. After leaving the bench he settled in Birmingham, Alabama, and continued in practice until his death in 1898.

Thomas H. Woods was born in Glasgow, Kentucky, in 1838. In 1848 his father, the Rev. Henry Woods, removed with his

family to Kemper county, Mississippi. There the son attended the public schools. In 1871 he went to Meridian. He attended Williams College, Massachusetts, two sessions, and, upon his return, began the study of the law, and soon afterwards obtained his license to practice and settled in Kemper county. He was sent as a delegate to the convention which passed the ordinance of secession, of which body he was the youngest member. He was a gallant soldier in the Confederate army, and received a serious wound at Malvern Hill. In 1865 he was elected district attorney, reëlected in 1866 and again in 1875. He resigned this office in 1876, and was in 1882 elected to the state senate. In 1889 he was appointed to the Supreme bench, which position he still retains. He is now the chief justice.

Albert H. Whitfield is a native Mississipian. He is of Scotch-Irish descent and was born in Monroe county, October 12, 1849. He was reared on the farm. He graduated at the University of Mississippi with first honor, taking the degree of A.B. in 1871. He was adjunct professor of Greek, Latin and history in that institution. He also obtained there the degree of A.M. in 1873 and the degree of B.L. in 1874. He practiced law from 1874 to 1894 when he was elected to the chair of law in the University of Mississippi. This position he filled until 1894 when he was appointed by Governor Stone to his present place on the Supreme bench. The honorary degree of LL.D. was conferred upon him by his *alma mater* in 1895.

Thomas R. Stockdale was a native of Pennsylvania, and graduated from Jefferson College. He afterwards attended the school of law in the University of Mississippi, attained the degree of B.L. and settled in Pike county in 1858. He entered the Confederate service in 1861, and continued in the army till the close of the war. He was elected to Congress in 1886, and served there until 1890. In the fall of 1896 he was appointed by Governor McLaurin to the supreme bench for the unexpired term of Justice Cooper, resigned. He occupied the bench until March 1897, when his term expired. He died in 1898.

Samuel H. Terrill is a native Mississippian, having been born in Jasper county in 1835. He was educated in the county schools and later attended the University of Mississippi. He enlisted in Company C of the 37th Mississippi regiment and served as its captain until 1863, when he was promoted to the rank of major. After the war he settled permanently at Quitman and engaged in the practice of law until 1882, when he was appointed to the circuit bench, where he served efficiently. In 1897 he was promoted by appointment of Governor McLaurin to the seat he now occupies on the supreme bench.

Much of the information contained in the foregoing sketch, especially touching the early judges, has been gleaned from Claiborne's "History of Mississippi," "The Bench and Bar of Mississippi," by James D. Lynch, and Goodspeed's "Memoirs of Mississippi." The writer intended to include in this article the history of noted causes which have been determined in the Supreme Court of Mississippi, and it would have been well to have treated each case in connection with the sketch of the judge who rendered the opinion therein. It was found, however, that this method would protract the article to an unreasonable length. An account of these cases may be furnished at some future day. Suffice it now to state that they fully sustain the reputation of the court for ability and impartiality.

CHIEF-JUSTICE TROTT AND THE CAROLINA PIRATES.

A. M. Barnes.

NICHOLAS TROTT, the first attorney-general of the Province of Carolina, and afterwards chief-justice, was a man of splendid legal ability, of unbounded ambition, and of little principle. To use a trite expression, he knew well how to look out for number one. He is renowned in the history of Carolina as having set himself, while a member of the Assembly, in violent opposition to what he deemed the undue assumption of authority on the part of three governors, by two of whom he was deposed, and each time reinstated by act of Assembly ratified by the council, or king's own, as it was called. He it was, too, who took bull-dog issue with this same royal council as to its claim to being an Upper House, corresponding to the House of Lords of England. Trott held that with this council alone did not rest the power of either rejecting or ratifying enactments, and dubbing it the House of Proprietors' Deputies, by which name he also persuaded the Assembly to designate it. This question once sprung with reference to the higher power of the Council in the enactment of laws, the tension never slackened until the coming of the Revolution of 1776 with its weightier matters put an end to it. Among others, the heated and protracted controversy concerning it between William Henry Drayton of South Carolina and the Hon. Sir Egerton Leigh of England, became a matter of international interest.

But all the same the royal council continued to hold its own to the end of the proprietary government; sitting as a separate body, without the consent of which no law could be passed nor even a question of law considered.

It is also asserted that the tyrannical conduct of Trott while chief-justice had much to do with the throwing off by a long-suffering people of the yoke of the proprietary government. However, Trott is more widely known in history as "the man who hung the pirates."

On the coming of Trott to the province, in 1698, legal affairs were in a sad shape. Indeed, they may more fittingly be described as in no shape at all. The court, if so dignified a term may be applied, consisted of only a judge and sheriff, with no prosecuting officer. The grand (?) model of Locke, as is well known, was antagonistic to lawyers. It declared it to be a "base and vile thing to plead for money or reward," and it forbade any but a near kinsman to appear in court in another's behalf. Even he had to take public oath that he had not bargained to enter upon said defense for any money consideration or for other reward. The object of this was only too evident. With no shrewd legal minds to combat their schemes and plans, the proprietors and their official puppets could have things all their own way.

It is believed that Trott was the first real lawyer to appear in the province, that is, one regularly trained; and it is amusing to note the comments which his coming called forth from some writers of that day. The appearance of the serpent in Eden seems to have been a matter of little consequence compared to the advent of this lawyer.

The proprietors sent out a chief-justice and an attorney-general at the same time, though the attorney-general was the first to be commissioned and to assume his duties. In the hands of this official was placed unlimited power, for, in addition, he was advocate-general of admiralty and naval officer. His duties were thus manifold. First, he was expected to instruct the governor in various matters pertaining to his office. Thus, if that chief executive were anything of a clayey nature, the attorney-

general could mould as well as direct. Second, all acts of Assembly were laid before him prior to their confirmation by the Upper House, so that he might see that they in every way conformed to the laws of England, also that they would be such as were not repugnant to the Lords Proprietors. Third, to prosecute and take charge of all criminal matters. In short, he was the court. Fourth, to keep his eye sharply upon the Indian trade, and to so turn the tide of it that it should come in laden with the highest moneyed values. In addition to these, and much more unnecessary to name, he was to have full control of the pushing of the matter of the King's customs. All collectors of same were not only to report to him, but also to consult with him and to receive and act upon his advice. As naval officer he had full jurisdiction over every ship outward or inward bound. For these many duties, though I cannot say they were also onerous, he received the magnificent sum of £40 per annum, about $200. It can therefore be a matter of no surprise that he set about devising ways and means of perquisites.

Before being commissioned attorney-general of Carolina, Trott had been governor of one of the Bahamas. It was while occupying this position that he was accused by Edward Randolph, then surveyor-general of customs, of being entirely too friendly with well-known characters of piratical tendencies, with whom he curried favor in order to further his own interests. Randolph even asserted that Trott had provided a safe harbor for the vessels of certain pirates for whom search was being made with the view to bringing them to justice. How much truth there was in these accusations, never became known, at least not in Carolina. One thing in Trott's favor was that the same charge had been made by Randolph against various other governors, for the surveyor-general was a blustering, outspoken man, "pirate mad," as many asserted.

At any rate, Trott came to the province with this charge hanging about him as a most unpleasant bit of moral drapery. This may have been the chief cause of his unusual harshness and severity during the famous trial of the pirates, Stede Bonnet and others, in Charleston, in 1718. Any leniency on his part might have seemed a confirmation of Randolph's charge.

I am aware that in a recent defense of Chief-Justice Trott it is claimed that there were two Nicholas Trotts, and that the first attorney-general of the Province of Carolina was never even a resident of the Bahamas. As this statement is directly opposed to that of every history of South Carolina I have examined, I know not what proof the writer of the said defense can bring forward in substantiation of the claim. Only the bare assertion is made in the article, and nothing given to sustain it.

The trial of the Carolina pirates was one that attracted wide-spread attention at the time, and that is still alluded to, and incidents in connection with it quoted, to this day. The Johns Hopkins University has considered it of sufficient import to include it in their series of Historical and Political Studies: the volume, the twelfth in the series, having been prepared in 1894, by Shirley Carter Hughson, under the title of "The Carolina Pirates and Colonial Commerce."

At the time Trott was appointed chief-justice the whole Carolina coast from the mouth of the Cape Fear River to the St. John's was infested with pirates. So, too, was the track of merchant vessels from the Colonies to England and from Carolina to Barbadoes, Jamaica, and other West India Islands. For the rice ships going out, and the vessels laden with sugar, rum, and fine dress-stuffs, coming in, were the most tempting of prizes. In four years' time about forty vessels were taken on the Carolina coast.

The laws of those days touching pirates were rather lax; or, rather, perhaps, the

laws were well enough, but those who had the putting into execution of the laws were careless as to their duty. Often, too, bribery was charged. It also made considerable difference as to the nationality of the vessel seized and robbed. When the sailors came on shore with their pockets full of *pistoles* and *doubloons* and with rich pieces of satin, lace, and silk for their friends, taken from French and Spanish vessels, Oh, then they were gallant fellows indeed! or at the worst privateers. It was only when British vessels were seized that they became pirates. Even then little was done to apprehend them.

It is a well-known fact that the king himself (Charles II), on his restoration, openly encouraged piracy, or privateering, as he was pleased to call it, for the profit it brought him. He knighted Henry Morgan, the notorious pirate, and made him deputy governor of Jamaica. William also commissioned privateers against vessels of France and Spain, knowing well that these papers but gave broader scope for plunder and bloodshed to men already in bad repute.

One of the most desperate and successful of the pirates who for some time harassed the Carolina coast, was Stede Bonnet, the very last man one would have supposed could have lent himself to such a calling. For he was a man of wealth and position, had served faithfully and with much distinction with the king's army in Barbadoes, being commissioned to the rank of major for brave conduct. He was a man of refinement and education, with many accomplishments for those times. His piratical career began in company with Edward Thatch, the notorious Black Beard, whose name had spread such terror along the entire North American shore. After having made several cruises with Thatch, plundering and slaying, Bonnet suddenly cut loose from the noted pirate and proceeded to England, where he availed himself of the proclamation of William granting pardon to pirates on certain conditions, took the oath, and received the proper clearance papers for his vessel. Then, under the pretence of privateering, with the king's sanction, he entered upon a career of plunder and bloodshed second to that only of the notorious Captain Kidd, armed with a like authority. He fitted a vessel, mounted it with the newest and best guns, and gathered about him a crew of seventy desperate men. He soon became such a terror to the whole Carolina water way, under the name of Captain Thomas, that Governor Johnson, of Carolina, in 1718, determined to capture him and his crew. He therefore dispatched Col. William Rhett in command of two sloops. Rhett sailed for the mouth of the Cape Fear river September 20. He came upon the pirates in their hiding place, took them completely by surprise, and, after a desperate encounter and much bloodshed, accomplished the capture of Bonnet and the remainder of his crew, about thirty in number. Soon after being brought to Charleston, Bonnet managed to escape, it is said, in the disguise of a woman. He was recaptured by Colonel Rhett, while hiding in the dense myrtle coppices on Sullivan's Island, just off the harbor. In the meantime his crew had been brought to trial and twenty-two of them sentenced to death, two turning State's evidence, and five or six proving that they were captives from peaceful vessels, and had been pressed into the pirate's service against their will.

Chief-Justice Trott's charge to the grand jury when the pirates were brought up for indictment was able and exhaustive. So clear and forceful was it, pruned of a certain amount of pedantry, so accurately did it deal with the various points of the law, that it was included among the "State Trials" published in London, copies of which may be found in the older law libraries of England and of a few in this country. This charge is also quoted at some length in "Phillimore's International Law."

Bonnet was brought to trial on November

10, 1718, Chief-Justice Trott presiding, with ten assistant judges and Richard Allein as prosecuting attorney. There had to be a special act of the Assembly providing for the trial of the pirates, the old statute of Henry VIII, relative to piracy, then in force in the province, not being considered sufficient to cover the exigencies of the case. The act of the Assembly also provided lists of those from whom the two juries, grand and petit, should be drawn.

From the moment of Bonnet's appearance in court, Trott's overbearing manner impressed all who saw it. He also many times overstepped his authority. In short, instead of being the calm, impartial, and dignified judge, he became not only the prosecutor but the unrelenting Nemesis as well. Bonnet's own demeanor, quiet, gentlemanly, forbearing, was in so marked contrast to Trott's, that, in spite of themselves, spectators found their sympathies turning to Bonnet. The chief-justice constantly interrogated the accused as well the witnesses; endeavoring at each passage of words to probe as deep as possible, and to expose every weak point in Bonnet's plea. Under the English law it was the duty of the judge, especially as the accused was deprived of counsel, to see that he not only had a fair trial, but also to take care of his interests. The course of Trott through the entire trial was diametrically opposed to every prompting of humanity and justice. He not only assailed every point of the defense, but he also brought to bear upon the case the testimony of various of the pirates at the preceding trials, when Bonnet had not been present. On Bonnet's attempting to reply he was either silenced or overwhelmed by the judge's arrogance.

Bonnet was sentenced on November 12, and executed about three weeks later. One remarkable thing about this famous trial was the knowledge of Scripture displayed by both the corrupt judge and the bloodthirsty pirate. On sentencing Bonnet, Trott made use among several other similar ones, of the following sentences, stopping after each to read the passage from Scripture: "You being a gentleman that have had the advantage of *liberal education*, and being generally esteemed a man of letters, I believe it will be needless for me to explain to you the nature of repentance and faith in Christ, they being so often and so fully explained in the Scriptures that you cannot but know them. . . . For had your delight been in the law of the Lord, and that you had meditated therein, day and night (Psalm i, 2), you would then have found that God's Word was a lamp unto your feet, and a light to your path (Psalm cxix, 105), and that you would account all other knowledge but loss in comparison of the excellency of the knowledge of Christ Jesus (Phil. iii, 8), who to them that are called is the power of God and the wisdom of God (1 Cor. i, 24), even as the hidden wisdom which God ordained before the world (1 Cor. ii. 7)."

Bonnet, who had borne himself bravely during the entire trial, broke down completely on being sentenced, and from thence till the day of his execution made many abject pleas for his life. In his letters to both the governor and the chief-justice he used frequent quotations from the scriptures. To Governor Johnson he wrote:—

"I heartily beseech that you will permit me to live, and I'll voluntarily put it forever out of my power by separating my limbs from my body, only reserving the use of my tongue to call continually on and pray to the Lord, my God, and mourn all my days in sackcloth and ashes to work out confident hopes of my salvation, at that great and dreadful day when all righteous souls shall receive their just reward . . .

"Now the God of peace that brought again from the dead our Lord Jesus Christ, that great shepherd of the sheep, through the blood of the everlasting covenant make you perfect in every good work to do his will, working in you that which is well pleasing in

his sight, through Jesus Christ, to whom be glory forever and ever, is the hearty prayer of

"Your honor's most miserable and afflicted servant, STEDE BONNET."

Shortly after Bonnet's sentence a second expedition sent by Governor Johnson in search of the pirates was also successful, capturing a large crew of them, twenty-three of whom were executed November 24. This, together with the efforts made by Governor Spotswood of Virginia, who slew both the noted pirates Black Beard and Worley, taking captive their crews, completely broke up the nest of pirates on the Carolina coast, and thereafter gave peace to the troubled waters of commerce.

FOREIGN COMPANIES IN FRANCE.

IT seems well that legal and commercial circles in America should have their attention directed to a recent decision of the Court of Cassation which reveals an unsatisfactory attitude on the part of the French legal tribunals towards foreign companies carrying on business within the territory of the Republic. The decision in question was given under the Anglo-French Convention of 1862. By this convention the high contracting parties "declare that they mutually grant to all companies and other associations, commercial, industrial or financial, constituted and authorized in conformity with the law in force in either of the two countries, the power of exercising all their rights, and of appearing before the tribunals, whether for the purpose of bringing an action or for defending the same throughout the dominions and possessions of the other power, subject to the sole condition of conforming to the laws of such dominions and possessions."

The obvious meaning of this treaty is that,[1] (1) companies constituted according to British law, are British companies; while those constituted according to French law, are French companies: (2) all British companies are entitled to exercise all their rights and bring or defend actions in France or *vice versa*. "In other words," to quote Mr. Barclay (*ubi infra* at p. 14), "a duly constituted British joint-stock company is, under the convention, a corporate entity, and when it brings or defends an action in a court of law, it presents itself as a legal person complete and indivisible. The only condition imposed by the convention is that, having been properly constituted in Great Britain, the company shall conform to the laws of France, that is to say, shall do nothing which a French company would not be permitted by law to do."

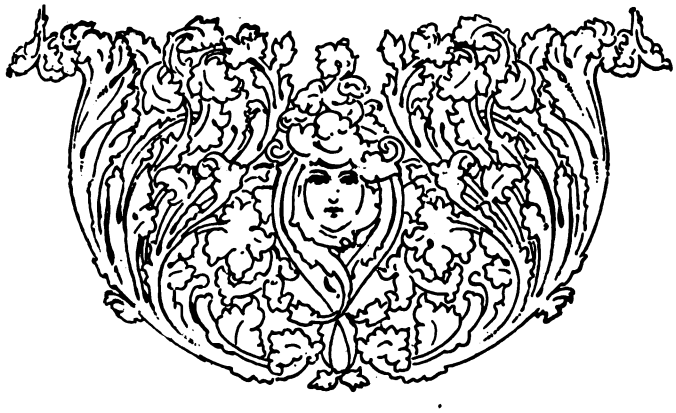
In the case of *La Construction, Limited*, however, the Court of Cassation adopted a very different interpretation of the convention, and as England's lot to-day may be America's to-morrow, it may be interesting to examine the facts in some little detail.

La Construction, Limited, had been registered as a British limited company in May, 1888. The subscribers of the memorandum of association and the first directors had been British subjects exclusively. In 1890, three Frenchmen were elected directors in the place of three retiring Englishmen, and it was at the same time decided in general meeting that thenceforward the board meetings might be held in France. The company bought land and erected a casino with money advanced by one of the new French directors. He was repaid in February, 1894, by the allotment of a certain number of fully-paid shares to his nominees. Debentures at or about this time were issued on a mortgage

[1] Cf. Mr. Thomas Barclay's "Companies in France" (Sweet & Maxwell, London, 1899). A brilliant and exhaustive monograph on this branch of the law.

of the company's real property in France, and were guaranteed by *The Brewers and General Fire Insurance and Guarantee Corporation, Ltd.* Meanwhile, a private creditor of the French director who had advanced money to the company obtained a judgment against him, and, as permitted by French law, he registered this judgment as a general mortgage against any real property the debtor might possess; there was other litigation, which does not bear on the point in question. This creditor then applied to the local court to have the company declared null and void as being English only in form, but in reality fraudulently constituted out of France by his debtor, to evade the more rigorous requirements of French law. Its assets, he alleged, were really those of this particular Frenchman, and as such liable, indiscriminately with his private means, to satisfy his debts. The local court did not take this view, but, on appeal to Aix, the higher Court held that " la nationalité d'une société se détermine par le lieu où elle a véritablement et effectivement son principal établissement, c'est-à-dire le lieu où se manifeste à la fois sa vitalité et son existence sociale, dont elle fait le centre de ses affaires, en quelque endroit qu'elle soit appelée tant à le suivre qu'à les traiter, où se tiennent habituellement les réunions de ceux qui la dirigent et se préoccupent de ses destinées, le lieu, en un môt, où elle a son principal établissement qui, dans un grand nombre de cas, peut différer de celui où se trouve concentrée son exploitation industrielle ou commerciale."

The Court of Cassation in turn was asked to reverse this decision and declare that a British company, formed in accordance with British law, having its registered office in Great Britain, is a company protected by the Anglo-French Convention of 1862, and that a French Court has no right to go behind the formation of a company so constituted. This, however, the Court of Cassation refused to do. The circumstances of the case, it may be admitted, were especial, and of course precedents are not binding in France. But in spite of these considerations, the decision is an ominous one and should be kept in view by any foreign countries that may be negotiating fresh commercial treaties with the French Republic. — *Lex.*



THE ROYAL SUPREMACY.

By A. Wood Renton.

THE recent manifesto of the English Church Union has brought into prominence once more the question of the nature of the Royal Supremacy. There is no subject on which controversialists on both sides of English ecclesiastical life are more ready to talk and to dogmatize. There is none in regard to which it is more difficult to form a really clear and just opinion. The doctrine of the Royal Supremacy rests on a basis of historical facts and legal and constitutional conceptions of a very complicated character. An attempt to analyze some of these will at least serve the purpose of showing how very intricate they are and how cautious wise men should be in generalizing about them. We must start with a grasp of the fact that the so-called "establishment" of the Church of England was not effected at the Reformation — an episode which may be roughly taken as having ranged from about the middle of the 16th century (1532) to about the middle of the 17th, when the book of Common Prayer assumed substantially its present form — but commenced with the very existence of the English state, which the preëxisting Church practically called into being. We must further get a distinct notion of what the establishment of the Church of England really means. As the relationship which it signifies is a legal one, we cannot do better than define it in the language of that accomplished lawyer, the Earl of Selborne: —

> The establishment of the church by law consists essentially in the incorporation of the law of the church into that of the realm, as a branch of the general law of the realm, though limited as to the causes to which, and the persons to whom it applies; in the public recognition of its courts and judges as having proper legal jurisdiction, and in the enforcement of the sentences of those courts, when duly pronounced according to law, by the civil power. The establishment (so understood), of the church in England, grew up gradually and silently, out of the relations between moral and physical power natural in an early stage of society; not as the result of any definite act, compact or conflict, but so that no one can now trace the exact steps of the process by which the voluntary recognition of moral and spiritual obligation passed into custom, and custom into law.

This investiture of the law of the church with legal sanctions was obviously attended with dangers against which the civil power was entitled to take, and took, precautions.

The ecclesiastical convocations might promulgate canons which were contrary to the common or statute law or repugnant to the royal prerogative. To safeguard these interests the meeting of convocation was made dependent on the King's writ, and no canons or constitutions coming within the category above indicated could be enforced. It may be convenient at this juncture to observe that for the object in hand, the question how far Roman canon law was held of binding authority in the English Church prior to the 16th century — a question on which Professor Maitland has thrown so brilliant and penetrating a light — is not very material. The point at issue is not the relation between the English Church and the papacy, but between the English Church and the Crown.

On the other hand, the ecclesiastical courts might exceed their jurisdiction. And here the evil was counteracted by the assertion and exercise on the part of the King's Courts of the power of prohibition. "All this was settled law," says Lord Selborne, speaking of prohibitions to the ecclesiastical courts, "before the era of Parliaments: it is fully expounded by Bracton, who was one of King Henry the Third's judges."

Under the comprehensive term "Royal Supremacy" may be grouped all those safeguards taken by the Crown against an abuse by the church either of her legislative or of her judicial powers. It is impossible here to consider at length how the legal theory of the supremacy was carried into practice in pre-Reformation times. But some historic landmarks must be noted. In the first place one of the articles in the Constitutions of Clarendon (1164) declares as one of the "liberties and customs of the Church of England" that "appeals, when necessary, ought to be from the archdeacon to the bishop and from the bishop to the archbishop, and if justice were not done by the archbishop, the last resort must be to the King, according to whose commandment the cause should be finally determined in the archbishop's court, without any further process, unless by the King's leave." The effect of this provision was to make the Final Court of Appeal a purely spiritual one — for the clause deals with appeals to Rome — in connection with which the fact that the appeal was subject to the King's consent was sometimes insisted on. Again in Magna Charta, the rights and liberties of the Church of England (*Ecclesia Anglicana*) are declared to be inviolable. Lastly, prior to the Reformation the Royal Supremacy was not considered as involving any right on the part of the Crown to interfere with the church in purely spiritual matters either by judicial or by legislative action. The statutes against Lollardism, which might be cited as an exception to this proposition, were in no way an innovation upon the then doctrinal position of the church.

We come now to the Reformation. The object of the legislation of Henry VIII, by which the Royal Supremacy was definitely declared by statute, was not to put the Crown in a new position as regards the church, but in the language of the statute of Elizabeth (1 Eliz. c. 1) "to restore to the Crown the ancient jurisdiction over the estate ecclesiastical and spiritual and abolish all foreign powers repugnant to the same." Except in the matter of the dissolution of the monasteries, it aimed at nothing but the exclusion of the papal power and the establishment of the supremacy of the Crown, not over a new church then created but over the old then-existing Church of England. We may take as a single example — others could easily be given — of the spirit of the ecclesiastical legislation of Henry VIII, the act for the abolition of Peter's pence and dispensations (1533, 25 Hen. VIII, c. 21.) It states expressly that

> Neither it nor any thing or things therein contained shall be hereafter interpreted or expounded that your grace, your nobles and subjects intend by the same to decline or vary from the congregation of Christ's church in anything concerning the very articles of the Catholic faith of Christendom, etc.

The Royal Supremacy was formally accepted when convocation acknowledged

> (1) That the King was lord and head over the church, *ecclesiae et cleri Anglicani singularem protectorem unicum dominum et quantum per Christi legem licet etiam supremum caput*, and (2) that convocation had always and ought only to assemble by the King's wish; and promised *in verbo sacerdotii* (3) not to attempt to allege, claim, or put in use any new canons but by the King's license; nor (4) to enact, promulgate or execute any such canons without the King's assent.

It will be noticed that the doctrine of the Royal Supremacy, as stated in this acknowledgment, covered practically the same ground as it did in pre-Reformation times, and also that the words *etiam supremum caput* are limited by the significant clause *quantum per Christi legem licet*. The submission of the clergy was confirmed by an actof Parliament, 25 Hen. VIII, c. 19, which also gave an appeal from the Archbishop's Court to "the King in Chancery," a jurisdiction committed by the King to the court of delegates. It is as well that High Churchmen should keep in view the fact that if the state

has encroached on the province of the spirituality, it was by this statute that the first step in that direction was taken. The court of delegates was as much a civil statutory tribunal as the judicial committee, and no one who accepts the legislation of 1533 as constitutional will find it easy to explain to himself and other people wherein it differed in principle from that of 1833, when the functions of the court of delegates were transferred to the privy council. In 1534 the Royal Supremacy was again defined by a statute (26 Hen. VIII, c. 1), in which the King is spoken of as "the supreme head of the Church of England." This act was repealed by a statute of Philip and Mary (1 and 2 Ph. and M. c. 8), which was in turn repealed by an act of Elizabeth declaring

> That all foreign power and authority, spiritual and temporal, should be extinguished and that such jurisdictions, privileges, superiorities, preëminences, spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority *have heretofore been or may lawfully be exercised* or used for visitation of the ecclesiastical state and persons . . . shall for ever by authority of this present parliament be united and annexed to the Imperial crown of this realm.

It is tolerably clear from these words what the constitutional limits of the doctrine of the Royal Supremacy were intended to be. But the matter was placed beyond all doubt by the explanation given in the injunctions of 1559 of the oath of supremacy: —

> The Queen neither did nor ever would challenge any authority other than was challenged and lately used by the king, her father and brother, which is and *was of ancient time*, due to the Imperial crown of this realm, that is, that the Queen shall have sovereignty and rule over all manner of persons of what estate ecclesiastical or temporal, *so as no other foreign power shall have authority over them.*

A later statute (5 Elizabeth, s. 14) refers to this explanation as fixing the legal construction of the oath of supremacy and limiting the obligation contracted by it. The same limited theory was adopted in the canons of 1603 (1 R. 2) and in the thirty-nine articles (Art. 37). To sum up briefly the results of the foregoing observations, what the doctrine of the Royal Supremacy does not involve is plain enough. It does not involve — on the contrary it repudiates — any claim on the part of the sovereign or the state to affect the creed or the orders of the church otherwise than by adding certain legal sanctions to what the church had from the beginning received. But what does it involve on the positive side, in the way of either legislation or jurisdiction? Is there a conflict between the express reservation of the rights of the *Ecclesia Anglicana* in Magna Charta—a reservation emphasized, it should be noticed, by the declaration in the Reformation legislation that the determination of questions in any cause of the law divine belongs to the spirituality, "without the intermeddling of any exterior person," and also by a similar provision in the articles — and such statutes as the act of submission, and the Judicial Committee, Act 1832, not to speak of that stormy petrel of ecclesiastical controversy, the Public Worship Regulation act of 1874? This is a legal problem still unsolved. To all appearance, the time for its solution is approaching. It would be of inestimable advantage to the church, if different schools of thought could agree to discuss it, without recourse to epithets of "Erastianism" on the one side and "Rebellion" on the other.

WILLIAM CAMPBELL PRESTON.

III.

By Walter L. Miller of the South Carolina Bar.

SOCIALLY and at home, Mr. Preston was a most charming character. His domestic life was all that could have been desired. Both of his wives were beautiful and accomplished women, — they were perfectly devoted to him, and their love and appreciation received from him in return the most cordial and heartfelt reciprocation. He kept up his courtship through life. He treated them with every courtesy, gave to them his confidence and tenderest sympathy, manifested the highest appreciation of them, and was always bestowing upon them some token of his favor and evidence of his love. As a picture of wedded love and sweet domestic accord, I do not think Mr. Preston's home has ever yet been surpassed. Of his first wife, Mrs. Martin speaks as follows: "His first wife, Miss Coulter, was very beautiful and interesting. He said, on his return from his foreign tour, that he 'had traveled all over Europe, and had seen but one Maria Coulter.'" Mrs. Mary C. Rion, of Winnsboro, South Carolina, was one of Mr. Preston's family for some time previous to her marriage, and was with him a great deal after, up to his death. In speaking of his home life she says: "Mr. Preston's private life was a poem. His second wife, Miss Penelope Louisa Davis, was a finely educated and talented woman, and living with Mr. Preston in an atmosphere of books and distinguished men, and the brilliant cosmopolitan society of Washington, and South Carolina's brilliant minds of that day, sharpened her wit, and still further refined her brilliant and susceptible mind. She was so conversant with literature that, if the author of any quotation was in doubt, she could instantly get the book in Mr. Preston's library and find it. . . . The romance of life remained with him, until his beloved wife died. During their whole life, every morning, a bouquet of flowers, often accompanied by some verse or extract of loving sentiment, was laid at her plate; and she treasured them all, and, after her death, trunks full of these souvenirs were found. The courtesies of life were never dropped between them and that was the mainspring of their perfect wedded life. After her death, he led a maimed life, for he had been nursed and petted and shielded from all domestic or business troubles by this noble and loving woman."

Mrs. Martin also gives us the following beautiful description of her: "When he married her, she was a brilliant woman, of extensive reading and fine literary tastes, and of such splendid conversational powers that Calhoun affirmed he had never heard her equal — delighting and astonishing the most distinguished society at Washington and elsewhere with her wit, and wisdom, and eloquence; but, after her marriage, ill-health, and entire devotion to one object (her husband), caused her to retire from society very much, and her style became less brilliant, but more soft and soothing; less assertive, but more winning; she still carried all hearts with her as irresistibly as before. But she, too, was called by death, away from him, leaving his old age desolate; for William Preston never after in his heart had place for another love. No! Except for the grace of God, he had gone down sorrowing to his grave." As cumulative proof along this same line, I may say, that Mrs. Preston's journal has about it all the earmarks of culture, refinement, delicacy and gentleness, and it is easy enough to read between the lines that its author was one of

the sweetest and noblest of women and the most devoted of wives.

If you want to see something of Preston's home-life, read this charming description by Mrs. Martin: "As well as an education for our children, his conversation was a daily delight and improvement for us all. O how charming he was in conversation, especially at the breakfast and dinner hours! His talk shed fragrance and beauty, as the vase of flowers he always liked to have placed on the table; and at the silent hour of evening, how he lighted up the sombre gloaming till the place flashed with iridescent beauty and brightness! Now he would take us to his native mountains; now on his European travels, when he would personally introduce us to Scott, Wilson, Lockhart, Rogers, Campbell, Lady Morgan, and all the literary notabilities of that intellectual period, bringing us in such social contact, too, with his *compagnon de voyage*, Washington Irving. Then he would tell us of his college days; then of his life at Washington, introducing us familiarly to all of its brilliant society — to Calhoun, Webster, Clay, Benton, etc."

Mr. Preston excelled as a correspondent and letter writer. I have a number of his letters kindly lent to me by Miss Isabel D. Martin, who knew him intimately and whose childhood he influenced very much. They are written in an easy, graceful style. They are frank, open and cheerful. Indeed, they are just the kind of letters one delights to read.

Mrs. Martin, the mother of Miss Isabel, speaks of his talent for letter-writing as follows: "Though by his oratory and conversation will traditional fame, at least, make him best known to posterity, yet I think his friends will be inclined more to estimate his intellectual powers by his familiar letters. From a large package of these to my husband, my daughters and myself, could be contributed such gems to literature as might grace the ægis of Minerva."

While, like President McKinley, Mr. Preston was neat and careful as to his attire, and desired always to be becomingly dressed, yet he did not wish to be conspicuous or to attract attention in that regard.

But no man is perfect, and Mr. Preston, too, had his faults and weaknesses. Like a great many of our public men, he sometimes used stronger language than the circumstances of the case would warrant. This was, however, largely the result of force of habit, and I am satisfied that he himself, in the latter years of his life particularly, regretted it, and endeavored to free himself from it as much as possible.

And now I have come very naturally to an interesting phase of Mr. Preston's life — his religious experience. For many years of his life he seemed to have only an intellectual sort of faith, — he gave his assent to the great truths of religion, but he did not feel in his heart the sanctifying powers of grace. He seemed to have difficulties along this line. Some have thought that it was the result of the seed that had been sown in his heart in his college days by the baneful teaching of Dr. Cooper. Mrs. Preston was a devoted Christian woman. It was her daily prayer and her fervent wish to see her husband brought fully under the sanctifying powers of religion. In one of the most beautiful and touching passages of her journal, she delicately alludes to this subject as follows: "and I am more and more convinced by my daily intercourse with the *élite* of the world, that piety is the only purifier and refiner; literature is next: but it and the world have both given their finishing graces to Mr. Preston; yet there is one thing more needful, to make him all that he is capable of." Her petition and those of other loving friends made their way heavenward, — her prayer was answered, and the one thing needful was received. We find Mr. Preston at last bowing humbly at the Cross, — all intellectual doubt gone, and a beautiful, spiritual light received. He had been for several years a member of the

Episcopal Church, and had been a seeker after the truth. He had always been liberal in his religious views and he felt kindly to all religious denominations. Although he was formally connected with the Episcopal Church, yet he had a hereditary partiality for the Methodist, this being largely the result of his association with his grandmother and his love for her memory. He had, himself, however, felt the lack of the witness of the spirit, which was now vouchsafed unto him. We have in his last days beautiful evidences of his faith. The words of scripture already lodged in his heart, came freely and spontaneously forth from his lips. During his last illness, every night, a good Methodist preacher "was under promise to him to pray by his bedside. 'Yes,' he would say, as he entered his room, 'pray, M., pray; that is *your* mission;' and ere for him prayer was turned to praise and faith to sight, that ministering friend was privileged to hear, 'I know *now* for myself that all is true that you have told me.'"

As a conversationalist, Mr. Preston possessed rare gifts. It was a delightful pleasure to hear him talk, and his society, on that account, was eagerly sought. Says Dr. Laborde: "In *conversational* power I have never met his equal. Who that has heard him can forget his point, his anecdote, his fullness, his variety, his ease, his grace, his vivacity, his elegance, his imitative talent, and that curious felicity of expression, which, in South Carolina, has been characterized as *Prestonian*. The reader will pardon me for saying, that I have been asked frequently by my friends to accompany them on a call upon him, for no other reason than that they wished to avail themselves of the charms of his conversation. It follows from what has been said, by necessary consequence, that such a man must be conspicuous in all the relations of social intercourse. I am sure I am not guilty of extravagance when I say, that no one in our State ever attracted larger admiration in this particular. In every circle 'he was the observed of all observers,' and shone with surpassing brilliancy." His delightful talk and his genial sympathy made him especially popular with young men.

He was extremely popular in society and his presence graced many an elegant dining and evening party. In reading Mrs. Preston's journal, we are struck with the fact that Mr. Preston was so popular a member of the most elegant society of Washington. He was constantly receiving invitations to accept the hospitality of distinguished people there.

Mr. Preston also excelled as a post-prandial talker. He was just the kind of man people liked to have about on festive occasion. When the cloth was removed and the champagne began to flow, then his eyes commenced to sparkle, his tongue to loosen, and his wit to effervesce. I am sure the reader will pardon me for relating one of these experiences of Mr. Preston as found in Perley's "Reminiscences." "Senator William C. Preston, of South Carolina, was not only one of the foremost orators in the Senate, but a delightful conversationalist, with an inexhaustible fund of reminiscence and anecdote. One of his colleagues in the House of Representatives, Mr. Warren R. Davis, of the Pendleton district, was equally famed as a story-teller, and when they met at a social board, they monopolized the conversation, to the delight of the other guests, who listened with attention and admiration. One evening, as the story is told, over the Madeira and the walnuts, which formed the invariable last course in those days, Mr. Preston launched forth in a eulogium on the extraordinary power of condensation, in both thought and expression, which characterized the ancient Greek and Latin languages, beyond anything of the kind in modern tongues. On it he literally 'discoursed eloquent music,' adorning it with frequent and apt illustration, and among other examples citing the celebrated

admonition of the Spartan mother to her warrior son, on the eve of battle. 'With your shield, or upon it.' The whole party were delighted with the rich tones and classic teachings of the gifted colloquist, except his equally gifted competitor for conversational laurels, who, notwithstanding his enforced admiration, sat uneasily under the prolonged disquisition, anxiously waiting for an opportunity to take his place in the picture. At length, a titillation seizing the olfactory nerves of Mr. Preston, he paused to take a pinch of snuff, and Mr. Davis immediately filled up the *vacuum*, taking up the line of speech in this wise: 'I have listened,' said he, 'with equal edification and pleasure to the classic discourses of our friend, sparkling with gems alike of intellect and fancy, but I differ from him *toto coelo*. He may say what he will as to the superior vigor and condensation of thought and speech, characteristic of classic Greece and Rome; but for my part, I think there is nothing equal to our own *vernacular* in these particulars, and I am fortunately able, although from a humble source, to give you a striking and conclusive example and illustration of the fact. As I was returning home from Congress, some years since, I approached a river in North Carolina, which had been swollen by a recent freshet, and observed a country girl fording it in a merry mood, and carrying a piggin of butter on her head. As I arrived at the river's edge, the rustic naiad emerged from the watery element. 'My girl,' said I, 'How deep's the water and what's the price of butter?' 'Up to your waist and nine pence,' was the prompt response. Let my learned friend beat that if he can, in brevity and force of expression, by aught to be found in all his treasury of classic lore."

Mr. Preston was a man of genial, amiable disposition and he was full of fun and frolic. He had a sanguine, hopeful temperament, and looked upon the bright side of things.

He had broad, liberal views, and was generous to a fault. He never tried to lay up money. Mrs. Rion tells us that he always had a beneficiary at his table, and, mentioning one of them, she says that he was proud of him and always spoke of him "as one of his jewels."

He established the Columbia Athenæum, was its president, and gave it his fine library of some three thousand books.

He was "a knightly character, brave, high-toned, sincere, honest." He was "democratic in his manners — perhaps aristocratic in his tastes."

He was a man of fine personal appearance, courtly manners, and magnetic style.

In Dr. Baer's address, we find the following description of him: "Mr. Preston had a commanding form. His face was large and long to an extent out of proportion even to his big body. He had heavy gray eyebrows and his eyes were very large, blue and somewhat prominent. When they blazed up under excitement, they fascinated, and took possession of you, and transfigured the whole face. One moment, you saw a big, sleepy-looking face, and the next, you stood awed and fascinated before a human countenance, wonderfully manly, noble, and expressive. There was grace, and dignity, and propriety in his every movement. Crippled as he was, sometimes, on a fine afternoon, he would walk with Mrs. Preston down the campus, and then back again. It appeared to me that every student followed the couple with his eyes, from the time they came out of their gate, till they re-entered it. The air, manner, and movements of both were so singularly striking and perfect. I have been told that, in his visit to Europe, in his younger manhood, both in London and at Paris, admiring crowds followed him when he appeared on the streets. I can well believe it. I suppose no one ever saw Mr. Preston without being satisfied that he was looking at a very extraordinary man. I never heard him make a speech, continues my friend, but it was my good fortune once

to see and hear him, as he must have appeared in his prime, when making a great speech. He taught my class elocution. Usually it was rather a farce. His recitation room was in the second story. We helped him up the steps, and to his chair. He would sit bending over his table, with the class book before him, and his crutches leaning against the wall. He would call in order the students, who had been required to select, memorize, and speak passages, either prose or poetry. As you finished, the old man would lift his head, and say, 'Very good, Mr. —' and then call on another, and so on to the end, without a word of comment or criticism. Once, however, one of the class spoke in a very dudish way Burns' Highland Mary:

> 'Ye banks and braes and streams around
> The castle of Montgomery.' —

When he had finished, Mr. Preston sat silent for a few moments, and then raising his face, he surprised the class by saying: 'I do not know that I can do it, but I am going to make an effort to show you how I think those fine lines should be spoken.' Helping himself by the table, he stood up, placed his crutches beneath his shoulders, and taking us all in with his eyes, I heard a low and tender voice speak slowly and distinctly the two first lines. Then all at once the aged and bowed body lifted itself erect, and stood straight and strong; the crutches fell on either side, and there stood before us a majestic, Apollo-like form, with great luminous eyes, and an all-irradiated face. I lost the power of conscious hearing and seeing, and I have never been able to recall anything else, until Mr. Preston fell panting into his chair; and finding myself with my classmates, leaning far forward, nearly out of our chairs, I caught my breath, and regained my seat. As soon as the old man had recovered from his exhaustion, a few of us went forward, and with awe and tenderness, helped him downstairs, and to his house. We knew then that he had been one of the great orators of the world."

A letter from Hon. James Hemphill, who has been for many years a distinguished member of the Chester bar, gives some interesting facts pertaining to Mr. Preston. Mr. Hemphill writes: "I had very little personal acquaintance with Col. W. C. Preston. I saw him for the first time in 1828 (seventy years ago). I was then a school-boy of fifteen, at a school in Richland County, on Cedar Creek. It was a time when some ardent patriots undertook to starve out the New England manufactories by wearing homespun clothes. Colonel Preston was a candidate for the legislature, and was dressed in a complete suit of homespun. He also shot at a mark with a Sand-Hill voter for a *water-milin*, as the Sand-Hills called it, and won the bet — outshot the Sand-Hills. I next saw him in Washington City in 1842, when he was a member of the United States Senate. I was introduced by our Representative, General Rogers, of York County. I had some conversation, but not a great deal. Mr. Calhoun was his colleague in the Senate, and they were said not to be friendly. I may add, although hardly pertinent to the case, that I also became acquainted with Mr. Calhoun, and spent an hour or more in his room. I was delighted with his kindness and affability. I saw Colonel Preston a few times subsequently. I never heard him make but one speech, at Winnsboro, in a law case. He spoke very well, with great power. His power of invective was strong. He gained his case. I suppose there is a sketch of him in Judge O'Neall's "Bench and Bar." (My copy has been lent out.) When his funeral took place in Columbia, the court of appeals was in session, and it is said that Judge O'Neall wanted the court to adjourn to attend the funeral. The other members of the court refused, and Judge O'Neall adjourned himself and went. The latter part is certain, for Judge O'Neall had it noted in the proceedings of the court and reported in

the law reports. Judge O'Neall was a great friend and admirer of Colonel Preston." The incident pertaining to O'Neall and Mr. Preston's funeral, to which Mr. Hemphill refers, I find noted in Richardson's reports as follows: "O'Neall, C. J., absent at the hearing, attending Colonel Preston's funeral." Is it possible that political prejudice could have had anything to do with the action of the court on this occasion? I know that politics at that time were at fever heat in South Carolina, and that Mr. Preston entertained views on some of the questions of the day which did not meet with the popular approbation. I will take the more charitable view, however, and assume that the majority of the members of the court were influenced in their action by other and higher considerations — possibly by a press of business, or some other urgent necessity.

Mr. Preston's reputation as a lawyer, orator and statesman, certainly merited every honor and mark of respect. As we have already seen, the bar of the State and the courts — notably those in Charleston — were conspicuous in honoring Mr. Preston's memory and in paying to him high tributes. I will conclude this reference by remarking that Judge O'Neall's course in this matter was eminently characteristic, and, taken in connection with his fondness for Mr. Preston and his high appreciation of him, exceedingly creditable.

Mr. Preston was a man of wide and varied reading. I am disposed to think that he had read broadly rather than deeply. From what I have been able to learn, he was not what we term an accurate scholar. He did not excel in the exact sciences. I imagine he would have had no fondness for plodding away to see if he could solve some difficult mathematical example. Neither like Mr. Calhoun would he have cared to spend much of his time endeavoring to analyze into its elements some deep question of philosophy; or like Dr. Thornwell, in trying to unravel some intricate question of metaphysics. He was distinctively a man of letters. Polite literature was his favorite department, and here he reigned almost without a rival. It accorded best with his talent, tastes and inclination. He roamed the fields of literature far and wide, and culled from them beauties on every side. History, fiction, poetry and legend, — all brought their offerings and laid them at his feet. He had a classically trained mind. Indeed, I may well adopt the succinct and forceful expression which Col. John P. Thomas, in speaking of him, uses, and say that he was fairly "saturated with the classics." While his knowledge of the Latin and Greek was not critical, yet it was full, and he had imbibed deeply of their literatures. He was particularly well versed in the French language and literature. So accomplished a French scholar was he that the remarks which he tells us an accomplished woman made to Mr. Legare, might well have been applied to himself — "he was only too Attic to be an Athenian."

He was familiar with the Bible, and drew from it some of his most beautiful illustrations, finest examples and happiest utterances. Indeed, he excelled in choice expressions, apt phrases, and happy quotations. He was familiar with the poets and the best authors. While he was not destitute of logical ability, yet he did not arrive at his conclusions so much by constructing a chain of syllogisms as by impulse and instinct, so to speak, — and he usually carried his audience with him. He sometimes, however, paid the penalty by adopting and acting on unsafe deductions. He had a keen sense of humor, could tell a joke and relate an incident well, and was an adept at repartee.

Senator Hoar, in those beautiful reminiscent articles which he has been writing for the magazines lately, says that Mr. Webster sometimes in his speeches would try one word after another, until he would get the right one — he seemed to be hard to please, and would keep repeating synony-

mous terms and words of kindred meaning until he got the one that suited him. Not so with Mr. Preston. The happy thought and the felicitous expression were always ready and came forth spontaneously. Indeed, his thoughts even in the embryonic state seemed instinctively to clothe themselves in proper garb, and when they were brought forth, they were fully panoplied so far as form and expression were concerned.

Mr. Preston's style of writing and speaking was just the opposite of that of Mr. Calhoun. It was copious, diffuse, and florid, rather than plain, concise, and barren. Mr. Preston preferred to err on the side of an excess of ornament and a profusion of flowers, rather than on that of sterility and barrenness. He amplified rather than condensed. He aimed to be elegant rather than severely plain. While his style was classic and his diction choice, still he would at times deviate from this elegant precision and would use the language of the common people, adopting the popular expressions and the current phrases of the day, and employing them with fine effect. This phase of his style, Colonel Thomas presents as follows: "The elegance of his diction was not less agreeable because of his terms, rude sometimes but graphic — like the horse came down the street 'ripping and tearing.'"

He advocated the use of good old Saxon words as much as possible. Miss Martin says that he gave her two rules to follow: first, never use a long word when a short one will do as well; and, secondly, avoid derivatives as much as possible. Mr. Magoon, in his "Living Orators of America," gives us so beautiful a description of Mr. Preston's style, that I am sure the reader will thank me for quoting from it. He says: "Some men seem to have dreamed of an angel's face in early youth, and spent their whole subsequent life in trying to embody, in every word they utter, something of its loveliness. 'In act most graceful and humane, their tongue drops manna.' Mr. Preston is one of this order in eloquence, inasmuch as he abounds in fervid imagery, genial sentiments, and elegant variety. There is less frigid simplicity than animated propriety in his composition. His language often resembles that of the Norman troubadour who compared the object of his love with a bird, whose plumage assumes the hues of every flower and precious stone. He habitually depends almost entirely on the circumstances of the occasion, or the excitement of the hour; and such men succeed admirably or universally fail. They never drudge along with the uniform calmness of stupid mediocrity. They speak only when they are manifestly inspired, and then they appear like an Oriental sun, announced by no dawn, and succeeded by no twilight."

Mr. Magoon presents in charming contrast the style of Webster and of Preston: "Webster and Preston used to sit close to each other in the American Senate. How unlike! Listening to one is like going from solemn, swelling music, into a stately sculpture-gallery, where you are surrounded with god-like forms, which give you the impression of distinct proportion and severest beauty, and which yet, by their majesty, bend you low in awful reverence. The other resembles an Italian parterre in full bloom, melodious with sparkling fountains, embellished with graceful vases and dancing fawns, redolent of sweet odors, and resounding with happy voices chatting and singing near, while the volcano burns on the view, and a fearful thunder-gust is beginning to obscure the sun."

I notice that Dr. Laborde also likens Mr. Preston's mind "to a *parterre* of evergreens and flowers, all arranged with exquisite taste, ornamented with fountains and statuary, and winding, pebbly brooks."

As Mr. Preston's face varied greatly, presenting an entirely different appearance in the placidness of repose from what it did when transformed and animated by action, lighted up by expression and illumined by

interest and excitement, so also did his manner of speaking and the garb in which his thoughts were expressed. On occasions of great importance, his words were carefully chosen, his style characterized by an elaborate finish and a stately elegance, and his thoughts adorned by the choicest imagery and a profusion of flowers; while, at other times, he expressed his thoughts in the homely idiom of the common people.

Mr. Magoon presents us with a charming description of Mr. Preston, as he appeared when he first saw him in the Senate: "We love good speaking, and will make almost any sacrifice to enjoy the best. Ten years ago we performed a long and expensive journey to Washington, on purpose to hear the lions roar. At that time, what an array of talent there was in Congress! The morning after our arrival, we hurried to the Capitol, glanced at the works of art and the elegant grounds, waiting for the doors to open, when we immediately ensconced ourself in the Senate gallery. The dignitaries soon began to drop into their seats. Some of them we had seen elsewhere, and the most were recognized at once, from prints or verbal description. But there was one in particular whom we were anxious to see and hear. Newspaper accounts of his matter and manner had excited the liveliest curiosity, and we had come a weary way to seek its gratification. 'Pray, sir,' said we to a reporter, 'which is Mr. Preston?' 'That's him,' was the reply, pointing to a somewhat large and decidedly heavy-looking personage, with brown coat and a little switch cane, round-shouldered, yellowish wig, and florid complexion, trudging about with good-natured greetings to all, in a kind of whining tone and careless air, everywhere met with smiles, and with everybody cracking a joke. This was a poser, indeed. We were looking for a prim, scholastic dignitary, with a most refined aspect and reserved manner, stooping to small talk only in selectest circles, and then always in *ore rotundo* style.

"Business began at length, and it was worse still. This great orator of South Carolina, of whom our friend, James C. Brooks, had written so vividly, arose to second a resolution. He stood in a most unclassical position, bending forward, with his hands resting on two desks beneath him, his face expressionless, and his whole delivery as devoid of our preconceived notions as it could possibly be. Had he not more than once responded to the call of his name, we should have doubted his identity.

"But, wait a bit. An expected debate was postponed, and a bill came up suddenly for final action, in which Mr. Preston was a good deal interested. It was a critical moment for the measure involved, and he rose again to speak. How different! Not three minutes had passed before we saw a new man there. He insensibly assumed an erect position, as elastic as it was commanding; his countenance changed its aspect as palpably as the landscape is changed by the sun bursting through sombre clouds; his muscles rounded out in a fuller and fairer symmetry; and the veins of his forehead swelled with the heated currents of almost preternatural energy; his voice was suddenly changed into deep and mellow tones, with now and then a slight trembling, that indicated intense emotion; those short, significant sentences, so peculiar to his higher efforts, shot out in every direction like hissing bolts; every eye and ear of a rapidly gathered throng seemed entranced before the speaker as he fulminated like one truly inspired.

"Since that day of unexpected disappointment and unequalled gratification, we have heard a great deal of debating in Washington, London and Paris, but have never met a second William C. Preston. There may be others who are sounder logicians, more finical rhetoricians, shrewder politicians, or abstruser metaphysicians; but where is a competitor who can excel him in lucid, fiery and captivating declamation?"

The Green Bag.

Published Monthly, at $4.00 per Annum. Single Numbers, 50 Cents.

Communications in regard to the contents of the Magazine should be addressed to the Editor, Horace W. Fuller, 344 Tremont Building, Boston, Mass.

The Editor will be glad to receive contributions of articles of moderate length upon subjects of interest to the profession; also anything in the way of legal antiquities or curiosities, facetiæ, anecdotes, etc.

FACETIÆ.

An Irish counsel, having lost a case which had been tried before three judges, one of whom was esteemed a very able lawyer, and the other two but indifferent, some of the other counsel chaffed him a good deal. "Well now," says he, "who the devil could help it when there were a hundred judges on the bench?" "A hundred," said a bystander, "there were but three." "By St. Patrick," replied the counsel, "there was one and two ciphers."

The remark that many of our successful lawyers commenced life as preachers was gracefully corrected by another lawyer who begged to state that he began life as an infant.

"Are you married?" asked a magistrate in the Dublin police court of a man charged with committing an assault on another man. "No, your worship," replied the man in the dock. "That's a good thing for your wife," said the magistrate.

The following is a copy of a letter written by a Scotchman in Pictou County, Nova Scotia, in answer to a demand for the payment of $2.56, the price of vegetables sold: —

Mr. ——,

I gettin your littir few moments ago if my wife os u 1 cent you can talk to himself I dont know nothing a Bill and I will never pay her to you and if I will got hold of you I will tore you from together you curse you till my wife he comes back to me I am goin to swore I nivir saw frutes or vegetabless in hous for year back and more and I am nivir goin to pay her to you 256 dollars till my wife he comes back. I will go to shail if you will pay my feed and no man can took me to shale to make me pay my wife's bills unless he come home perhaps you are takin advantage at me whin you know the woman's away but you better be get a move on now I am redy to go to shale now I will never pay her to you so come on now you devil come if I will met you I will broke your faces.

P.S. There is 1 more John McDougall here mabe his you man try her.

The lawyer asked the witness if the incident previously alluded to wasn't a miracle, and the witness said he didn't know what a miracle was.

"Oh, come!" said the attorney. "Supposing you were looking out of a window in the twentieth story of a building, and should fall out and should not be injured. What would you call that?"

"An accident," was the stolid reply.

"Yes, yes; but what else would you call it? Well, suppose that you were doing the same thing the next day; suppose you looked out of the twentieth story window and fell out, and again should find yourself not injured, now, what would you call that?"

"A coincidence," said the witness.

"Oh, come, now," the lawyer began again. "I want you to understand what a miracle is, and I'm sure you do. Now, just suppose that on the third day you were looking out of the twentieth story window and fell out, and struck your head on the pavement twenty stories below and were not in the least injured. Come, now, what would you call it?"

"Three times?" said the witness, rousing a little from his apathy. "Well, I'd call that a habit."

And the lawyer gave it up.

The present Lord Chancellor of England was cross-examining a shrewd bucolic witness some years ago, who rather "had" him.

"They sometimes call you a Devonshire dumpling, don't they?" asked the genial advocate.

"I believe they do," replied the witness.

"But you are not a Devonshire dumpling?"

The witness waited till the laughter occasioned by this inquiry subsided, then he slowly drawled out: —

"Hey, but if I hod been a doompling, you lawyers 'ud a' gobbled I up afore now!"

NOTES.

ABOUT the year 1810 the following verses were found pinned to the wig of the then Recorder of Cork, as it hung on a peg in the robing-room of the court house. The author of these verses is unknown.

"Sometimes beneath this legal sign,
Is placed a head of curious mould,
With noble thought and genius fine,
Oft swayed by passion uncontrolled.

A brain with law and justice filled,
Estranged from every selfish view,
And in that tempered mercy skilled,
Which gives the guilty wretch his due.

For with a true Shandean start,
He flings all gravity aside,
And bids the feeling of the heart
O'er law's harsh quibbling to preside.

Still ne'er beneath a judge's wig,
Did fate intend that such a brain
Should through law's rubbish daily dig
Its mouldy precepts to explain.

For better purposes designed,
With lofty soul and prouder aim,
The bent of such a noble mind
Should be the highest point of fame.

But here 't is useless to repine,
Of such the instance is not rare,
Of flowers that should with splendor shine
To waste their sweets on desert air."

The old court-house of the County of Cork was destroyed by fire in 1890 and many priceless documents were destroyed. This historic old court-house is rich in traditions and in legal lore, and offers a wide field of research to the legal antiquary. It has been the scene of many famous trials, including some of the famous Fenian trials in 1867, and is now no longer a monument of English rule in Ireland. Another building has been erected on its site, but the legal traditions of the old building seem to be irretrievably lost.

A CURIOUS lawsuit was recently won by the "Vorwärts," Berlin. That paper asserted that the Saxon supreme court was influenced against the Socialists. The Saxon judges brought suit, and the Berlin supreme court decided against them!

FOR forty-two years George Knight, who murdered his wife in Poland, Androscoggin County, Me., in 1856, has been serving his life sentence in the State prison at Thomaston. It is a remarkable record, without an equal in the State, and probably few equals anywhere. Of all the men who took a prominent part in the events which led up to his conviction, he alone is alive to-day. The judge that sentenced him is dead. His counsel is dead. The county attorney and the attorney general who conducted the case against him are dead. Dead, also, are the court officials and nearly all the jurymen, and yet these men lived a life of freedom and his has been passed within prison walls. He is now eighty-two years old, and is still in good health and clear of mind and eye. He was first sentenced to death, and we venture the opinion that he has regretted many times that this sentence was ever commuted.

THE Japanese courts of justice, since the beginning of July, 1899, have been completely reorganized. There is now a supreme court, seven courts of appeal, forty-nine provincial high courts, 298 county courts, 1201 local magistrates. The legal code, modelled chiefly after the German, has been translated into English by a German professor of law, Dr. Lonhölm. The objection to the English and American system was that it was not definite enough, favors too much the rich and powerful, and opens the door to corruption. Such, at least, was the verdict of the eminent Japanese lawyers who for nearly twenty years sifted the laws of the world to find a code suited to their country. Curiously enough, the German code, a work of excessively slow growth, will not take full effect until 1900, or a year later than the Japanese code which has been shaped after it.

THE statistical investigations of Dr. Frederick Prinzing seem to show that married men are more

law-abiding than bachelors, and that widowers are worse transgressors than either. We quote an abstract given in "The American Journal of Sociology" (Chicago, July) from his article appearing in the "Zeitschrift für Socialwissenschaft": —

"Property rights of all kinds are more generally respected by the married than by the single. The graver offenses against property — robbery, extortion, fraud, etc. — are committed by the married man with comparative infrequency. When he is driven to the unlawful acquirement of wealth or of material goods, he generally chooses some of the less dangerous methods of so doing. Receiving stolen goods, breaking of laws relative to trade, commerce and public health, forcible detention of pieces of property, bankruptcy, etc., are the forms which offenses against property usually assume among married men. Among those married at an extremely early age (eighteen to twenty-five) trespasses against the rights of property are much more common than among the unmarried of a corresponding age. This is probably explained by the fact that in such marriages poverty, if not a concomitant, is frequently a result. Incendiarism is most largely found among the unmarried, the greatest proportion falling to the account of widowers and single men between the ages of thirty and sixty years. . . . In the sphere of crime and offense against human life, the unmarried are greater sinners than the married, though not so markedly so as in the offenses against property rights. Only in the matter of careless and negligent killing and wounding do the married surpass the unmarried. The difference in the criminality of the married and the unmarried grows less with advancing years. Between the ages of fifty and sixty years it is small; after that period it is still less. . . . It is of interest to note in this connection that drunkenness claims the major share of its victims between the ages of thirty and fifty years. The criminality of widowers decreases with advancing age. Their share in crime between the ages of thirty and fifty is notably greater than that of either of the other classes mentioned. . . . It has been said, in attempted explanation of this fact that widowers are, as a rule, ill-situated financially, but there appears to be no satisfactory evidence that this is true. Statistics do not prove that widowers belong to the poorer classes in any unusual degree. Widowers are especially prominent in offenses against property; but they also stand first in the series of those guilty of other classes of crime. The loss of the wife very frequently leads to mental derangement, and it is probably true, as well, that certain types of self-control are peculiarly difficult for this class to exercise."

CURRENT EVENTS.

SINCE the recent promulgation of the Russian imperial ukase forbidding further convict transportation to Siberia, the Penal Department has been casting about for a new field for criminal colonization in order to prevent the threatened congestion in the great central prisons and penitentiaries of European Russia, without at the same time overcrowding the far Eastern penal island of Saghalien. It has now been practically decided, subject, of course, to the imperial exequatur, to convert the remote district of Okhotsk-Kamtschatka into a new penal province. The Ministerial Department points out that this region possesses no indigenous population worth speaking of, to be corrupted by the exiled offenders, and has the advantage of being so distant and so rigidly isolated from European Russia that the escape of convicts so common from the Siberian settlements, will be well-nigh impossible. Okhotsk-Kamtschatka is further recommended as a penal colony by the fact that rich gold deposits have lately been discovered there, and these will be worked entirely by convict labor, thus enabling the government to reduce considerably the annual Exchequer credit of fourteen million rubles for penal expenses.

BLIND fish were recently drawn from the bottom of an artesian well 188 feet deep. They are colorless and square-mouthed. Their heads are large, and they have legs, with four tiny fingers front, and five toes on the hind foot. Down deep in the bowels of the earth, completely shut off from all communication with the upper world, these blind animals, it is said, have hunted other blind animals for uncounted cycles.

ONE of the largest forests in the world stands on ice. It is situated between the Ural and the Okhotsk Sea. A well was recently dug in that region, when it was found that at a depth of 300 feet the ground was still frozen.

THE Royal Academy of Science of Amsterdam has paid a delicate compliment to the English-speaking world by ordering that its translations shall in future be printed in English instead of native Dutch, in or-

der that they may be more available to the scientific world at large.

It appears, from figures furnished by the Post Office Department, that the average person in Massachusetts, including men, women and children, spends $2.30 on postage per annum. New York comes second, with an expenditure of $2.27, and the District of Columbia third, with $2.16. Colorado is fourth, with $1.93, and Connecticut is fifth, with $1.80. The States ranking lowest in this regard are South Carolina, with 25 cents per capita; Mississippi, with 34 cents; Alabama, with 34 cents; Arkansas, with 37 cents, and North Carolina with 41 cents.

LITERARY NOTES.

The complete novel in the New Lippincott for October is called "Love Across the Lines," by Harry Stillwell Edwards. It is a story of the war in Virginia, in the vein of Captain King, but with a difference. In a brilliant article, I. Zangwill has expressed his sage but fantastic views on "Zionism"; Paul Laurence Dunbar has written a slave story entitled "The Strength of Gideon"; "The Journey's End," by Beulah Marie Dix, is a dashing tale of Roundhead times, and a brief humorous sketch by Cy Warman, called "Ar' Ye Woth It?" possesses his rare trait of homely fun. Mrs. John Lane writes lovingly of "Gilbert White of Selborne." "The Common Insects of Autumn," by Belle S. Cragin, tells just what people like to know about the habits and haunts of our little neighbors.

Bishop Potter contributes the first article in the October number of Appleton's Popular Science Monthly; it is entitled "The Help that Harms," and is a discussion of the charity question from the moralist's point of view. Prof. George A. Dorsey is the author of an illustrated account of "The Hopi Indians of Arizona." "Christian Science from a Physician's Point of View" is the title of an article by Dr. John B. Huber. "The Wheat Lands of Canada" are described in an interesting article by S. C. D. Roper. Prof. William H. Hudson is the author of an interesting paper entitled "Bacon's Idols." "Mathematics for Children," by M. Laisant, is an interesting discussion as to the best way of teaching children this dry and ordinarily repulsive study.

As the October Century appears simultaneously with the reception to Admiral Dewey in New York, the timeliest of its contents is Rear Admiral Sampson's hearty tribute to the hero of Manila. The frontispiece of the magazine is a portrait of the Hon. John Morley, M.P. A study of Mr. Morley himself, accompanies the portrait. The number opens with a profusely illustrated paper on "Fascinating Cairo," by Frederic C. Penfield. From the pages of his well-filled diary the Hon. John Bigelow has extracted a series of passages relative to the German statesman. Von Bunsen, and to the group of celebrities to which Von Bunsen belonged. A picturesque view of "The Streets of Peking" is given by Miss Scidmore. Major J. B. Pond relates his reminiscences of "A Pioneer Boyhood" in Illinois.

The Review of Reviews for October contains several important articles on the commercial and industrial conditions and problems of the moment. The Hon. Thomas L. James writes on "The New Era of Prosperity," presenting important statistical data bearing on the recent remarkable increase in our export trade, the appreciation of prices, and other phenomena in our commercial and industrial life as a nation. Dr. E. Benjamin Andrews gives an economist's impression of the recent conference in that city on the subject of "trusts," while the presiding officer of that gathering, the Hon. William Wirt Howe, states the conclusions to be drawn from the deliberations of the conference as to desirable legislation.

The story of "Dame Fast and Petter Nord," now running as a serial in the The Living Age, gives American readers their first opportunity to become acquainted with the brilliant Swedish writer, Selma Lagerlöf, as a writer of short stories. It is translated for The Living Age by Dr. Hasket Derby.

President Charles W. Eliot, of Harvard University, opens the October Atlantic with a characteristically original and forcible paper on "Recent Changes in Secondary Education." Henry D. Sedgwick, Jr. discusses the future relations of "The United States and Rome." Other articles are as follows: "Language as Interpreter of Life," by Benjamin Ide Wheeler; "Letting in the Light," by Jacob A. Riis; "The Louisiana Expansion in its World Aspect," by Charles M. Harvey; "The Flaw in our Democracy," by J. N. Larned. In literature, Paul E. More's "George Meredith," and Miss Preston's "Mrs. Oliphant" are brilliant and searching reviews. In short stories, Mrs. Prince's delightfully humorous "P'tit Jean"; Miss Earle's tender and romantic "Through Old Rose Glasses"; and the ingenious and brilliant "Virginia Correspondence," leave little to be desired.

SCRIBNER'S for October contains the first part of Mrs. John Drew's "Autobiographical Sketch" — the charming summary of her career, which she prepared a few months before her death for her children and grandchildren. A new development in photography is described by Dwight Elmendorf, under the title "Telephotography." Under the title of "The Vaudeville Theatre" Edwin Milton Royle gives a most amusing account of the inside workings of these shows, which have convinced managers that "decency pays." There are two of Joel Chandler Harris's amusing "Minervy Ann" stories; there is another O'Connor tale by W. H. Browne; and a new writer, Judson Knox, tells a story of the humanizing of a bank-teller.

WHAT SHALL WE READ?

Romances of Roguery is the title of a volume by Frank Wadleigh Chandler, which fills a place in English literature hitherto inadequately occupied. It is a historical and descriptive account of the picaresque novel of Spain and its translations and adaptations in other languages, dealing with its whole range of subject and incident, the social state of Spain out of which it came, and including summaries and criticisms of several hitherto undescribed examples of much rarity, with a very full bibliography of the literature of the rogue of Spain. The MacMillan Company publish it in their "Columbia University Studies in Literature."

A new novel by the author of "The Courtship of Morrice Buckler," has just been published by the MacMillan Company. Many readers will remember the stirring and clever work which first gave Mr. A. E. W. Mason his reputation, and will look forward to his new book *Miranda of the Balcony* with some interest. The scene of this story is laid chiefly in Spain and Morocco, and the story, which is an exciting one, hinges on the action of a woman, under a contemptible pressure placed upon her by a blackmailing acquaintance of her husband, who is separated from her. The hero of the story is a young engineer, and the plot is very adroitly carried out.

An especially timely work on *Tropical Colonization*, by Alleyne Ireland, has just come from the press of the MacMillan Company. The author has spent ten years in the tropics in special study of his subject, and his book deals with the three great questions which arise in regard to colonies in the tropics; — How to govern a tropical colony? How to develop a tropical colony? The commercial value of a tropical colony? In regard to the first point, Mr. Ireland examines in detail the English Crown Colony system, the constitution of those British tropical colonies which possess representative institutions, the French colonial system, and the Dutch government of Java. In regard to the second point, Mr. Ireland gives a minute account of the labor problem in the tropics, and describes the system of indentured labor in force in some tropical colonies, and the Dutch "Culture System," the only systems which have succeeded since the abolition of slavery in securing an efficient labor supply for the development of the tropics. The author enforces his descriptions by important statistics. In regard to the commercial value of colonies, Mr. Ireland, by the use of ten original diagrams, presents an exhaustive analysis of the question of "Trade and the Flag," and exhibits in a striking manner the relative importance to England of the British tropical colonies, the British non-tropical colonies, and the United States as sources of supply and as markets for British goods. An appendix contains a classified list of about five hundred works on British, French, Dutch, American, German, Portuguese, and Italian colonies, and the author has provided the work with a copious index.

A little book which will be heartily welcomed is entitled *Patriotic Nuggets*,[1] containing, as its title-page sets forth, "bits of ore from rich mines"— namely, extracts from the writings of Franklin, Washington, Jefferson, Webster, Lincoln and Beecher, six prophets whose wisdom the logic of facts has amply confirmed. The authors cited have been taken in their chronological order, as have also the quotations from each one, the principle of selection evidently being their views concerning America — its earlier wrongs and rights, its revolutionary struggles, its constitution-making, its unprecedented advantages for popular thrift and development in material, moral and spiritual forces, its threatened dangers of discord and of dishonest financial heresies, the great maelstrom of secession and rebellion and its escape therefrom, and its later perils in political and financial reconstruction. And, considering the necessary limitations of so brief a compilation, it is remarkable how complete an outline view may be had of American history in these gathered utterances of the great men named. Events come in by reference and illustration; the main purpose is the setting forth of sound principles. Many of them are familiar, but their collocation in this way gives them a peculiar strength, while their pertinency to the right growth of American ideas is striking.

No writer of modern times has produced a more profound impression upon the reading public, than

[1] PATRIOTIC NUGGETS: Selections from Franklin, Washington, Jefferson, Webster, Lincoln and Beecher. Gathered by John R. Howard. New York: Fords, Howard & Hulbert. Handy volume. Flexible cloth, gilt top, 40 cents.

Miss Selma Lagerlöf, and her new volume of stories, entitled *Invisible Links*,[1] possesses all the power and charm of her previous works.

The stories are full of vigorous incidents, often blended with a play of fantasy equal to Hawthorne's, and they do not fail to carry the interest of the reader to a fitting climax. They will appeal to lovers of literature by the choiceness of their wording, by the simple directness of style, the delicacy of pathos and humor, and the sympathetic human quality that pervades even the exquisite descriptions of nature. Miss Lagerlöf views her scenes and incidents through the mind of some one present on the scene, and this point of view subtly impressed upon her descriptions, gives value and interest even to the slightest details. The translation is by Mrs. Pauline Bancroft Flach, whose former translations from Miss Lagerlöf, have met with so much favor in America and England.

Seldom has the genius of any poet lent itself so charmingly to interpretation as that of Elizabeth Barrett Browning, and the *Study of her Life and Art*, written by Lilian Whiting, owes much, as the writer herself insists, to a series of fortunate circumstances. For two summers Miss Whiting lingered in Florence, held under its spell of enchantment, amid the scenes which Mrs. Browning had known and loved; visiting the old gray church of San Felice, on which the windows of Casa Guidi looked; watching the sunsets from the heights of Bellosguardo, where Mrs. Browning's dearest friend, Miss Blagden, lived, and which is introduced in "Aurora Leigh"; and in Rome, Venice, and England, Miss Whiting followed the traces of Mrs. Browning's haunts and wanderings. There was, indeed, a kind of occultation of happy conditions that revealed to the writer phases of Mrs. Browning's intimate life that have not heretofore been chronicled, and if love gives insight, Miss Whiting may have gained some aid of this nature from her life-long devotion to the poetry of Mrs. Browning, which she has felt to be more potent in its influence than has been fully realized. The most spiritual of poets, Mrs. Browning has also a philosophic breadth and an intellectual vigor that richly repay study.

The book is divided into five chapters, entitled: Living with Visions: "Summer Snow of Apple Blossoms"; Music-flow of Pindar; Friends in the Unseen. — Loves of the Poets: The Prefigured Friend; Vita Nuova; "One day, my Siren." — In that New World: Pisa and Poetry; In Casa Guidi; Florentine Days; Walter Savage Landor. — Art and Italy: Individuality of Character; The Clasped Hands; Kate Field's Records; Mrs. Browning's Death. — Lilies of Florence: Poetic Rank; Spiritual Laws; Modern Scientific Thought; The Consecration of Genius.

[1] Invisible Links. By Selma Lagerlöf. Translated from the Swedish by Pauline Bancroft Flach. Little, Brown & Co., Boston, 1899. Cloth, $1.50.

[2] A Study of Elizabeth Barrett Browning. By Lilian Whiting. Little, Brown & Co., Boston, 1899. Cloth, $1.25.

NEW LAW BOOKS.

A Treatise on the Law of Evidence. By Simon Greenleaf, LL.D. Sixteenth edition, revised, enlarged and annotated, vol. I, by John Henry Wigmore, and vols. II and III by Edward A. Harriman, both professors of law in the Law School of Northwestern University. Little, Brown & Co., Boston, 1899. Three vols. Law sheep. $15.00, *net*.

No work seems to hold its own as the standard authority upon the subject of which it treats as does "Greenleaf on Evidence." Edition after edition has testified to its superlative worth, and now comes the sixteenth edition by two of the best-known authorities on the law of evidence in the country. This new edition is an advance on its predecessors in every desirable particular. Vol. I alone contains about 7,000 new cases, and 249 pages more of closely set type than the fifteenth edition. Many of these cases being cited several times under different heads makes the increase in the number of citations at least 9,000. and the fuller page of the sixteenth edition makes the increase in the contents about one third. Mr. Wigmore has worked upon the following plan: The first and most important innovation has been to put the statements of all the law in the text. This will commend itself to every man who has in former editions been obliged to read the notes with care lest law later than that of the text might there be found. In making this great change and improvement, care has been taken not to confuse the original work of Professor Greenleaf with that of the editor, but in all cases it has been carefully distinguished. In previous editions much of the late law was scattered through the notes. Now the text states the law fully and completely, the notes giving full references to the authorities on which the law rests. He has brought the citations down to date, as well as added extensively to the older citations, and on a very large number of topics has given practically all the citations as a result of long search. Where the point is a matter of controversy he has endeavored to put in all citations, on both sides, realizing that a lawyer prefers to have all the cases in his own State, rather than a few cases analyzed in full but not touching the rulings of his own Court. Many new sections of text have been written, and old sections extended, not merely by bringing up the law of the notes, but by

introducing new material where advisable. This shows in almost every chapter. Three entire chapters have been added, dealing in part with matters formerly treated in brief editorial notes, but chiefly with matter wholly new. These are Chapter IV, Real Evidence; Chapter V, Relevancy, Circumstantial Evidence; Chapter XI, Exceptions to the Hearsay Rule, Regular Entries in the Course of Business. None of these chapters have had before more than a few brief sections with a few pages of notes. — In vols. II and III, which treat of the Evidence Requisite in Certain Particular Actions and Issues at Common Law, and of Evidence in Criminal Cases, in Equity, in Admiralty, and in Courts-Martial, Mr. Harriman's work has been directed to the notes, which have been very carefully revised, and much enlarged and extended, both by the citation of late cases and the addition of new material showing the changes and developments of the law. The editor has consolidated his notes with those of Greenleaf and the editors of preceding editions, formerly in two series, and in the sixteenth edition, notes, comments, and citations to explain and reënforce Greenleaf's statements of law, are properly grouped under one reference on each point. The notes of the author and of the subsequent editors are carefully distinguished by brackets, but are arranged in logical sequence, and give a homogeneous annotation of the original text to the present time. A separate Table of Cases accompanies each volume, and Vol. III contains an exhaustive Index of the whole work. The best efforts of printer and binder have been called upon to coöperate with the editors in giving to Bench and Bar the most useful, complete, and convenient book on the subject.

THE LAW OF PRIVATE COMPANIES, relating to business corporations organized under the general corporation laws of the State of Delaware, with notes, annotations and corporation forms. By J. ERNEST SMITH. T. & J. W. Johnson & Co., Philadelphia, 1899. Paper. $1.50.

The General Corporation Law of Delaware, approved March 11, 1899, being fully as liberal as those of its sister State, New Jersey, there can be no doubt that Delaware will henceforth take a prominent part in the formation of new companies. In this work of Mr. Smith's the full text of the law is given with extensive annotations and over a hundred forms.

STATUTORY TORTS IN MASSACHUSETTS. By WATERMAN L. WILLIAMS of the Suffolk Bar. Little, Brown & Co. Boston, 1899. Cloth. $2.00, *net.*

Every Massachusetts lawyer will be interested in this work, which covers important points arising in the practice of every lawyer in the State. The statutes covering questions of damages for personal injuries are carefully considered and the cases arising under them critically analyzed are discussed with full references and citations. The table of contents is as follows: PART I. The Liability of Municipal Corporations. PART II. The Liability of Owners or Keepers of Dogs. PART III. The Liability of Common Carriers of Passengers. 1. Steam Railroads; 2. Proprietors of Steamboats, Stage Coaches, etc.; 3. Street Railways. PART IV. Liability of Employers. PART V. Liability of Other Persons and Corporations. 1. Telegraph Companies: 2. Gas and Electric Light Companies; 3. Persons and Corporations in General. APPENDIX A. Public Statutes, ch. 52, ss. 17–22. Act 1887, ch. 270 as amended. APPENDIX B. Development of Statutes. Index.

PROBATE REPORTS ANNOTATED. Vol. III. Containing recent cases of general value decided in the Courts of several States on points of Probate Law. With notes and references. By FRANK S. RICE. Baker, Voorhis & Co., New York, 1899. Law sheep. $5.50, *net.*

We have already spoken in terms of high commendation of this series of reports. To the practitioner in the Probate Courts it is invaluable. The cases are selected with admirable judgment and the notes and references unusually comprehensive and satisfactory. In the present volume some hundred cases are reported, covering a wide range of subjects.

AMERICAN BANKRUPTCY REPORTS ANNOTATED. Vol. I. Reporting the Bankruptcy Decisions and Opinions in the United States of the Federal Courts and References in Bankruptcy. Edited by WM. MILLER COLLIER. Matthew Bender, Albany, N. Y., 1899. Law sheep. $5.00.

Up to this time no attempt has been made to publish all the opinions delivered in connection with Bankruptcy decisions, and Mr. Collier, appreciating the needs of the profession in this direction, has undertaken the collection of all decisions of both the judges and referees. Full and valuable annotations accompany the report of each case and to those engaged in Bankruptcy cases this series of reports will prove of great assistance. It is the intention of the publishers to continue the series by advance sheets which will be consolidated into bound volumes as rapidly as the cases accumulate.

AMERICAN PRACTICE REPORTS. Vol. I. Official leading cases in all State and Federal Courts, annotated and systematically arranged so as to include in the table of cases of each State, its reported, cited and digested practice cases. CHARLES A. RAY, ex-Chief Justice of the Supreme Court of Indiana. Washington Law Book Co., Washington, D. C. Law sheep.

Statistics for a single year show that the total reverses in all the State courts of last resort upon procedure points alone are 38 per cent. Impressed by the large proportion of cases lost through the failure of attorneys to draw the pleadings so as to present the true merits of their cause or the proper matter of defence, Judge Ray has inaugurated this series of reports, hoping thereby in some measure to lessen the delay in the administration of justice to litigants, and to make it possible for lawyers to win all their meritorious cases, instead of losing thirty-eight out of one hundred. The object is praiseworthy, and this series of reports will afford great assistance to the practitioner upon all points of procedure. We commend the work to our readers as one admirably adapted to the lawyer's needs.

NOTES ON THE UNITED STATES REPORTS. Vols. I and II. A brief chronological digest of all points determined in the decision of the Supreme Court. With notes and citations. By WALTER MALINS ROSE of the San Francisco Bar. Bancroft-Whitney Co., San Francisco, 1899. Law sheep, $6.50 a vol.

We have in this work of Mr. Rose a publication which should prove of inestimable value to the legal profession. As to its scope and the method of its preparation, we quote from the author's preface. "Broadly speaking, it consists of two classes of matter: first, chronologically arranged syllabi of all points of law determined in the Supreme Court decisions; and, second, notes appended to each syllabus, based upon and collecting all the subsequent citing cases pertaining thereto. These citation notes are prepared by the editor from complete numerical tables of citations, which disclose as to each case all the subsequent cases in which it has been cited in the Supreme Court, the intermediate and inferior Federal Courts, and the courts of law of last resort of all the states of the union. Proceeding upon the theory that the profession wants something more than bald, unclassified, numerical tables of citations, the notes aim to present a complete citation information respecting each case in the most orderly and available form; and to that end the citing cases are so classified and described as to show the points to which they cite, their nature, their application of the cited principle, and their general effect."

The series is to be completed in ten volumes. We commend it to our readers, and advise them to examine the volumes for themselves. A careful inspection will demonstrate the great value and utility of the publication, which is destined, as we believe, to attain the greatest success of any legal work of recent years.

NEW LAW BOOKS RECEIVED.

AMERICAN STATE REPORTS. Vols. 67 and 68. Bancroft-Whitney Co., San Francisco, 1899.

COMMENTARIES ON THE LAW OF PRIVATE CORPORATIONS. Vol. VII. By SEYMOUR D. THOMPSON. Bancroft-Whitney Co., San Francisco, 1899.

FERNAND LABORI.

The Green Bag.

VOL. XI. NO. 12. BOSTON. DECEMBER, 1899.

MAITRE FERNAND LABORI.

A CHARACTER STUDY.

BY JOHN DE MORGAN.

"LABORI may be a great lawyer, but he is incapable of guile," exclaimed a hard-headed Yankee, as he walked away from the court-house at Rennes one day, during the trial of Captain Dreyfus. The speaker was right, only he might have truthfully said that Labori *is* a great lawyer.

When the eyes of the world were directed to that memorable court-martial in the old capital of Bretagne they rested on a central figure who had undertaken the herculean task of defending the accused, and that central figure, Fernand Labori, is physically and intellectually the foremost member of the French bar.

This great lawyer has won his laurels by the sheer effort of genuine talent combined with resolute perseverance, for he owes absolutely nothing to political influence or parliamentary intrigue.

Some thirty-nine years ago, in the town of Rheims, at the house of a railway official, a boy baby entered the world, and his proud parents gave him the name of Fernand. In roseate dreams, both by day and night, his parents saw a bright future for him, and they determined that he should have every advantage they could give him.

After being subjected to the educational influences of his time in the Lycée of his native town, young Labori was sent to Mainz, in Germany, in order to acquire a practical knowledge of the language of that country, as well as an acquaintance with the requirements of a mercantile career, for his parents intended him for a soldier in the ranks of trade.

Labori mastered the language so rapidly, that he was soon able to utter his thoughts in idiomatic and elegant German, and even to write treatises which attracted attention by their logic and pure language. But book-keeping and commercial arithmetic were not to his liking, and he wrote to his father that he could never make a success as a merchant.

His time was not wasted, for he acquired a knowledge of men and of nations which broadened his intellect, and placed him far above the average intellectual Frenchman.

His parents were rather disappointed, though they would not admit it. They suggested that he should study commerce in England, which had been called a "nation of shopkeepers" by the great Napoleon. Fernand lost no time in crossing the channel, and he soon mastered the English language, and talked like an educated English gentleman, but though he worked diligently and faithfully he could not overcome his repugnance to commerce as an avocation.

Returning to his home, he won over his parents, and obtained the requisite permission to go to Paris and enter the faculty of law.

What a change there was in the young man! In the shortest possible time, he obtained the highest distinction, including learned degrees and gold wreaths. Twice in his student days he gained the title of

laureate, and in November, 1884, he was called to the bar as advocate at the Court of Appeal.

The lawyers of Paris have a very pleasant custom of meeting together once a month, for the purpose of listening to papers specially prepared on legal subjects, and taking part in the ensuing discussion. The most brilliant of their number is chosen to be *secrêtaire de la conférence des avocats*, and this great honor was conferred on Fernand Labori before he had been four years at the bar. His inaugural address on the occasion of his investiture produced such enthusiasm among his colleagues, that it ranked as a historic event; and to-day the paper is referred to as one of the best ever read before a body of lawyers.

The young lawyer had devoted his attention mostly to civil law, and his first briefs were in cases which were neither sensational nor historic. It was not until the trial of the anarchist, Duval, that Labori proved himself a past-master in forensic tactics. In a later trial he obtained the acquittal of the men accused of parricide in the De Niort case, and at once sprang into popularity.

He wanted a wider field than the courtroom, and so he entered the ranks of literature and became the editor of the "Gazette du Palais," a daily law journal. In three months he had placed the paper in the very front rank of the judicial press. Though the editor of a daily paper, he did not neglect his practice at the bar. It was a mystery how he found time to study every case so thoroughly, to conduct them with such ability, and yet edit a daily paper, for every word of which he was held personally responsible. Everything he undertook he did well. French practice requires different methods from either American or English procedure, and it is difficult to understand the expedients made use of by a successful French advocate. No modern lawyer has mastered the traditions and rules of the French bar more thoroughly than Labori. His smile, as he addresses a witness, is as simple as that of a sincere child; his manner is that of a friend and comrade who is prepared to hear the most damaging confessions, and to forgive the most serious faults.

Nothing indicates that he has been shocked or surprised by the evidence he has drawn out, and the witness is lured into a maze from which he cannot extricate himself.

In the famous Vaillant case in January, 1894, Labori was counsel for the defense, and for the first time had an opportunity of giving the world the full measure of his marvellous eloquence, as well as a splendid example of his great tact. It was at that trial that he announced himself a Moderate Republican, and the Royalists shrank back shivering, for they had fondly hoped that this "hope of France" was in favor of monarchy.

In 1895, Labori made his one attempt to enter the legislature as a representative of his native town, but he was defeated by 189 votes.

Since that time he has appeared in nearly all the famous trials in Paris. He defended the Turk, Ahmed Riza, when the journal "Meshveret" was prosecuted, and, though he knew that a conviction was sure, he fought so well that his client was condemned to pay a nominal fine which was less than the minimum decreed by the code. In the Panama trials his eloquence was employed in the defense of Aristide Boyer to such good effect that he received the congratulations of the judges and his colleagues at the bar.

It is not an exaggeration to say that Maître Labori is the most eloquent advocate in France to-day. His eloquence does not consist in the uttering of flowery phrases and glittering generalities, but rather in welding together scraps of evidence which appear almost contradictory and having nothing in common, and in plain, simple, unvarnished language presenting them to the court. He does this with such thorough sincerity that all are convinced.

Labori is one of the most powerful cross-examiners living. No witness can evade his questions: very few try to do so, for they usually unburden themselves, as though pleased to tell all they know to this friendly and sympathetic lawyer. Therein lies his great power. What some can only elicit by browbeating and bullying he can get by his magnetic manner. The witness will often tell the judge more than he has been asked, because he feels so sympathetic towards the counsel. A French cross-examiner cannot ask a witness a question direct, he is not allowed to speak to the witness, but must ask the court to put his questions and to receive the answer. If the judge assumes a harsh or bulldozing manner, the witness lays the blame on him, and is sorry for the kind-hearted advocate who appears to deprecate any harshness.

If the mode of procedure were the same, Labori might be likened to the Lord Chief Justice of England, Lord Russell, for both men have won their laurels as cross-examiners.

Both men are alike in their eloquent pleadings, though Labori being French, perhaps is the more emotional. When facts are in his favor he presses forward along the line of logical argument with geometrical precision, proving every point and making it impossible for any one to doubt his conclusions; but when these facts are irrelevant or inconclusive he argues calmly and deliberately, feeling his way until those who listen to him are wondering what he can make of so poor a case, when, just at the right moment, he makes such a magnificent appeal to the emotions, speaking with such sincerity, every word coming from his heart, that he carries away his hearers and himself. Tears have been seen to course down his cheeks, his bosom heaves with emotion and there have been times when he fairly broke down with heart-felt sympathy and wept like a child.

Fernand Labori is an artist. No great painter ever studied the light and shade necessary to produce a perfect work more thoroughly than does this masterly lawyer. He arranges his case artistically, his witnesses are called so that the proper light and shade may be produced; in his speech he is dramatic, eloquent, but thoroughly artistic; like an accomplished chess-player, he sees many moves ahead and never makes a mistake. The smallest detail becomes of immense importance if it aids his case, but the most convincing evidence loses its effect when once he attacks it.

If he were not a good man he would be a danger to the state, for he can lead men anywhere he pleases. His eloquence is hypnotic.

No man has a greater knowledge of French law, and this adds to his strength, for in all his cases, desperate as many have been, he has never once been found tripping by judge or prosecutors.

Labori is a busy man. He has a larger practice than any one of the majority of popular advocates, but finds time to edit a monthly politico-literary review published in Paris, under the title of the "Grande Revue," which he calls his amusement. For serious work in his leisure, he is engaged in editing an encyclopedia of French law which will be a complete dictionary containing everything necessary to the advocate, as well as to the student.

Although the articles in this work, which is entitled "Le Repertoire Encyclopédique de Droit Francais," are from the pens of the most famous French writers on jurisprudence, Labori reserves the right of editing and revising them all. Twelve volumes have been issued, and the thirteenth would have left the press before now, had it not been for the attempted assassination of the great counsel during the Dreyfus trial.

Long before Labori was connected with the defense of Captain Dreyfus, he had studied the case, and come to the conclusion that the prisoner at the Ile du Diable was inno-

cent. He made no secret of his belief, and was asked to write an article in the interest of justice. His answer has become historic, and no doubt was one of the actuating impulses which drove Zola into the arena and led to the release of Dreyfus. Labori said: "It would do no good to write a review article. You cannot dry a lake with a teaspoon. Very much more is needed than an article. But there is a way, I think, by which the desired result might be attained. Yes, there surely is. It is by one of those sacrifices, the old-world memories of which are enshrined in the legends of the Middle Ages, or at least by readiness to make one. Let a man of weight and capacity throw his whole personality and his entire activity into the scale of justice, consecrating his life and his work to the righting of the wrong, heedless of the consequences, and the feat is achieved. This is my belief. A man of this temper might be found. It is worth considering."

It was not until later that Zola threw his whole life into the cause of justice, and France was compelled to listen to reason and do a tardy justice.

When the new trial was ordered, Labori was asked to become one of the counsel for Dreyfus. He accepted only on condition that he should undertake it as a work of love, and faithfully has he labored, without fee or reward, for his much-abused client.

Though leading such a busy life, the great advocate finds a pleasure in the home circle, whose central figure is Madame Labori, the once well-known English pianist, Miss Maggie Okey, who became the wife of De Pachmann, but finding the union one of unhappiness, obtained a divorce from him, and subsequently married the brilliant lawyer.

The Laboris are a model couple, living happily, having a mutual ambition and identity of interests, and each feeling that the other is the best and most perfect partner that can be found.

During the Esterhazy and Dreyfus trials, Madame Labori acted as her husband's secretary and helped him to a very great extent.

The world is better for such men as Labori, and tyrants tremble when the bar has among its members such fearless advocates of equal rights and justice to all.

WAS THE CONFEDERATE SOLDIER A REBEL?

By Bushrod C. Washington.

I.

WITH their political disabilities removed, in the possession of restored citizenship, and loyal to our re-united country, there are thousands of Confederate soldiers in all parts of the United States, filling, in public office and private enterprise, positions of highest honor and trust. The great body of these now grizzled, time-worn veterans is still resident in the once seceded States of the South.

After four years in the Civil War, of unexampled endurance and devotion, and a display of heroism which the Anglo-Saxon race now everywhere contemplates with pride and claims as a common heritage, having yielded to the inevitable, they subscribed at Appomattox the terms of an honorable and honest surrender.

While that surrender, to their minds, did not compromise a single principle for which their statesmen had disputed in the national councils, nor in defence of which their States had later seceded and called them to take up arms, it did establish *an immutable fact* — a fact they were forced to admit, which they instantly recognized, and pledged themselves thenceforward forever to observe, — *that secession was impossible*, that the Federal Union, whatever their understanding of it before had been, was then and forever "one and inseparable."

While Appomattox witnessed the reëstablishment of our territorial oneness under domination of the national theory of government, and demanded a return of paramount allegiance to the Federal centre by those who had lately rendered it to their respective States, it was the restoration of a geographic union only. While the surrender accomplished the re-association of lately separated States, it did not effect, instanter, a reunion of the American people. It did not bring immediately to pass that return of confidence and mutual respect, that "Union of hearts and union of hands," without which, in a democratic republic like ours, there could not be the complete and ideal union.

Such a consummation, at such a time, was not within the range of human possibility. It was not in the nature of man, that the animosities aroused by the carnage, devastation, and nameless horrors of an internecine war, a war of proportions without historic precedent, could be dissipated by the mere surrender of arms and interchange of pacific formalities.

The heart-wounds of a people emerged from a civil war like ours could be healed only through the mollient processes of time, or closed by some sudden emergency of national defence or aggression, which would call upon the people of all sections to share a common danger, and unite in acts of mutual endurance and self-sacrifice. The processes of time were slow, not always mollient, and often interrupted. The five and thirty years since Appomattox, with intertrade and intermarriage might have filled or bridged the "bloody chasm," could soldiers and statesmen have had their way. The magnanimous terms of capitulation offered by Ulysses Grant, the great commander of the Federal army, went far towards promoting the return of fraternity, and were an earnest of the sincerity of his later utterance — "Let us have peace."

But after the battle, the jackal and the vulture. After the war, its grim sequel of "reconstruction" set in, when those heroes, "invisible in war, invincible in peace,"

marched forth to display their super-patriotism, "to fire the Northern heart," and seek promotion and profit for themselves out of the political chaos. Mark Antonys innumerable, in mock heroics, "waved the bloody shirt" and cried "The rebellion is not dead while the arch-traitor Davis lives." The "carpet-bagger" also was abroad in the land, and his trend directly south. The white people of the South being disqualified as a result of the war, and their slaves endowed with citizenship, laws of social gravity were completely reversed. The white race, the descendants of Anglo-Saxon thanes, with ancestry tracing back of the Norman conquest, were relegated to civil vocations, often manual labor in their fields, while their ex-slaves, late Hottentots and Senegambians, sat in State legislatures, and from the seats of Calhoun and Pinckney made laws for them.

Under the influence of the insatiable carpet-bagger, their domination was one of injustice, rapine, and plunder. They enacted tax-laws which hardly exempted air and sunshine to the owners of any description of property.

This condition, too unnatural for long endurance, was more than an interruption of the healing process, it was a tearing open of old wounds, a long set-back to the ideal union.

But all this was a natural consequence of civil war, of war whose horrors the poverty of language is too great to express in fitter words than those of Sherman, "War is hell." In like comparison "reconstruction," to the people of the South at least, was purgatory. Let us draw the curtain of oblivion over the dark and grewsome memory.

The bounding years of the century's close have brought quick and amazing changes. The dismembered and warring States, reunited at Appomattox in eighteen hundred and sixty-five, in little more than three decades have assumed the mighty proportion of a "world-power." A transformation so sudden and astounding could only be accomplished by a united people moved by the spirit of American institutions.

The war with Spain called the country to confront a foreign enemy. A despotism, the antipodes of the American Republic, was to be expelled from the western hemisphere. A common enemy was to be encountered by a united people. To the call of the government "to arms," the response of the South was eager and spontaneous. Confederate veterans and their sons promptly enlisted for the war. Side by side with the men of the North they offered up their lives in the service of their country. Their valor and skill were conspicuous on land and sea, and attest that they were then, as ever, true and loyal Americans.

What five and thirty years of peace had not fully attained at home, was suddenly completed on foreign soil and in distant waters. It was for Appomattox to witness a reunion of the dismembered States, but the reunion of the *American people* was sealed in the distant bay of Manila, on the heights of San Juan, in the offing of Santiago.

The Union being now complete and strong in the conscious power of the loyalty of all the people, it may be well before entering upon the career of a great "world-power," whatever that may imply, to determine some matters of purely domestic relation.

From the commencement of the civil war down to the present day, the people of the North have applied to the Confederate soldier, in the sense of odium and derogation, the epithet of "*Rebel.*"

While the use of that term is of little moment as a mere matter of parlance, it is of grave and far-reaching import when imprinted in the cold, indelible type of history. The history of a country should be sacred to the maintenance of *Truth*, and written for a light and guide to posterity. Future generations will ask only for the "fish and egg" of historic facts, stated with

impartial candor. How dare we bequeath to them the "serpent and scorpion of old hates and blinding prejudices"?

The time seems at last to have arrived when we may safely ask and answer the question, "*Was the Confederate soldier a rebel?*" and in doing so bring to bear upon the inquiry those frank and manly methods peculiar to Americans.

The inquiry being in the interest of *truth*, must be pursued with the intention to recognize *facts*, and no mere opinion, nor bald assertion, however high the source, should be allowed to traverse the established and authentic records of history. Leaving bigotry and prejudice with the sunken fleets of Montojo and Cervera, let us follow the inquiry back into the morning-dawn of our liberty, and research the genesis of our federation. That the American colonies of Great Britain, prior to the Revolution, under their respective charters, exercised local self-government and were separate and independent of each other has never been questioned. That at the close of the Revolution they were independent, sovereign States has never been seriously denied. When, how, and *under what limitations* they became a nation, has been a subject of dispute as old as the Constitution. It is nevertheless the history of an evolution which may be traced with the exactness of ascertained facts, and the certitude of continuous and authentic records.

The frequent infractions of the chartered rights of the colonies by the mother country, had long prior to the Revolution caused anxiety among the colonies, and infringement upon the rights of any one of them had caused restlessness in all. Self-preservation, a first law of nature with States as well as men, caused them first to think of united action for the prevention and redress of wrongs.

Mr. Bancroft, in his "History of the United States," an authority of the highest order, to whom the writer will often refer, maintains that the first movement of the colonies towards concerted action was an assemblage of delegates from each of them, which met at New York on the seventh day of October, 1765. Its object was to devise and adopt a plan of united opposition to the British Stamp Act.

It was first recommended and the call made to the colonies by the legislature of Massachusetts in June, 1765; the object, as stated in the call, "to consult together and consider of a united representation to implore relief."

"Of the American colonies," says Bancroft, "Virginia rang the alarm bell, Virginia gave the signal to the continent." He referred to the memorable philippic of Patrick Henry delivered in the Virginia House of Burgesses, so defiant in its utterance that the speaker of the house cried "Treason!" It is familiar to every school-boy, was delivered six months prior to the call of Massachusetts, and was the first warning to the colonies that the Stamp Act was an attack upon American liberties. Massachusetts turned the alarm to practical effect by calling for the assembling of the Congress at New York, James Otis being the moving spirit.

South Carolina was the first to respond to the call. Bancroft heads a chapter, "South Carolina founds the American Union," and continues "Far away towards the land of the sun the Assembly of South Carolina was in session, and on the 25th day of July the circular of Massachusetts was debated. It was referred to a committee of which Christopher Gadsden was chairman, and through his leadership South Carolina pronounced for the Union." He quotes from the speech of Gadsden in the New York Congress: "Our State, particularly attentive to the interests of America, was the first, though at the extreme, and one of the weakest, to listen to the call of our Northern brethren in distress." In this Congress various opinions obtained as to the proper

means for seeking redress. It was proposed by some that the colonies should stand upon their chartered rights, "But," says Bancroft, "Gadsden of South Carolina spoke against this with irresistible impetuosity. He showed that the charters were various, and that the colonies could not be firmly united upon chartered rights. 'We should stand,' said he, 'upon the broad common ground of those natural rights that we feel and know as men and as descendants of Englishmen; there should be no New Yorker and no New England man known on the Continent, but all of us Americans.' These views prevailed, and this was the first great step towards American independence." "And when," says Bancroft, "we count up those who, above all others, contributed to the great result, we are to name the inspired madman, James Otis of Massachusetts, and the great statesman, the magnanimous, unwavering, faultless lover of his country, Christopher Gadsden of South Carolina."

What generous confidence, what unselfish devotion marked the union between North and South in 1765! What demon sowed the seed in this Eden that ripened into the harvest of death and destruction in 1861?

The Stamp Act was repealed in March of the following year, and the colonies became aware of their power in even a temporary union. But selfishness, the bane of men and nations, moved England ere long to fresh encroachments. A court of inquiry was instituted in Rhode Island, with power to send persons to England to be tried for offences committed here. This aroused the distant colony of Virginia, whose House of Burgesses was then in session, and on March the twelfth, 1773, a resolution was passed appointing a standing committee to inquire into the infraction of the rights of Rhode Island and consult with the assemblies of other colonies. This, according to Bancroft, was the first move towards creating the Continental Congress.

Much feeling had been aroused by the laying of duties on imports, which was followed by resistance in several colonies. The tax upon tea led to the destruction of cargoes of tea in the harbors of Wilmington, North Carolina, Annapolis, and Boston. Boston was made an example, and the port was closed to trade. News of the passage of the Boston Port Bill spread like a prairie fire. The Sons of Liberty, a patriotic club of New York, sent words of encouragement to Boston, and a circular to all the colonies urging immediate action for her relief. Responses came quickly and most promptly from the South. Gadsden of South Carolina sent word to Boston, "Don't buy an ounce of the damned tea;" and through his effort substantial aid was hurried forward to that suffering city from the planters of South Carolina. Virginia, whose House of Burgesses was in session, upon receiving the news, in sympathy with the people of Boston, appointed a "day of humiliation, fasting and prayer," and named a committee to consult with the other colonies for the purpose of convening a general congress. The cry started from the South and rang through all the colonies, "The cause of Boston is the cause of us all."[1]

It would be an insult to credulity, did not facts sustain the statement, that in less than ninety years, the cry that re-echoed from the North was — "On to Richmond!" "Down with the Rebellion!!" "Death to the Slave Power!!!"

Stupendous paradox! Was it the irony of fate or the mandate of cruel destiny? From the vantage-ground of aftersight, it was a reaction traceable to cause, — an eccentric episode in our social progress, — an active stage of the "irrepressible conflict."

The call for a general congress was adopted, and on the fifth day of September, 1774, a convention of delegates from twelve colonies met in Carpenter's Hall, Philadelphia. The objects of this convention were not in the least revolutionary. Its resolves

[1] Bancroft.

were all pacific, being simply declaratory of the inherent rights of Americans, as British subjects, and of the chartered rights of the colonies, which the mother country had usurped. After advising the colonies to discontinue exports to England until the abuses of Parliament should be corrected, it adjourned, having recommended the colonies to meet again in congress on the tenth day of May, 1775.

Up to this time no confederation had been entered into. The colonies were still British dependencies and without political relation to each other.

The colonies reassembled in congress on the tenth day of May, 1775. Hostilities with England had already commenced. John Hancock of Massachusetts was chosen president of this congress, and George Washington of Virginia was appointed commander of the army. The commission to Washington was that of "General and Commander-in-Chief of the army of the United Colonies," and was issued in the name of the colonies, each being named separately in the commission. This congress of the colonies remained in session at Philadelphia providing for the general defense under the powers delegated to it.

On the seventh of June, 1776, Richard Henry Lee of Virginia moved the resolution in Congress, "That these United Colonies are, and of right ought to be, free and independent States." . . . The resolution was adopted, and a committee appointed to prepare a declaration of independence. John Adams of Massachusetts, Benjamin Franklin of Pennsylvania, Roger Sherman of Connecticut, Robert Livingstone of New York, and Thomas Jefferson of Virginia composed the committee. Thomas Jefferson was made chairman, and the Declaration of Independence was drawn by his hand. It came up for final action on the Fourth of July, 1776, and received the unanimous vote of all the colonies. It was entitled "The Unanimous Declaration of the Thirteen United States of America." Its chief declaration was, "That these United Colonies are, and of right ought to be free, and independent States, that they are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain is totally dissolved." . . .

A committee had also been appointed to prepare articles of confederation, which reported on the twelfth day of July. They are entitled, "Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantation, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia. The first three of these articles more especially concern this inquiry, as follows: —

ARTICLE 1. The style of the confederacy shall be "The United States of America."

ARTICLE 2. Each State retains its sovereignty, freedom and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled.

ARTICLE 3. The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade or any other pretence whatever.

By the Declaration of Independence the colonies had severed their connection with Great Britain. They were then sovereign and independent States, and without political relation to each other.

The acts of the American people up to this time, for prevention and redress of grievances from the mother country, were in and through united action of the colonies and not through any convention of the people *en masse*. It was the colonies that now had become free and independent States. The people of the colonies had not thereby become relegated to political chaos; they had

not reverted to the condition of man in the state of nature without law. The colonies, having declared their independence, were separate political entities, and under their several constitutions became sovereign States. They were representative democratic republics, under legislative, executive, and judicial departments. The people who before had been British subjects were now the citizens of their respective States, which exercised paramount authority over them, and to which they owed and acknowledged the allegiance of citizens. These recently separate States came together under the Articles of Confederation, "into a firm league of friendship with each other." "Each State retaining its sovereignty, freedom and independence, and every power, jurisdiction, and right, which was not by this Confederation expressly delegated to the United States in Congress assembled."

In Article 5 of the Confederation the States established their equality by providing that, "In determining questions in the United States in Congress assembled, each State shall have one vote."

The United States therefore at that time was a confederated republic, with delegated and limited powers, and was administered by a Congress in which each State had one vote, and in the recess of Congress by a committee appointed by Congress, called the "Committee of the States."

This was the government under which the Revolution was successfully fought, and under which was maintained all external and inter-state relations for nearly ten years.

But the government under the Confederation soon developed serious weakness. As the public debt, which included the expenses of the Revolution, began to mature, the difficulty of providing the means to meet it became a grave concern to Congress. Its only recourse was to make requisition upon the States, and there was no authority to enforce payment of their quotas. The government seemed on the verge of dissolution, the States, jealous of their rights, ignored the request of Congress to enlarge its powers. "It was deemed, in the language of the day, that any proposition for perfecting the Articles of Confederation should originate with the State Legislatures."[1]

At this juncture the legislature of Virginia, on June 21, 1786, at the suggestion of James Madison, appointed seven commissioners to meet such other commissioners from the several States, at a time and place to be agreed upon, "to report an act to establish a uniform system in the commercial relations between the States, which act should be subject to ratification by the several States of the Union."

Only four other States responded, the commissioners meeting at Annapolis, Maryland, on September 11, 1786. They did nothing but report back to their respective legislatures, and recommend the calling of a general convention of all the States, to meet at Philadelphia on the second Monday in May, 1787. The object of this convention, as stated, was "to take into consideration the situation of the United States, to devise such other provisions as shall to them appear necessary to render the Constitution of the United States adequate to the exigencies of the Union, and to report such an act to the United States in Congress assembled."

The memorable body which assembled under this call was known as the Convention for the Revision of the Articles of Union between the States, and met in Philadelphia, May 14, 1787. "It was," says Alexander Stephens, "the ablest body of jurists, legislators, and statesmen that ever assembled on the continent of America."

The great achievement of this convention was the production of the new Constitution, which upon the recommendation of Congress was ratified by the several States, and which with subsequent amendments is to-day the fundamental law of our country.

[1] "Elliott's Debates," cited in Stephens' "History of the U. S.," 276.

To determine the nature and powers of the government under the new Constitution, it is necessary to ascertain who were the contracting parties, and what was their purpose and intention in acceding to the compact called the Constitution.

Fortunately the Constitution has a history, and it is a legal maxim, "that the surest and best means to construe an instrument is to refer to the times and circumstances under which it was enacted."

This may be done by inquiring into the objects of the call made for delegates to meet in general convention; into the debates upon the call in the State legislatures, and in the conventions nominating and instructing their delegates; into the debates in the general convention at Philadelphia which framed the Constitution; into the deliberations in the State conventions which ratified the same, and into the terms of ratification set forth by each State; by ascertaining the opinions of the fathers of the Republic in correspondence, and otherwise expressed before and after its ratification; and, finally, by examining the internal evidence of the written document.

While the limits of a magazine article are insufficient for a constitutional argument supplemented by copious extracts from all these sources, sufficient may be included to enable a fair determination. The objects of the call for a general constitutional convention are set forth in the title and preamble to the acts of the State legislatures, as follows:—

NEW HAMPSHIRE.

An act for appointing delegates to the convention to be holden in the city of Philadelphia in May, 1787, for the purpose of revising the Federal Constitution, to confer with such deputies as may be appointed from other States for similar purposes, and with them to discuss and decide upon the most effectual means to remedy the defects in the Federal Union. . . .

MASSACHUSETTS.

For the sole and express purpose of revising the Articles of Confederation, and making such alterations therein as shall, when agreed to in Congress and confirmed by the States, render the Federal Constitution adequate to the exigencies of government and the preservation of the Union. . . .

CONNECTICUT.

To discuss upon such alterations agreeably to the principles of Republican government, as they shall think proper to render the Federal Constitution adequate to the exigencies of government and the preservation of the Union. . . .

NEW YORK.

For the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures such alterations and provisions as shall, when agreed to in Congress and confirmed by the several States, render the Federal Constitution adequate to the exigencies of government and the preservation of the Union. . . .

New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia commissioned delegates in language almost identical with the above, that is, "to revise the Articles of Confederation so as to render the Federal Constitution adequate to the exigencies of the Union."

From the foregoing it is plain that the delegates to the Constitutional Convention were sent there as the representatives of the several States as States, and not by the people directly.

It is also plain that they were not authorized to change the character of the government, but only "to revise the Articles of Confederation, so as to render the Federal Constitution, adequate to the exigencies of the Union." It is nowhere shown that the Federal nature of the government was intended to be altered, but that the government, while remaining a Confederation of States, was to be clothed with authority sufficient to render it operative *within the sphere of its delegated powers.*

But, notwithstanding these definite instructions to the delegates, there immediately developed in the Constitutional Convention several parties diametrically opposed to one another. There was a minority led by Hamilton of New York, Madison and Randolph of Virginia, Wilson of Pennsylvania, and King of Massachusetts, who favored a consolidated national republic, in which the States were to be practically obliterated, — a government with a strong hand, possessing all paramount authority, and bearing directly upon the people.

This form of government was so manifestly opposed to the American spirit, so in conflict with the jealously-guarded rights of the States, and the proposal to create it so far transcending the authority of the delegates as instructed by the States, that it was overwhelmingly defeated. The advocates of it, however, being true patriots, addressed their efforts immediately to perfecting a Constitution on a *federal* basis, and the Constitutional essays of Madison, Hamilton and Jay, in the "Federalist," fully explained the federal character of the government about to be created.

At a time when there was much perplexity as well as disagreement in the Convention, that great apostle of popular rights and free institutions, Thomas Jefferson, who was at that time minister to France, brought order out of chaos by suggesting a form of government unprecedented and unsurpassed in the annals of mankind. It was recommended in letters to James Madison, in December, 1786.[1]

The conception of Jefferson was, that the Federal government should be organized after the pattern of the States, with legislative, executive and judicial departments coördinate, yet with well-defined and separate powers. But the novel feature that was to distinguish the American Republic from any republic of antecedent history, was that the general government should be vested with some specific powers over the individual citizens of the several States, and thus have authority to execute directly its own enactments over individuals within the States, to the extent of the powers delegated.

Such was the Constitution recommended to Congress, by it referred to the several States, and by them separately ratified through conventions of the people called by the legislatures.

The acts of ratification of the several States show that they thoroughly understood that they were entering into a *federative* union. In the Convention of Pennsylvania, James Wilson, afterwards a judge of the United States Supreme Court, who was also a deputy to the National Convention, explained fully, that the Constitution did not create a consolidated government, and said, "Instead of placing the State governments in jeopardy, it is founded on the States, and must stand or fall as the States are secured or ruined."

Roger Sherman and Oliver Ellsworth, delegates from Connecticut, in letters to the governor, stated that the sovereignty of the States was retained.

Massachusetts expressly declared "that all powers, not delegated by the Constitution were reserved to the several States, to be by them exercised," and requested that such an amendment be added to the Constitution.

Virginia and South Carolina made the same recommendations in almost the same language.

New York resolved, "That the powers of government *may be resumed by the people* whenever it shall become necessary to their happiness," and distinctly declared that all undelegated powers were reserved to the State governments.

North Carolina and Rhode Island did not immediately ratify the Constitution, but remained some time outside the Union, during which time they were looked upon and

1 "Writings of Thomas Jefferson," vol. 11, p. 64.

treated as separate nationalities. In finally acceding to the compact, North Carolina declared her understanding to be that "Each State in the Union respectively retains every power, jurisdiction and right which is not by this Constitution delegated to the United States or to the departments of the general government."

Rhode Island, the last to enter the Union, in an act of ratification, set forth in eighteen declarations amounting almost to a bill of rights, asserted: "That there are certain natural rights, of which men, when they form a social compact, cannot deprive nor divest their posterity . . . , and that the powers of government may be resumed by the people whenever it shall become necessary for their happiness." It would be difficult to express in plainer language the understanding of the several States.[1]

But if further proof of the limited federal nature of the government and the reserved rights of the States is needed, it is amply provided in the words of the fathers.

[1] These proceedings are taken from "Elliott's Debates," as cited by Stephens.

Alexander Hamilton, the leader of the "Nationals" in the Constitutional Convention, says (in the "Federalist," page 144): "If the Federal government should overpass the just bounds of its authority, and make a tyrannical use of its powers, the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution as the exigencies may suggest and prudence justify. The propriety of a law in a Constitutional light must always be determined by the nature of the powers upon which it was founded. . . If a number of political societies enter a larger political society, the laws which the latter may enact pursuant to the powers entrusted to it by its Constitution must necessarily be supreme over those societies. But it will not follow from this, that the acts of the larger which are not pursuant to its constituted powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. *These will be merely acts of usurpation, and will deserve to be treated as such.*"

THE LAWYER IN LITERATURE.

By Melville D. Post, of the West Virginia Bar.

An address delivered at the annual dinner of the Alumni of the Illinois College of Law, Palmer House, Chicago, Ill., May 27, 1899.

YOUR invitation to speak after dinner might be regarded by the layman as a piece of commendable foresight, since it would seem to recognize the wisdom of satisfying a lawyer before arousing him into activity; and that foresight goes further when it is remembered, as our ambassador to the court of St. James once declared, that the pyloric orifice is the shortest cut to the human brain.

I approach with some trepidation the subject selected for me by your learned President. At its threshold one is met by a vague protest against the apparent inconstancy of that one who, having taken to his roof-tree a stately dame, turns aside on occasion to swagger through the streets with her unconventional sister. The good housewives are apt to wag their heads and predict an early coming into the ecclesiastical courts.

It is not my intention to meet this danger-

ous declaration by an issue at law. I must be permitted, gentlemen, to carry the case into a court of equity, to bring in it other features. I must be permitted to raise questions of title, of ancient custom, and the public weal, that upon a final hearing the chancellor may determine what gallant of them all has the best right to this whimsical, wayward lass. With whom she is happiest; who sees clearest the sky-tints of her eyes, under lids a little heavy; the shimmering lights in her hair; the harmony of limb and drapery; and behind that the deeps of her nature, crowded with strange thoughts, fantastic reveries, and exquisite passion, into which one looks through a weird light, like a diver in deep seas. For what one will her smile be sunniest that the multitude below may see it and be glad. What one among all the gallants has the best right to this Argive Helen. And when the witnesses have spoken and the argument is closed, I shall not fear the conscience of the Chancellor unless, like that god of whom the ironical Tishbite spoke, it be sleeping or on a journey.

It is a faith dear to those who are sorry to labor, that he who produces a masterpiece in any department of art is one with the mark of the gods on him — through whom an influence from beyond is working, and who, merely a medium for this influence, produces an effect by a sort of divine intuition without any knowledge of the laws upon which that effect usually depends. I think there has never been a more triumphant error.

It ought to be written that the value of a work will be found to depend largely upon how thoroughly the craftsman appreciates the laws of his art. For this reason it would seem that nothing is so essential to a writer as a knowledge of the laws of evidence. If, as we are taught, the one indispensable beauty in all literature is truth, then it follows, all else being equal, that he who is best able to reproduce that truth is he who is best able to determine it. This conclusion is irresistible.

Just here the law has been at work for six thousand years. It has been its constant effort to determine those rules by which alleged matters of fact are established or disproved. From that first time when the young men went forth to hunt in the forest, or to dig in the fields, old wise men have remained by the cave's mouth or the chimney's ingle, laboring to determine these laws — merely to determine them. The laws were from the beginning. Finally, as the result of a labor simply incomprehensible, these laws have become clear, and men have understood the relative weight and convincing virtue of evidence. These rules, as Greenleaf points out, are no metaphysical refinements, but are founded upon the very laws of nature existing anterior to courts.

Then, there is written down in the temple of the law for the benefit of her priesthood a great code of rules by other men but dimly understood. Rules by which truth may be determined — that truth which is the indispensable beauty in all literature. There is no guesswork here; no probable result by indefinite accident or vague intuition. The writer learned in these rules creates his atmosphere of truth with the same unerring accuracy that the architect estimates the arches of his portico or the engineer calculates the strain on his truss. Other men may be guided by vague lights dancing on the marsh-land, but this man is following the stars.

There is another class of literature whose mission it is to create a mood; to establish an impression; to move the deeps of human emotion. This object has been explained with great learning by Whistler in art, and Pater in literature, but it seems by the vast army of craftsman to be but dimly understood. It is the art of going deep; of tracking the sources of expression to their subtlest retreats; of knowing in what places and with what degree of delicacy it is neces-

sary to touch the sensibilities of the individual in order to create in him the mood.

From the dawn it has been known to the lyric poet, but the artist missed it until the Florentine came in the fifteenth century. Pheidias and his school passed producing the outside, but not the inside of the Greek. Later, under the porticos of Florence, in a land of expanded summer, Sandro Botticelli caught the mood and left it in the faces of his Madonnas; and Luca della Robbia tangled it in somehow in his pale colors; and Leonardo Da Vinci painted it with such deft skill into the portraits of Ludovico's mistresses that they have outlived the saints; and the great Michelangelo, "with a genius spiritualized by the reverie of the middle age," traced, wherever his hand moved, this intensity of expression which troubled men like a great passion — traced it even in that wasting snow-image which he moulded, with scorn, by the command of Piero de' Medici.

The lyric poet, I have said, knew the secret from the beginning, and other men of letters have on occasion obtained this fine result, some by laws which they comprehend, and others by accidental hap, I think, as one stumbles on a treasure while groping in the dark. William Morris understood it well, when he told the most beautiful tales that men have ever listened to. Simple, but strong and sweet, leaving us dreaming in a land of selfish passions for that faith which the Sundering Flood could not divide and that love which led the wanderer of Upmeads to the Well at the World's End. Browning knew, for his lines whisper like wonderful voices from beyond the world which we ought to understand, and Rossetti and Swinburne knew. Master craftsmen! There is something in your verses that keeps saying to us, "Eccovie! These men have heard the Choral Seven."

The mood, then, is the virtue of this type of literature. To make men feel what he would have them feel, is the object of the artist. It is also the object of the advocate. For no one knows better than he, that truth is a mere matter o view-point; that men are pleased or troubled by the order in which events are marched by them; that they are melted or hardened as the deeps of their emotion are moved; and, finally, that their sense of right is merely the finished mood. And knowing this, it is the business of his life to create that mood. It is his labor to study the intricate nature of men and both the natural and the artistic sequence of events, that he may know, when he looks into a man's face, what it is that this man has been accustomed to regard as truth; in what order and under what lights and shadows events must be marched by him; and just what string of his emotion it is advisable to twang. But this is not enough. He has usually under our system of legal procedure twelve men to deal with. An instrument of strange and inharmonious notes, grossly out of tune, and from this by deft handling he must finally obtain a perfect harmony.

Delicate business, gentlemen: a note omitted, a key jarring, an error never so slight in the swift estimate of the delicate response to be had from the deeps of each human pipe, and all goes banging into discord. Delicate business! To be appreciated only by the surgeon cutting away death, down among naked nerves at the roots of life.

It is clear, then, that the learned advocate — this deft handler of human passions — is working at the very fountain-head of all art, and the other workers are his brethren, only younger and somewhat given over to dreams. If this is precious knowledge, indispensable to all literary excellence, is not that one who comes from the learned profession of the law best equipped among all the craftsmen? If fact is to be reproduced, he has under his fingers the rules by which all fact is to be determined; if the nature of men is to be dealt with, he has sounded every deep and shoal of it; if the waters of the heart are to be troubled, he knows the way down into the pool. And he claims no esoteric secret, no

mystic origin for his knowledge, no whispered word from behind the stars, no genius but the genius of interminable labor. He had no moment of inspiration when he heard better than other men, no moment of illumination when his sight was clearer. What he has known of truth, he has learned, where all may learn, watching the great face of nature day and night, and every day and night.

But the law hath yet another hold upon the body of this maid. Our craft, if you please, and this art, if you please, bears the deep stamp of a common kinship. In the beginning, the law of fitness obtained without question. He who was swift of foot hunted for the tribe, and he who was big of limb fought for the tribe, hurling its weapons and bellowing its war-cry; and he whose head was clearest, observed and reasoned, plotted and planned and counselled, that the tribe might win and live. This man who reflected, who pondered over the experience of his fellows seeking the truth, who hunted for the cause behind the things around him, who foresaw the event afar off and prepared his people to meet it; this man, who said whether the tribe should go out to the chase or up to the battle or lie hidden in the caves among the hills, this first leader was the first lawyer. To him men came with their simple quarrels, and he passed judgment; learning to detect the truth from word and gesture and incident and the rule of probabilities — and then, as the daylight broke into the world, he saw the rights of men and bound the families into the tribe and the tribe into the state.

He was also the first man of letters. He remembered and handed down the traditions of old times. He gathered the strange stories of his people, and lopped off the grotesque, the improbable, the absurd, recasting them into proper proportion. He built, too, the fable and the tale, modelled after events as he had seen them, but with a finer harmony and a more artistic sequence. It was not until the work-a-day world approached its meridian, and the business of the law had grown vast and exacting, that this splendid lover of literature was forced out of her street companionship. It was then only that she came lingeringly and at longer intervals to call him out into the sunshine. She who loved the great world so well, its green hills, its broad stretches of meadowland and the deep forests where the Faery haunted. And standing with her, he saw what men dreamed of when they slept, — treasure buried by the sea, and the lost spring of perpetual youth gushing out under the roots of the mountains. And with his hand in hers, together they wandered across the world into a land of unending summer, to the kingdom of Queen Mab, to the enchanted island of Morganna the Fay, and with them went trooping the men and maids who love the moon, and the merry children of the rainbow and Pan piped, and the world was young.

But the chiefest blessing was to see her when she came to him, — the lure of her beauty, how can it be written? Hair like hers he had sometimes seen tumbling down from a painter's canvas; shoulders like hers he had sometimes seen rising out of a sculptor's marble, but such a smile he had not seen before on the crust of the earth. Like hers glowed the face of the golden Helen when she prayed to Venus in the temple at Sparta. Like hers glowed the faces of the nixies when they danced bare-limbed on the banks of the Rhine; and like hers glowed the faces of the sirens when they flashed their naked bodies on the haunted isles of the Aegean sea.

It is little wonder that the great Chancellor d'Aguesseau, with the jurisprudence of France in his hand, pined like a captive for the republic of elegant letters.

THE GOLDEN AGE OF LAW.

IN the realms of law, history assuredly is both instructive and entertaining, for it shows what a miserable myth the "golden age" is, and exposes the sham of the "good old days." It is impossible to imagine how any one who has read Lord Campbell's "Lives," the "State Trials," and such important legal works as Stephen's "History of the Criminal Law," can ever regard the past with feelings other than those of profound disgust.

Let us consider what was the position of a man charged with an offense in the time of the last two Stuart kings — the end of the seventeenth century.

This period is chosen, not because it was exceptionally bad, but because it is more generally interesting, although the days of the Tudors would reveal details as cruel and as unjust, when the brutality of Sir Edward Coke, and other servants of the Crown, equalled that of Scroggs and Jeffreys.

Legal procedure was very different then to what it is now, and its terrible intrinsic unfairness can be understood when one reflects that the proceedings in a criminal court were initiated and conducted on the supposition that the prisoner was guilty of the offense charged against him: that in cases of treason and felony, which then practically included all serious offenses, the prisoner was not allowed to have counsel to represent him, except by leave of the court — seldom given — and then only to argue points of law.

It was a long time before counsel were permitted to cross-examine, and it was not until 1837 that they could address the jury in defense. To one acquainted with the technicalities of our criminal courts, the procedure adopted, e. g. in the seventeenth century, of arraying against a man on trial for his life, a number of eminent counsel, all of whom addressed the jury, and then refusing the prisoner — generally ignorant of law — the privilege of legal assistance, seems shameful in the highest degree. Better by far it should be as now, and that the prisoner should be given every latitude and every chance of escaping punishment.

Again, the scale on which punishments were awarded was terrible; high treason, petty treason, piracy, murder, arson, burglary, housebreaking, and putting in fear, highway robbery, horse stealing, *stealing from the person above the value of a shilling*, and two other offenses, were punishable with death, whether the offender could read or not. If he could not read, and was therefore unable to claim benefit of clergy, all felonies and every kind of theft above the value of a shilling, and all robbery were capital crimes. Flogging was a most popular punishment, especially in cases of misdemeanor, and such tortures as cutting off the ear, slitting the nose, burning in the hand, were freely dispensed by judges. Burning to death was the regular punishment for women found guilty of treason. But enough has been said on this subject to show how materially in this respect the "good old days" differed from our decadent age.

And now, limiting our observations to the specified period, let us turn to the most interesting cases which were tried during those reigns, which have been termed "perhaps the most critical part of the history of England," and we cannot do better than commence with a trial, which is not only a monument of injustice, but one of constitutional import.

The Regicides, i. e. those who were concerned in the execution of Charles I, and were excepted from the act of indemnity, were arraigned at the Old Bailey, on the

tenth of October and following days, A. D. 1660, for high treason.

The unfairness meted out to them subsequently was foreshadowed by the consultation between the prosecuting counsel *and the judges* commissioned to try the case, to resolve many points "preparatory to the trials of the murderers of the late king."

One of the points determined at this extraordinary meeting was, "that it was better to try *these traitors*" at the sessions at Newgate — an admirable instance of prejudging a case. The charge of Lord Chief Baron Sir Orlando Bridgman to the grand jury contained such passages as, "I have done in this particular, to let you see that the supreme power being in the king, the king is immediately under God, owing his power to none but God," and was a high testimony to the truth of the doctrine of "Divine Right." The grand jury found *Billa vera*, and on the tenth of October, Sir Hardress Waller, Colonel Thomas Harrison, and Mr. William Heaveningham were brought to the bar, and charged that each of them with others, "not having the fear of God before his eyes, and being instigated by the devil, did maliciously, treasonably, and feloniously, contrary to his due allegiance and bounden duty, sit upon and condemn our late sovereign lord, King Charles the First, of ever-blessed memory, and also did upon the thirtieth of January, 1648, sign and seal a warrant for the execution of his late sacred and serene majesty, of blessed memory," etc.

Sir Hardress Waller pleaded guilty, but the others put themselves on their country, and, having severed their challenges, were tried separately. Colonel Harrison, with whom it is proposed alone to deal, was tried first. In opening the case, Sir Heneage Finch, the solicitor general, spoke in blasphemous terms of Charles I, and prefaced volleys of abuse and irreligious bombast by the announcement, "We bring before your lordships into judgment this day the murderers of the late king."

Even the spectators seemed to think the proceedings extraordinary, for when one of the counsel for the crown stated that the prisoner's guilt was clearly proved, they hummed, and called forth a rebuke from the Lord Chief Baron.

"Gentlemen, this humming is not becoming the dignity of the court. It is more fitting for a stage play than for a court of justice."

Subsequently the prisoner applied to be allowed to employ counsel to argue a difficult point of law involved; but the court refused it, the recorder saying, "This gentleman hath forgot their barbarousness; they would not hear the king!"

Harrison's defense seems to have been one of much merit, but it was impossible for him, a layman, to argue the very difficult points of law in his case, and, furthermore, even had he been allowed counsel, it is hardly likely that Sir Orlando and his brethren would have lent an impartial ear to his arguments.

North says of the presiding judge, "He labored very earnestly to please everybody"; but for "everybody" more justly should be written "the king." His co-operation in the butcheries that followed the Restoration is of itself sufficient to stamp him with infamy.

Another scandalous trial occurred in 1662, when a man named Tonge and five others were indicted at the Old Bailey for high treason. The evidence was far from being conclusive against them; but, whether that is so or not, the summing up of the presiding judge, Sir Robert Foster, is as fine a specimen of judicial subserviency as could well be obtained.

"My masters of the jury: I cannot speak loud to you, you understand the nature of this business, such as I think you have not had the like precedent in your time. My speech will not give me leave to discourse of it, for the witnesses, they are none but such as honest men: it is clear they all

agreed to subvert the government, to destroy his majesty. What can you have more! Two of the witnesses are without exception, but I do not see any way but their testimony is good. For the parties, they in themselves are very inconsiderable: these are but the outboughs, and if such fellows are not met withal, these kind of people are the fittest instruments to set up a Jack Straw or a Wat Tyler. Therefore you must lop off these, or else they will encourage others. You see, one of their own company hath confessed the fact, out of remorse at his own conscience. But I leave the evidence to you. Go together."

Such a speech needs no comment; but one would scarcely believe it represented the judicial directions in a case of high treason, if it were not a proved fact.

Why the trial of Mary Moders, *alias* Mary Stedman, styled the German princess, at the Old Bailey, in 1663, for bigamy, should have been included in the state trials it is hard to say, but it is highly amusing, nevertheless.

She pleaded not guilty, demanded in the usual form to be tried "By God and my country," and after the clerk had wished "God send thee a good deliverance," she was sent back to jail to await her trial on the morrow. And then, so says the report, "Her husband, the young lord, told her, he must now bid good bye of her for ever. To which she replied,

> 'Why, my Lord, 'tis not amiss,
> Before we part to have a kiss,'

and so saluted him and said, 'What a trouble and a noise is here of a cheat. You cheated me and I you. You told me you were a lord, and I told you I was a princess, and I think I fitted you,' and so saluting, they parted."

The next day she came into court "in a black velvet waistcoat, dressed in her hair, trimmed also with scarlet ribbands," and laughed so much at "the young lord," that he left the court "by advice of his friends." The evidence was dead against her, although much of it was wrongly admitted — the alleged real husband's statement being given by a third party before the jury, and also evidence that the prisoner had been tried for bigamy before and acquitted. However, she was equal to all irregularity, and delivered an extraordinarily able speech in her defense, the line being that her husband's father "hunted after her life," because she was poor and his son had married her thinking she was rich.

Now, whether it was due to her ability or the black velvet waistcoat, it is certain that the judge warmly espoused her cause, and amid some hissing and clapping of hands she was acquitted.

The present-day procedure at the Old Bailey is, in many respects, very different from what it was in Charles II's reign.

Now a judge, or a barrister, appointed for the purpose, presides at each trial, and the Lord Mayor and aldermen, although they grace the judicial benches with the dignity of their presence, take no part in the proceedings.

This was certainly not the case in the celebrated trial of Penn and Mead on the first of September, 1670, by a court consisting of the mayor, the recorder, five aldermen, two sheriffs, and a certain Richard Browne, all of whom took a very active part in the trial.

The prisoners were Quakers, and were charged with what nowadays would be unlawful assembly or street obstruction, but which in those days had a religious, and therefore a political significance. When the court opened, the prisoners, their hats having been removed by an official, were brought to the bar, and the following incident occurred:

"Mayor: 'Who had you put off their hats? Put them on again.'

"Recorder (to prisoners): 'Do you know where you are?'

"Penn: 'Yes.'

"Recorder: 'Why do you not pull off your hat, then?'

"Penn: 'Because I do not believe that to be any respect.'

"Recorder: 'Well, the court sets forty marks apiece upon your head as a fine for your contempt of court.'

"Penn: 'I desire it might be observed that we came into the court with our hats off, that is, taken off, and if they have been put on since, it is by order of the bench, and therefore not we but the bench should be fined.'"

Penn's language was not over-respectful, but it is scarcely possible to believe that even political judges could have acted as this tribunal did.

Later Penn asked on what law he was indicted, and was told the Common Law. He asked what it was, and was told by the recorder, "You must not think that I am able to sum up so many years and run over so many adjudged cases, which we call Common Law, to answer your curiosity."

On Penn very properly persevering with his questions the recorder spoke to the mayor. "Take him away, my lord: if you take not some course with this pestilent fellow to stop his mouth, we shall not be able to do anything to-night"; and the mayor ordered the officials to "turn him out into the bale-dock." Which being done, the worthy civic dignitary thoughtfully told the other prisoner, "You deserve to have your tongue cut out."

What the "bale-dock" was is not quite clear, but in the report it says that Penn remained there until for another contempt he was turned into the "hole," in which "stinking hole" he remained till the end of the trial.

When the jury failed to agree, the mayor, following the lead of one of the aldermen, said to the foreman, "Sirrah, you are an impudent fellow — an impudent, canting fellow; I warrant you you shall come no more upon juries in haste."

In those days, therefore, it was apparently regarded as an honor to serve on a jury, and in that respect times have indeed changed. However, one at least did not hold that opinion, for he begged to be dismissed on the ground of "indisposition of body"; but his prayer was not granted, the mayor observing, "You are as strong as any of them; starve and hold your principle."

The jury were then locked up the whole of that night, the next day and the following night, without meat, drink, fire, or any other accommodation, but still they would not find the prisoner guilty. In the end the court were forced to accept a verdict of "not guilty," and the recorder then fined the jury "forty marks a man and imprisonment till paid." The upshot of this celebrated trial was that Bushell, the foreman, sued out his writ of *habeas corpus* and was discharged from imprisonment, it being held that the return to the writ that he had been imprisoned for finding a verdict "against full and manifest evidence, and against the direction of the court," did not justify his imprisonment. This case established the immunity of jurors in respect of their verdict, and once and for all determined their right to return a "general" verdict, or, in other words, to regard circumstances and motives, and not merely the strict issue. This right, although Lord Mansfield in the "North Briton" case tried to destroy it, was even more firmly fixed than before by Fox's Libel Act, and in spite of the latter-day opposition of some of the less-distinguished judges, remains to this hour inviolate, and the main charter of individual freedom in this country.

— *Law Magazine and Review.*

THE FIRST TEN SECRETARIES OF STATE.

By Sallie E. Marshall Hardy.

I.

THE history of the state department is perhaps more interesting than that of the executive. Certainly the men who have been at its head are among the most eminent of American statesmen, which cannot be said with truth of all of those who have occupied the presidential chair.

The service of the first ten secretaries of state covers a period of nearly half a century, and no other forty-two years since the United States became a nation have been more momentous. Well for us, then, that they were chosen from among our greatest men.

Five of them were from Virginia, Thomas Jefferson, Edmund Randolph, John Marshall, James Madison and James Monroe. Of the other five, Timothy Pickering was appointed from Pennsylvania; Robert Smith from Maryland; John Quincy Adams, from Massachusetts; Henry Clay, from Kentucky, and Martin Van Buren, from New York.

All of them were lawyers, or, at least, had studied law. Half of them had measured their diplomacy with that of skilled European statesmen. Jefferson had negotiated treaties with the principal European countries and had been minister to France. John Marshall had been one of the special envoys to France to try to arrange our difficulties with that country. Monroe had been minister to France and England. John Quincy Adams had represented the United States in Russia and England, and Henry Clay had been one of the commissioners, in 1814, to negotiate a treaty of peace with England and had signed the treaty of Ghent. Five of them were afterward Presidents of the United States: Jefferson, Madison, Monroe, John Quincy Adams and Van Buren, and a sixth, John Marshall, became chief justice.

The longest time any of them held the office was eight years, James Madison and John Quincy Adams; the shortest, one year, Edmund Randolph and John Marshall. Timothy Pickering and James Monroe each served six years, and Henry Clay and Martin Van Buren, two.

The first secretary of state, Thomas Jefferson, was appointed by President Washington, and served from 1789 to 1794. He was forty-six years old. He came of good Welsh stock on his father's side, and his mother was a Randolph, of the rich and prominent Randolph family of England. He was born April 2, 1743, and was one of nine children.

He is said to have been very like his mother and to have inherited his taste for literature from her. Certainly he owed to her the most of his training, for his father died before he was fourteen years old. Thomas Jefferson was slender and very tall, being six feet and two inches in height.

When at twenty-four he began to practice law, it is said, "He did not gamble or drink, use tobacco or swear, in short avoided all the vices of the young Virginia gentry of that day." It was in 1767 that he was admitted to practice law at the Virginia bar. His diary shows he had sixty-eight cases the first year; one hundred and fifteen for 1768; one hundred and ninety-eight in 1769; one hundred and twenty-one in 1770; one hundred and thirty-seven in 1771; one hundred and fifty-four in 1772; one hundred and twenty-seven in 1773, and only twenty-nine in the troublous days of 1774.

He was not a good speaker, and his voice was very unpleasant. On New Year's day,

1772, he married Mrs. Martha Wayles Skelton, the daughter of an eminent lawyer of that day. She was rich, and his marriage doubled his fortune. His wife's health was wretched for several years, and he refused a number of important offices on that account. At the last, he is said to have sat for weeks at her bedside and to have given all necessary medicines and food with his own hands. His eldest daughter wrote: "When she died, he fainted, and remained so long insensible that they feared he would never revive."

When the Congress appointed a committee of five to prepare a declaration of independence, Mr. Jefferson had one more vote than the other four; John Adams, Benjamin Franklin, Roger Sherman and Robert R. Livingston, and therefore was made chairman of the committee.

When he received Washington's letter appointing him secretary of state he replied:

"You are to marshal us as may be best for the public good." He left Monticello for New York on the first of March in his own carriage, going three miles an hour in the daytime and one mile an hour at night. He stopped on the way, at Philadelphia, to pay a visit to the aged Dr. Benjamin Franklin. It was during his term as secretary that Jay's treaty with England was made.

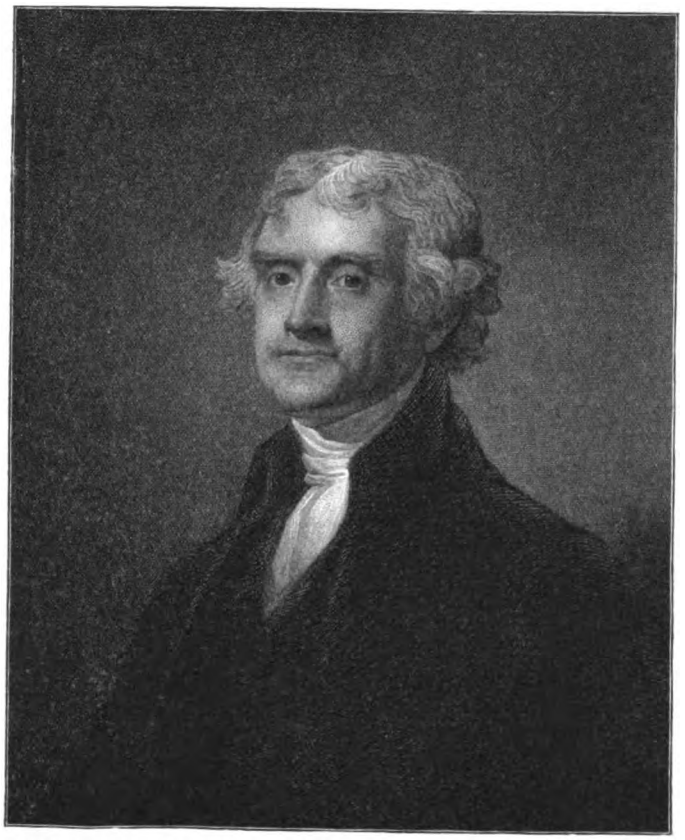
Washington, claiming that he had been elected by the whole people, tried to make his administration "a no-party administration," and therefore chose his first cabinet from both the Federalist and Republican parties. It, however, did not do, and from the first, the two leaders, Hamilton and Jefferson, clashed. When the war between England and France began, Hamilton sympathized with England, and Jefferson with France, and the breach between them grew wider and wider until it was so unpleasant that Mr. Jefferson resigned his place in the cabinet, on the fifth of January, 1794, and retired to Monticello where he remained until three years later, when he was elected Vice-President of the United States.

When Mr. Jefferson resigned, Washington appointed Edmund Randolph secretary of state. Edmund Jennings Randolph was born August 10, 1753, in Tazewell Hall, near Williamsburg, Virginia. He was descended from the ancient and honorable family of Sir John Randolph of the county of Wilts, England. After a brilliant career at college he studied law with his father in Williamsburg and gained easy and early success at the bar. He had a high reputation with the judges and his brother lawyers for legal accuracy and exact thinking. William Wirt describes him as: "Of a large and portly figure; features uncommonly fine; his dark eyes and his whole countenance lighted up with an expression of the most conciliatory sensibility; his attitude dignified and commanding; his gesture graceful and easy; his voice perfect harmony; and his whole manner that of an accomplished and engaging gentleman."

During the Revolutionary war he was an aide-de-camp to Washington and a member of his military family. He was the first attorney-general of Virginia, with a salary of £200. In 1777 he married Miss Betsey Nicholas, a daughter of Hon. Robert Carter Nicholas, State treasurer of Virginia.

The "Gazette" of that time says: "Edmund Randolph, Esquire, attorney-general of Virginia, to Miss Betsy Nicholas, a young lady of amiable sweetness of disposition, joined with the finest intellectual accomplishments, cannot fail of rendering the worthy man of her choice completely happy."

They were born in the same town, within twelve hours of each other, and an aunt of Randolph's laughingly predicted that, although the two families were not on speaking terms at the time, these children would unite them by marrying. "His success at the bar," says Grigsby, "was extraordinary, — clients filled his office and beset him on the way from his office to the



THOMAS JEFFERSON.

court-house with their papers in one hand and their guineas in the other."

He was a member of the convention which framed the Constitution, several times a member of Congress, and defeated Richard Henry Lee in the race for governor of Virginia in 1786. From his twenty-second to his forty-second year he was never out of office and never sought it. He was the first attorney-general of the United States, and when Jefferson resigned as secretary of state, he suggested Randolph to Washington for the place. The salary of secretary of state was then $3,500.

On qualifying, he wrote to Washington: "I must entreat you, sir, to receive my affectionate acknowledgments for the various instances of your confidence, and to be assured that, let the consequences be what they may, in this perilous office no consideration of party shall ever influence me; that nothing shall ever relax my attention or warp my probity, and that it shall be my unremitted study to become an accurate master of this new and important business." Unfortunate, indeed, was it for him that he ever accepted the office. No man could have filled it acceptably at that time. It is said that his labors, while at the head of the state department, have been unsurpassed in the history of our government, and that the tenderness of the letter with which he recalled our minister to France, Gouverneur Morris, although a political opponent, commands the admiration of all who read it.

Sad indeed was it that such a man could have been ever suspected of intrigue with the French minister, Faucet, much less treated in such a way that he was forced to resign. The following is his letter to Washington:

"Immediately upon leaving your house this morning I went to the office of the department of state, where I directed the room in which I usually sit to be locked up, and the key to remain with the messenger. My object in this was to let all the papers rest as they stood. Upon my return home I reflected calmly and maturely upon the proceedings of this morning. Two facts immediately presented themselves; one of which was, that my usual hour of calling upon the President had not only been postponed for the opportunity of consulting others upon a letter of a foreign minister, highly interesting to my honor, before the smallest intimation to me; but they seemed also to be perfectly acquainted with its contents and were expected to ask questions for their satisfaction. The other was, that I was desired to retire into another room, until you should converse with them upon what I had said. Your confidence in me, sir, has been unlimited; and I can truly affirm, unabused. My sensations then can not be concealed when I find that confidence so immediately withdrawn, without a word or distant hint being previously dropped to me. This, sir, as I mentioned in your room, is a situation in which I cannot hold my present office, and, therefore, I hereby resign it."

President Washington then appointed Timothy Pickering. Although appointed from Pennsylvania, Mr. Pickering was born in Salem, Massachusetts, July 17, 1745. He was a great-great-grandson of John Pickering, who came from England in 1642 and settled in Massachusetts. He graduated at Harvard in 1763. He studied law, but practiced a very short time. He was a soldier in the Revolution and after the war went into business in Philadelphia. He negotiated a very important treaty for Washington with the Seneca Indians. He was postmaster-general and secretary of war. On the resignation of Mr. Randolph, he acted as secretary of state for three months and then was appointed to that office. He was forty-nine years old. While he was secretary, France refused to receive Gen. Charles Cotesworth Pinckney, the minister Washington had appointed, and committed repeated depredations on our West India

EDMUND RANDOLPH.

commerce. Three envoys extraordinary Pinckney, Marshall and Gerry were sent to try to settle our differences with that nation.

Their instructions were: "Peace and reconciliation to be pursued by all means compatible with the honor and the faith of the United States, but no national engagements to be impaired." Copies of the papers transmitted to the state department lie before me in Chief-Justice Marshall's clear, plain handwriting, that handwriting that was so indicative of the character of the man. They had several interviews with Talleyrand, the French minister of foreign affairs, but in vain "the prince of Diplomats" brought all his powers to bear upon them.

The following story gives a good idea of the character of the man they had to deal with. The incident occurred during a visit of Talleyrand to the old Prince de Condé, who, though he still retained his natural urbanity and politeness, had in a great measure lost his memory. He addressed Mr. Talleyrand several times by a title that did not belong to him, and his valet endeavored to set him right by whispering to him the real name of his visitor. The old prince flying into a passion demanded of his servant how he dared to mention to him the name of such a scoundrel, and turning to Tallyrand himself, asked him if he knew the rascal. "My lord," replied the arch hypocrite, "it has been two years since I knew the person of whom you speak."

The following is the final letter sent by the envoys to the secretary of state:

PARIS, November 27, 1797.

Frequent and urgent attempts have been made to inveigle us again into negotiations with persons not officially authorized, of which the obtaining of money is the basis; but we have persisted in declining to have any further communication relative to diplomatic business with persons of that description, and we mean to adhere to this determination. We are sorry to inform you that the present disposition of the government of this country appears to be as unfriendly towards ours as ever, and that we have very little prospect of succeeding in our mission. We are all of the opinion that if we were to remain here six months longer, without we were to stipulate the payment of money, and a great deal of it, in some shape or other, we should not be able to effectuate the object of our mission, should we be even officially received, unless the projected attempt on England was to fail, or a total change take place in the persons who at present direct the affairs of this government.

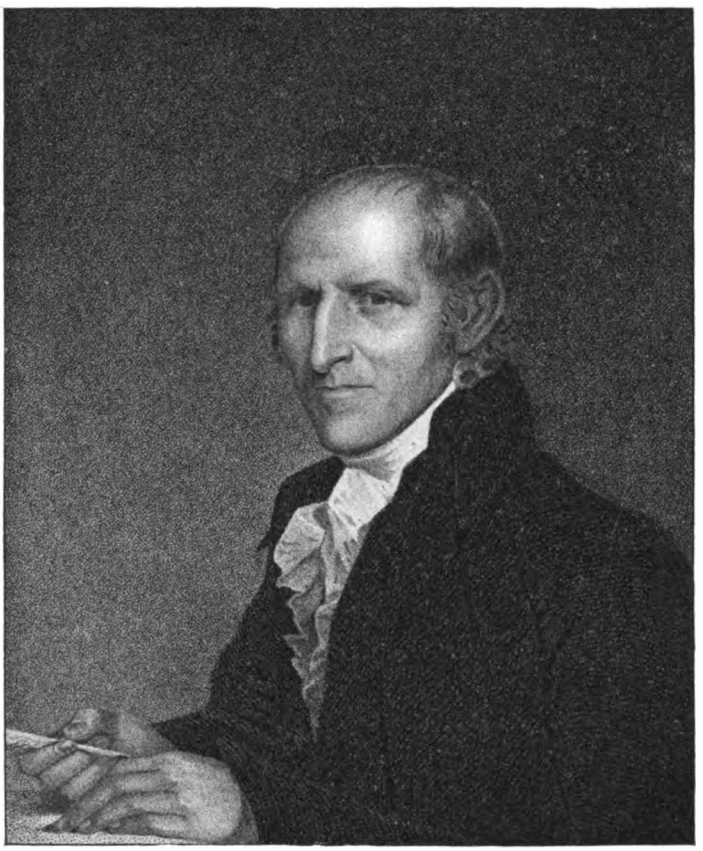
We have the honor to be your most obedient servants,

CHARLES COTESWORTH PINCKNEY,
J. MARSHALL,
E. GERRY.

To TIMOTHY PICKERING, *Esq., Secretary of State.*

Mr. Pickering continued secretary of state until the difficulties with France, growing out of the X. Y. Z. papers, had reached a crisis and had led to a serious disagreement between Mr. Adams and his cabinet, when Colonel Pickering was dismissed from office. He was very poor, and some citizens of Boston, who admired him, subscribed $25,000, paid his debts, and bought him a farm in Massachusetts. He married, April 8, 1776, Rebecca White, who was born in Bristol, England, and their married life was very happy.

When Mr. Adams removed Colonel Pickering, he appointed John Marshall to the position. It was in 1800, and he was forty-five years old. He was born September 24, 1755, at Germantown, Fauquier county, Virginia. The place is now called Midland and is on the Virginia and Midland railroad. He came of a long line of distinguished men, among whom were many soldiers. His ancestral tree goes back to William le Mareschal, a commander in the army of William the Conqueror, whose share of the conquered lands the Domesday Book shows were on the Welsh border, now Pembrokeshire, England. Other ancestors were John Marshall, the leader of



TIMOTHY PICKERING.

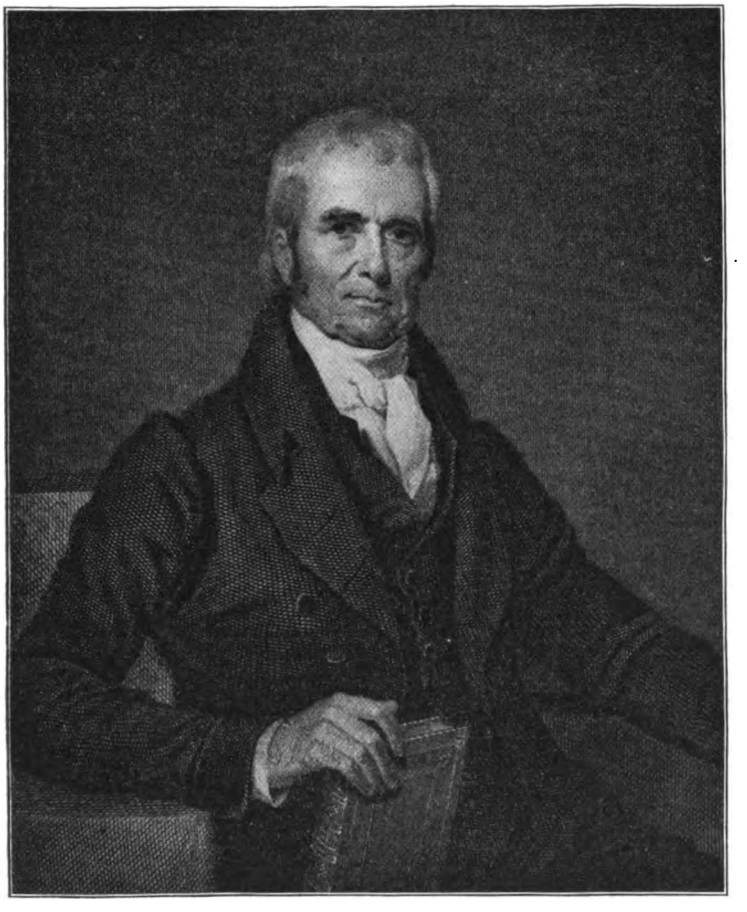
the Irish nobility in their efforts to gain for Ireland the benefits of Magna Charta; John Marshall, who fought bravely under England's banner in Bloody Mary's time; John Marshall, who fought at the battle of Edgehill in defense of King Charles; Bishop Keith of Scotland; and Lieut.-Genl. Thomas Grymes of Cromwell's army.

His father, Col. Thomas Marshall, was a brave soldier in the Revolutionary war, and his mother was Mary Keith, a woman of great force of character and pleasing in mind, person, and manner.

John Marshall was reared amid the solemnity and beauty of the unchangeable Blue Ridge mountains, and the lessons they taught and the spell they cast upon him in infancy and early youth remained forever with and about him. He was in turn captain in the army of the Revolution: member of the Virginia legislature; member of Congress; secretary of war; secretary of state and third chief-justice of the United States, and declined, at one time and another, the offices of attorney-general, minister to France, and associate justice, which were offered him by Washington and John Adams.

He went to William and Mary college and attended the law lectures of Professor, afterwards Chancellor, Wythe, and the lectures on natural philosophy of President, afterwards Bishop, Madison. When he first appeared in Richmond to argue a case he sauntered about the streets in a plain linen round-about, looking like a country bumpkin; but once in court, it is said, he astonished the judge and the bar by his wonderful power of analysis. This anecdote is told of his appearance at this time. "He was one morning strolling through the streets of Richmond, attired in a plain linen round-about and shorts, with his hat under his arm, from which he was eating cherries, when he stopped in the porch of the Eagle hotel, indulged in some little pleasantry with the landlord, and then passed on. A gentleman from the country then present, who had a case coming before the court of appeals, was referred by the landlord to Marshall, as the best advocate for him to employ, but the careless, languid air of the young lawyer had so prejudiced Mr. P., that he refused to engage him. On entering the court, Mr. P. was a second time referred by the clerk of the court to Mr. Marshall, and a second time he declined. At this moment entered Mr. V., a venerable looking gentleman with a powdered wig and black coat, whose dignified appearance made such an impression on Mr. P., that he at once engaged him. In the first case which came on, Marshall and Mr. V. each addressed the court. The vast inferiority of his advocate was so apparent that at the close of the case Mr. P. introduced himself to young Marshall, frankly stated the prejudice which had caused him, in opposition to advice, to employ Mr. V., that he extremely regretted his error, but knew not how to remedy it. He had come into the city with one hundred dollars as his lawyer's fee, and had but five left, which, if Marshall chose, he would give him for assisting in the case. Marshall, pleased with the incident, accepted the offer, not however without a sly joke at the importance of a powdered wig and a black coat."

Frances W. Gilmer thus described his manner of speaking: "So great a mind, perhaps, like large bodies in the physical world, is with difficulty set in motion. That this is the case with Mr. Marshall is manifest from his mode of entering on an argument, both in conversation and in public debate. It is difficult to rouse his faculties. He begins with reluctance, hesitation, and vacancy of eye. Presently his articulation becomes less broken, his eye more fixed, until finally his voice is full, clear and rapid, his manner bold and his whole face lighted up with mingled fires of genius and passion, and he pours forth the unbroken stream of eloquence, in a current, deep, majestic,



JOHN MARSHALL.

smooth and strong. He reminds one of some great bird, which flounders on the earth for a while before it acquires impetus to sustain its soaring flight."

His practice paid him only between five and six thousand dollars, although it exceeded that of any other lawyer in Virginia. A French peer, the Duke de Liancourt, who was travelling in this country a little later, said of him: "Mr. J. Marshall, conspicuously eminent as a professor of the law, is beyond all doubt one of those who rank highest in the public opinion at Richmond. He is what is called a Federalist, and, perhaps, at times, somewhat warm in support of his opinions, but never exceeding the bounds of propriety, which a man of his goodness, prudence and knowledge is incapable of transgressing. His political enemies allow him to possess great talents, but accuse him of ambition."

The great lawyer, William Wirt, gave this advice to a lawyer friend: "Aim exclusively at strength. From Marshall's eminent success I say, if I had my life to go over again, I would practice on his maxim with the most vigorous severity, until the character of my mind was established. Imitate John Marshall's and Locke's simple process of reasoning. The world will ever give its sanction to this as the truest criterion of superior minds."

The paper which contained a full statement and defense of the American policy towards France, sent by the envoys to the minister (Talleyrand) of foreign affairs, to be presented to the directory, was drafted by General Marshall. It evidences throughout that penetrating insight into the hidden meaning of things which ever distinguished him. Upon his return from France a dinner was given him by both houses of Congress, and at it one of the toasts was the well known sentiment: "Millions for defense, but not a cent for tribute."

Patrick Henry wrote to Mr. Blair of Richmond: "General Marshall and his colleagues exhibited the American character as respectable. France in the period of her most triumphant fortune beheld them as unappalled. Her threats left them as she found them, mild, temperate and firm." President Adams wrote to a friend: "My new minister, Marshall, does all to my entire satisfaction." The biographer of Secretary Wolcott says: "With regard to Marshall's doing everything to the President's satisfaction, everyone who knew Marshall knew that he possessed to an extraordinary degree the faculty of putting his own ideas into the minds of others, unconsciously to them. The secret of Mr. Adams's satisfaction was, that he obeyed his secretary of state without being aware of it."

General Marshall's instructions to Rufus King, our minister to England, respecting the claims of British creditors and neutral rights, evince his usual sagacity and firmness. He wrote to Mr. King: "The United States do not hold themselves responsible to France or to Great Britain for their negotiations with either of those powers, but they are ready to make amicable and reasonable explanations to either. The aggressions, sometimes of one and sometimes of another belligerent power, have forced us to contemplate and prepare for war as a probable event. We have repelled, and we will continue to repel, injuries not doubtful in their nature, and hostilities not to be misunderstood. But this is a situation of necessity, not of choice; it is one in which we are all placed, not by our own acts, but by the acts of others, and which we will change as soon as the conduct of others will allow us to change it."

While secretary of state, General Marshall wrote the following letter to Alexander Hamilton in regard to the candidates for the presidency, Jefferson and Burr: "I cannot bring myself to aid Mr. Jefferson. Perhaps respect for myself, should, in my present situation (head of the state department) deter me from using my influence, if

indeed I possess any, in support of either gentleman. Although no consideration could induce me to be secretary of state while there was a President whose political system I believed to be at variance with my own, yet this cannot be so well known to others, and it might be suspected that a desire to be well with the successful candidate had in some degree governed my conduct."

It was while on a visit home, during the Revolutionary war, that he met the girl who afterwards became his wife, and, as some one has said, "to the amazement of all, and perhaps to her own, from that time his devotion to her knew no variableness, neither shadow of turning." She was then a reserved, bashful girl of fourteen. She was Mary Willis Ambler, a daughter of Colonel Jaquelin Ambler, the beloved treasurer of Virginia, and a descendant of the celebrated Huguenot Jaquelins. The family was so noted for its piety that the saying went in those days: "As pious as an Ambler." His marriage was one of the three events of his life which he deemed worthy of commemoration in the simple inscription which, two days before his death, he wrote to be placed on his tombstone.

As one of the last acts of his administration, Adams appointed John Marshall chief justice of the United States, but requested him to act as secretary of state during the remainder of his term. The same year Princeton College conferred the degree of LL.D. on him.

CONSTITUTIONAL RIGHTS OF POLICY-HOLDERS.

By a Member of the Constitutional Convention.

RECENT insurance litigation in the State of New York has called attention to the fact that under the statutory law, as enforced by the courts, the holders of policies in domestic insurance corporations are without remedy in equity (perhaps in law) for any breach of contract, no matter how flagrant. It is pertinent, therefore, to inquire, what are the constitutional rights of policy-holders? If the constitution does not protect them, then they are at the mercy of the corporations, or of the attorney-general, who is, erroneously, supposed to have the right to interfere. This doctrine of the law of the State of New York, that a private corporation may be protected against actions by parties in interest by judicial construction and statutory enactment is of comparatively recent growth, and while the lower courts have made efforts to get back to first principles in the administration of the law, the court of appeals seems determined to fasten this doctrine upon the jurisprudence of the State, and as every one is supposed to know the law, it is important that persons entering into insurance contracts should know the limitations under which the contracting parties act, that they may govern themselves accordingly. The germ of this new theory of corporate exemption is found in the case of Uhlman *v.* New York Life Insurance Company (109 N. Y., 421), which, while within the reasonable rules of equity, in so far as that particular case was concerned, makes the suggestion that if the right of a tontine policy-holder to an accounting be conceded, it "would place the company in the power of unscrupulous parties to take advantage of it for the purpose of endeavoring to levy contribution from it which it might pay in order to secure freedom to itself from troublesome, expensive, unneces

sary and wholly disingenuous investigations (and made in numerous suits) into the affairs of the company and its accounts running through many years." This case was decided in June, 1888, and in 1890 the legislature enacted chapter 400 of the laws of that year, in which it was provided that "no order, judgment or decree, providing for an accounting or enjoining, restraining or interfering with the prosecution of the business of any life or casualty insurance company, association or society of this State, or appointing a temporary or permanent receiver thereof, shall be made or granted otherwise than upon the application of the attorney-general, on his own motion, or after his approval of a request in writing of the superintendent of the insurance department, except in an action by a judgment creditor, or in proceedings supplementary to execution." In 1892 the substance of this statute was enacted as section 56 of the Insurance Law, and in Swan *v.* Mutual Reserve Fund Life Association (155 N. Y., 9) the court holds that this "may be regarded as voicing a policy of the law," and declares that "It cannot be said that the enactment of such a law is without good reason, or is against a wise public policy. There is reason for making such a distinction between such insurance companies and other corporations; for the former have characteristics, which entitle them to be almost public in their nature."

It is not the purpose of this discussion to follow the court in its remarkable special pleading to show that an insurance corporation ought to be above the law, but to consider the provisions of section 56 of the Insurance Law in its relation to the constitution, and to call attention to "a policy of the law" which has been laid down by a higher authority even than that of the Court of Appeals of the State of New York. If the learned court had been as astute in discovering the real policy of the law as it was in finding reasons for supporting this statute, it might have learned that the people of this State, acting in their sovereign capacity, had enacted that "the term corporations as used in this article shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And *all* corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons" (Sec. 3, Art. VIII). The people in making their constitution in 1846 did not recognize that "there is reason for making a distinction between such insurance companies and other corporations," and although the constitution has passed through two conventions, and has been under the consideration of one commission since that time, it remains to-day in the same form as when adopted in 1846, in so far as this provision is concerned. Before that time the revised statutes (§1 Rev. St. (3d ed.) 732) provided that "every corporation, as such, has power . . . to sue and be sued, complain and defend, in any court of law or equity," and this has been the rule from the time of the Roman law. (Ency. Brit. vol. 6, 432). It may be suggested that the statute under consideration does not deny the right of the individual to sue, but that it merely denies the right of the court to issue its process. It must be conceded however, that a mere naked right to sue is of no importance, if the remedy is denied, and the court, in the Swan case (*supra*) has held on demurrer that the "plaintiff has not legal capacity to maintain this action and it must be brought, if at all, by the attorney-general of the State of New York, pursuant to the requirements of chapter 690 of the laws of 1892; which apply to this action and prohibit the plaintiff from maintaining it."

Section 449 of the Code of Civil Procedure provides that "every action must be prosecuted in the name of the real party in interest, except that an executor or administrator, a trustee of an express trust, or a

person expressly authorized by statute, may sue, without joining with him the person for whose benefit the action is prosecuted," and the court in the case of People *v.* Lowe (117 N. Y., 175), which denied the right of the attorney-general to bring an equitable action in behalf of certain parties in interest in the settlement of a building and loan association controversy, declares that it "is a general rule running through our whole system of jurisprudence, that no person shall bring a suit, or even be a party to one, unless he has some interest therein; . . . the same rule, in reason certainly, applies to actions commenced by the people." In the case of the People *v.* Albany & Susquehanna Railroad Company (57 N. Y., 161,) it was said that "the people of this State have no general power to invoke the action of the courts of justice by suits in their name of sovereignty for the redress of civil wrongs sustained by some citizens at the hands of others. When they come into court as plaintiffs in a civil action they must come upon their own right for relief to which they themselves are entitled. It is not sufficient for the people to show that wrong has been done to some one; the wrong must appear to be done to the people in order to support an action by the people for its redress." The court in the Lowe case (*supra*) pointed out that the attorney-general had no authority under the provisions of sections 1781, 1782, to bring an action in behalf of the people to vindicate private rights, and we find no such authority, either under the provisions of the Code of Civil Procedure, or the insurance law; the latter simply denies to the courts the right to issue any judgments, orders or decrees in reference to a certain character of actions, except upon the application of the attorney-general, etc. It nowhere makes it the duty of the attorney-general to act, section 1808 of the Code having reference to the action provided for in Articles II, III and IV of Title 2, and even in this section the action of the attorney-general depends upon his discretion. But this is of only incidental importance, and is referred to only because the learned court, in its opinion in the Swan case (*supra*) held that the statute did not impair the obligation of the contract because it furnished a remedy. The point to be noticed is that the Code of Civil Procedure (section 449) gives a right of action to the real party in interest, and section one of article I of the State constitution declares that "no member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers." That the law of the land does not mean a statute enacted for the purpose of working the wrong is too well established to require any citation of authorities at this time, and the statute having recognized the right of a party in interest to maintain an action, by what right does the legislature step in and defeat the right by denying to the courts the power to enforce its judgments?

Let us get this point clearly in mind. In the Swan case, for example, the plaintiff was a member of this State, guaranteed by the constitution all of the rights and privileges secured to any citizen thereof. Can there be any doubt that among the rights and privileges of a citizen of this State is the right to enter into a contract? Can there be any doubt that the defendant, the Mutual Reserve Fund Life Association, was authorized by the law of its creation to enter into a contract with the plaintiff, in common with other persons? Having the right to make a contract, can there be any doubt that among the rights and privileges of citizens of this State is a right to enforce contracts according to their terms, and in the manner common to the jurisprudence of the State? How is the legislature to say that two parties, fully authorized to make a contract, shall be denied admission to the courts for the purpose of enforcing the contract because one of the

parties happens to be a particular kind of insurance corporation? for section fifty-seven of the Insurance Law limits the operation of this so-called law to a particular class of insurance companies. The constitution makes no such distinction; it declares that "all corporations shall have the right to sue and shall be subject to be sued," not in the discretion of the legislature, but "in all courts in like cases as natural persons." The bill of rights found in the constitution of Massachusetts gives the true intent of the first section of the constitution of New York, when it declares (Section XI) that "Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property or character. He ought to obtain right and justice freely and without being obliged to purchase it; completely and without denial; promptly and without delay; conformably to the laws." This is but an assertion of the common law maxim that there is "no wrong without a remedy"; and, as was said in the case of Ashby *v.* White (2 Lord Raym. 953) "If a man has a right, he must have a means to vindicate and maintain it, and a remedy if he is injured in the exercise and enjoyment of it; and, indeed, it is a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal."

Without taking time to consider the suggestion that the legislature in changing the remedy must give the new remedy to the party in interest, and not make it depend upon the discretion of a public officer, we pass to the consideration of a provision of the constitution which, in conjunction with the provision already quoted, has not been considered by the courts in dealing with these contracts of insurance. Section I of Article VI says: "The supreme court is continued with general jurisdiction in law and equity," and the meaning of "general" is that which comprehends all, the whole (Gracie *v.* Freeland, 1 N. Y., 228). In DeHart *v.* Hatch (3 Hun. 375) the leading case upon the question of the jurisdiction of the supreme court, Judge Daniels writing the opinion, it is said: "It (the constitution) provided that there should be a supreme court having general jurisdiction in law and equity. The terms used are so comprehensive that they include all cases of every description in law and equity, from the most important and complicated to the most simple and insignificant, and they imperatively and positively endow the court with that extended jurisdiction. The language made use of is, that there shall be such a court, having the jurisdiction declared; and that was given to it, not to be exercised or declined as the legislature might afterward provide or enact, or as that body and the court combined should at any time elect, but for the purpose of being at all times maintained and preserved for the benefit of those who might be *parties to controversies in either law or equity*. The jurisdiction conferred upon the court included both the power to entertain, progress, and, in the end, determine all civil actions, and the duty also to do those things; and for that reason, suitors in such cases have the right to require them to be done. *The jurisdiction was conferred for their benefit*, and to secure and promote the stability and good order of the State. It was rendered permanent and uniform in its nature, and as those attributes are provided for it by the fair import of the constitution, it has not been left to the legislature either to *abridge or limit them by any interposition on its part*. For, if anything of that kind can be accomplished by legislation, then the jurisdiction can be by law abridged and reduced; and that would so far nullify the provision that there shall be such a court as the constitution has described, as such legislation might be made to extend. . . . If the legislature can declare that the court shall have no jurisdiction over one class of cases, it may do so as to

all, and in that way the provision contained in the constitution could be completely abrogated. . . . The court has no legislative authority, and no power to decline or refuse the jurisdiction provided for it by the constitution. If it had it might impair and abridge its jurisdiction so far as to render the tribunal comparatively useless, which, the constitution has declared, shall be the most comprehensive in the State. Upon this subject, neither the court nor the legislature has any power of election whatever. The court exists solely under the constitution, and while it does so it must be what that instrument has declared it shall be: a court of general jurisdiction in law and equity. And that includes the authority, as well as the duty, of hearing and deciding all actions of a legal or equitable nature; for the term, general, includes all."

The same view of the question is taken by the court in the case of Mussen *v.* Ausable Granite Works (63 Hun. 367), where, in speaking of the supreme court, it is said: "Its jurisdiction is as wide as the boundaries of the State, and every person, natural or artificial, within its boundaries is subject to that jurisdiction." In defining jurisdiction, in the same case, the learned justice writing the opinion says: "The term jurisdiction, as used in the constitution, I think means jurisdiction of every kind that a court can possess, of the person, subject-matter, territorial, and generally the power of the court in the discharge of its judicial duties." Again, it is said in the same case, citing many authorities, that "any act of the legislature which deprives the court of the jurisdiction it had at the time of the adoption of the constitution, or limits or qualifies it, is unconstitutional and void." In the case of People ex rel. Reynolds *v.* Common Council (140 N. Y., 300), following the same line of reasoning, it is laid down as a rule of law that the "obligation of a contract is impaired, in the constitutional sense, by any law which prevents its enforcement, or which materially abridges the remedy for enforcing it which existed when it was contracted, and does not supply an alternative remedy equally adequate and efficacious." At the time of making the contract of insurance in the Swan case (*supra*) the constitution provided for a supreme court of general jurisdiction in law and equity; it gave the plaintiff the right to litigate any question growing out of the contract, whether legal or equitable, and it was not within the power of the legislature to abridge that right by an enactment which denied the jurisdiction of the courts to issue judgments, orders and decrees in a particular class of cases. The enforcement of contracts is purely a judicial function, and the legislature cannot interfere with the jurisdiction of the supreme court to prevent such a result. (See Flynn *v.* C. R. R. Co., 142 N. Y., 439; Alexander *v.* Bennet, 60 N. Y., 204; Gilman *v.* Tucker, 128 N. Y., 190; Dash *v.* Van Kleeck, 7 John., 508; People *v.* Coughtry, 58 Hun., 245; Matter of the Estate of Stillwell, 139 N. Y., 337; Popfinger *v.* Yutte, 102 N. Y., 38; The People *v.* Nichols, 79 N. Y., 582; Huthoff *v.* Demorest, 103 N. Y., 377).

In 1868 the State of Georgia enacted a new constitution, and sought a restoration of its rights under the provisions of the various acts of Congress. This new constitution, which was in force when the State was readmitted to its political duties and obligations, contained a provision that "no court or officer shall have, nor shall the general assembly give, jurisdiction to try, or give judgment on, or enforce any debt the consideration of which was a slave or the hire thereof" (Art. 5, sec. 17). In the case of White *v.* Hart (13 Wallace, 646) the plaintiff had brought an action in the superior court of Chattanooga county to recover upon a promissory note $1,230. The defendant pleaded in abatement that the consideration of the note was a slave, and, on the plaintiff demurring, the court overruled the demurrer and gave judgment for the defendant, under

the provisions of the constitution quoted above. The case was taken to the United States supreme court, where, after considering the relations of the State of Georgia to the United States during the rebellion, the court held that "when the note was executed, and until the constitution of 1868 was adopted, the courts of the State had unquestionable jurisdiction to entertain a suit brought to enforce its collection, and if that jurisdiction ceased it was by reason of the provision of the constitution of the State, here under consideration," and that the "proviso which seeks to work this result is, so far as all pre-existing contracts are concerned, itself a nullity." In reaching this conclusion the court followed the rule laid down in the case of Van Hoffman *v.* The City of Quincy (4 Wallace, 552), where it was said that "the laws which subsist at the time and place of making the contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its term. . . Nothing can be more material to the obligation than the means of enforcement." The law of this State, at least from the adoption of the constitution of 1846, has been that "all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons," and that the supreme court should have "general jurisdiction in law and equity." This paramount law of the State has entered into and formed a part of every contract executed in this State between individuals and corporations, and the legislature cannot step in and provide a new remedy which does not preserve to the individual all of the rights which he had under the provisions of the constitution at the time the contract was made. To concede such a power would be to give the legislature authority to override and annul the constitution. "The ideas of validity and remedy," say the court in the White case (*supra*) "are inseparable, and both are parts of the obligation which is guaranteed by the constitution against invasion. The obligation of a contract is the law which binds the parties to perform the agreement."

We have thus far considered the question of the constitutional rights of policy-holders in New York insurance companies from the standpoint of the provisions of the State constitution, but a little investigation will show that the statute under consideration is in conflict with the Federal Constitution, the Fourteenth amendment of which provides that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." What are the privileges of citizens of the United States, which the Constitution declares shall not be abridged by any of the States? "Although the precise meaning of 'privileges and immunities' is not very conclusively settled as yet," says Judge Cooley in his work on "Constitutional Limitations" (p. 490, 6th ed.), "it appears to be conceded that the Constitution secures in each State to the citizens of all other States the right to remove to and carry on business therein; the right by the usual modes to acquire and hold property, and to protect and defend the same in the law; the right to the usual remedies for the collection of debts and the enforcement of other personal rights; and the right to be exempt, in property and person, from taxes or burdens which the property, or persons, of citizens of the same State are not subject to."

In the Civil Rights Cases (109 U. S., 3), Mr. Justice Bradley says: "The long existence of African slavery in this country gave us very distinct notions of what it was, and what were its necessary inci-

dents. Compulsory service of the slave for the benefit of his master, restraint of his movements except by the master's will, disability to hold property, to make contracts, to have a standing in court, to be a witness against a white person, and such like burdens and incapacities were the inseparable incidents of the institution. . . . Congress, as we have seen, by the Civil Rights bill of 1866, passed in view of the Thirteenth amendment, before the Fourteenth was adopted, undertook to wipe out these burdens and disabilities, the necessary incidents of slavery, constituting its substance and visible form; and to secure to all citizens of every race and color, and without regard to previous servitude, those fundamental rights which are the essence of civil freedom, namely, the same right to *make and enforce contracts, to sue*, be parties, give evidence, and to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens.

Whether this legislation was fully authorized by the Thirteenth amendment alone, without the support which it afterward received from the Fourteenth amendment, after the adoption of which it was reenacted with some additions, it is not necessary to inquire. It is referred to for the purpose of showing that at the time (in 1866) Congress did not assume, under the authority given by the Thirteenth amendment, to adjust what may be called the social rights of men and races in the community; but only to declare and vindicate those fundamental rights which appertain to the essence of citizenship, and the enjoyment and deprivation of which constitutes the essential distinction between freedom and slavery." Section 1977 of the Revised Statutes of the United States, which is the act referred to in the opinion quoted above, as reënacted after the adoption of the Fourteenth amendment, provides that all persons in the United States shall have the power to "make and enforce contracts, to sue, be parties, give evidence," etc., and it is not necessary to inquire further as to the meaning of these words for the purposes of this discussion. Citizenship in the United States carrying with it the right to make and enforce contracts, to sue, etc., the legislature of the State of New York has no power to abridge that privilege by a statute compelling a party in interest to employ the attorney-general, at the discretion of the latter, to bring an action for the enforcement of his contract. The right to bring the action belongs to the individual; he is a party to the contract, and the right to submit his controversy to the courts, under the rules and regulations common to other citizens in the enforcement of contracts, cannot be denied or abridged.

In Allgeyer *v.* Louisiana (165 U. S., 578), the court, in speaking of the Fourteenth Amendment, says that the "liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned," and, as we have already pointed out upon the highest judicial authorities, the right to enter into a contract carries with it, by necessary implication, the right to its enforcement. If we were to admit, therefore, that the right of action was not one of the privileges secured by the Fourteenth amendment, the New York statute under consideration would be a substantial denial of the liberty of the plaintiff in the Swan case (*supra*) to enter into a contract in the enjoyment of his natural right to "life, liberty and the pur-

suit of happiness." (See Butcher's Union Company *v.* Crescent City Company, 111 U. S., 765.)

In the Allgeyer case (*supra*) the State of Louisiana had enacted that no person, firm or corporation should "fill up, sign or issue in this State any certificate of insurance under any open marine policy," or in any manner do any "act in this State to effect, for himself or for another, insurance on property, then in this State, in any marine insurance company which has not complied in all respects with the laws of this State," under a penalty of $1,000 for each offense. The action was brought to recover this penalty from E. Allgeyer & Co., who were alleged to have violated the provisions of this act in writing a letter from the State of Louisiana to the Atlantic Mutual Insurance Company of New York, advising that company of the shipment of one hundred bales of cotton to foreign ports in accordance with the terms of an open marine policy. The defendants filed an answer, alleging that the act was in derogation of their rights under the provisions of the Fourteenth Amendment, and that the contract was a New York contract, where the premiums were paid and where the losses, if any, were to be adjusted. The defendants urged that under the provisions of the Constitution the State of Louisiana had no power to impose a penalty upon them, as citizens of the United States, in entering into any lawful contract. Commenting upon this case, Mr. Justice Peckham, in delivering the opinion of the court, says: "The supreme court of Louisana says that the act of writing within that State, the letter of notification, was an act therein done to effect an insurance on property then in the State, in a marine insurance company which had not complied with its laws, and such act was, therefore, prohibited by the statute. As so construed we think the statute is a violation of the Fourteenth Amendment of the Federal Constitution, in that it deprives the defendants of their liberty without due process of law. The statute which forbids such act does not become due process of law, because it is inconsistent with the provisions of the Constitution of the Union. . . . To deprive the citizen of such a right as herein described without due process of law is illegal. Such a statute as this in question is not due process of law, because it prohibits an act which under the Federal Constitution the defendants had a right to perform."

Keeping in mind the fact that the plaintiff in the Swan case (*supra*) was a citizen both of the United States and of the State of New York; that he was guaranteed by the constitutions of both the privilege of making contracts; that the State constitution provided for a supreme court with general jurisdiction in law and equity, and that this provision of law entered into and became a part of the contract; that the defendant was a private corporation, created for the express purpose of entering into these contracts of insurance, and was endowed by the Constitution with the right to sue and be sued in all courts in like cases as natural persons, we will consider the rights of property which the plaintiff had, and the protection which the Fourteenth amendment gives him. If the plaintiff had a right to make the contract, he had a right to enforce it in the tribunals which were in existence, and which had jurisdiction of the subject-matter at the time of making the contract, or in a tribunal which should offer him the same opportunities for securing the rights stipulated in the contract. The supreme court is still in existence; the Constitution still declares that it shall have "general jurisdiction in law and equity," but the legislature has stepped in and declared that this court, with general jurisdiction, shall have no power to make that jurisdiction effectual, unless the attorney-general shall ask for such interference. Can there be any doubt that this is violating the obligation of

the contract, or that it is depriving the plaintiff of his property in that contract without due process of law, or that it is denying to him the equal protection of the law? Every man in the State of New York who has a contract with a railroad corporation, with a banking corporation, with certain kinds of insurance corporations, associations and individuals; with manufacturing corporations, has a right to have his case adjudicated and determined, and to have all of the machinery of the courts at his service in securing his rights; but because he happens to have made a contract with a particular kind of insurance organization, he is denied these rights and privileges, and this does not constitute that equal protection of the law which the Constitution of the United States intended to guarantee. If the contract which the plaintiff made with the defendant in the Swan case stipulated for certain benefits to the insured, and if the defendant neglected and refused to perform its part of the contract, the plaintiff having fully performed on his part, there was a right of action, and whether legal or equitable it is not material to inquire in the State of New York, as the code has abolished all distinction between them, except in the matter of remedies. This right of action was a vested right, because the supreme law of the State, at the time of making the contract, provided a tribunal to have jurisdiction of the controversy, and because, under the laws and customs of this State, every person has a right of action for a breach of contract.

This vested right of action is property in the same sense in which tangible things are property, and is equally protected against arbitrary interference. "Where it springs from contract, or from the principles of the common law," says Judge Cooley in his "Constitutional Limitations" (6th ed., p. 443), "it is not competent for the legislature to take it away. And every man is entitled to a certain remedy in the law for all wrongs against his person or his property, and cannot be compelled to buy justice, or to submit to conditions not imposed upon his fellows as a means of obtaining it." (See Westervelt *v.* Gregg, 12 N. Y., 202, 211; Angel *v.* Chicago, St. Paul R. R. Co., 151 U. S., 20; Steamship Co. *v.* Joliffe, 2 Wallace, 450; Hein *v.* Davidson, 96 N. Y., 175.) This right of action being property, can there be any doubt that the plaintiff in the Swan case was deprived of that property right, without due process of law, when the legislature of New York enacted that the courts of that State should not issue process for the enforcement of his rights without the intervention of the attorney-general, or when the Court of Appeals declared that he "has not legal capacity to maintain this action?"

"Depriving an owner of property of one of its attributes," says Judge Andrews in People *v.* Otis (90 N. Y., 48), "is depriving him of his property within the constitutional provision," and the principal attribute of property in a contract is the power and the machinery for its enforcement. It will not be profitable at this time to enter into an historical review of "due process of law," or of the "law of the land," terms which in their essence are identical, but simply to point out what is not due process of law as applied to the question now under consideration. If section 56 of the Insurance Law is an attempt on the part of the legislature to usurp the powers of the judiciary, then its action is not "the law of the land," but a mere arbitrary act in the form of legislation.

Judge Cooley says that "judicial powers, judiciary powers; and judicatories, are all phrases used in the Constitution; and though not particularly defined, are still so used to designate with clearness that department of the government which it was intended should interpret and administer the laws. On general principles, therefore, those inquiries, deliberations, orders and decrees, which are peculiar to such a department, must in their nature be judicial acts. Nor can they be both judicial

and legislative; because a marked difference exists between the employments of judicial and legislative tribunals. The former decide upon the legality of claims and conduct, and the latter make rules, in connection with the Constitution, upon which those decisions should be founded. It is the province of judges to determine what is the law upon existing cases" ("Constitutional Limitations," 109).

Under this definition, the act of the legislature denying the right of the courts to issue orders, judgments or decrees was in its nature a judicial act; it was abridging that general jurisdiction of the supreme court which the Constitution provides, and it could not, therefore, become the law of the land, and it is without force or effect, except as it is given such force and effect by the action of the courts. That the courts, in acting under this statute, are depriving the plaintiff of his property without due process of law, follows as a logical necessity, and this conclusion is fully sustained by authorities which must be controlling upon the courts of New York. (Caldwell *v.* Texas, 137 U. S., 692, and authorities there cited; Hurtado *v.* California, 110 U. S., 516; Pennoyer *v.* Neff, 95 U. S., 714.) In the latter case, speaking of due process of law, Mr. Justice Field says: "Whatever difficulty may be experienced in giving to those terms a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They then mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and *enforcement* of private rights." The plaintiff, seeking the aid of the courts in the protection and enforcement of his private rights, is told that he "has not legal capacity to maintain this action," although he is a citizen of the United States, and has the right to make any lawful contract. This is not due process of law; it is an arbitrary exercise of power.

LEAVES FROM AN ENGLISH SOLICITOR'S NOTE BOOK.

III.

WHAT'S IN A NAME? A STORY OF MISTAKEN IDENTITY.

By Baxter Borret.

IN writing the account of the narrow escape I had from liability to a charge of professional negligence in the case of the wills of the two maiden sisters living at Croomedene, I was reminded of another incident which occurred to me earlier in my career, before I left London for Georgetown, in which George Croome, the brother of the old sisters, was concerned. I first became acquainted with the family through staying one summer in a charming village on the borders of Epping Forest, in the county of Essex, about twenty-five miles out of London, at the time I was reading up for my final examination. Of this village, Canon Croome, their father, was the rector; an acquaintance made casually in the railway train ripened into intimacy; and when I started in practice in London, Canon Croome was the earliest client whose name was recorded on my books.

It was at this time that the worthy old clergyman consulted me as to the many claims made upon him by creditors of his scapegrace son, George, and I felt compelled to advise him to let me persuade George to go and live abroad out of their reach, while I would endeavor to arrange terms with the most reasonable of them. So it was that one of the last acts I was called upon to do for the good old clergyman was to prepare a will for him by which the income only of a considerable capital sum was made payable to George by monthly payments at the discretion of trustees, and in case of the income becoming alienated by act of law, such as bankruptcy, or by any act on George's own part, the payments of income were to be suspended at the discretion of the trustees, and handed over to his sisters.

One day, about the year 1865, old Canon Croome had a sudden stroke, and died in a few hours, before George could be summoned home from abroad. I had arranged with all the honest creditors. Canon Croome had insisted in paying in full all debts for necessary expenses of living, going indeed a good way beyond the strict interpretation of the word "necessary," but he sternly refused to pay gambling debts, or money claimed by professional money-lenders. The principal debt hanging over George's head was one to a notorious money-lender named Grimes, of whom I will give a description later on; meanwhile I have a pleasanter picture to draw of a really faithful clerk. What a blessing to a lawyer a really clever, trustworthy clerk is! Such a blessing I possessed in the person of George Carter, who must at one time have been a queer character in his way. He knew something of everything, how and where he acquired his knowledge of all the shady corners and byepaths of the dark side of London life without getting his own personal character sullied passed my comprehension. I know nothing of his boyhood, he was thirty-five years old before I stumbled across him; by some little service I rendered to him, I had saved his home from being wrecked by a miserable money-lender. I had taken the matter up at the request of a relative, and his gratitude to me for saving his wife from want and his home from wreck constituted a fund upon

which I could ever afterwards rely whenever I had to draw upon it. I can only say that when I had any difficulty before me, any very private inquiry which had to be made among the shady byways of city life, any delicate little negotiation to be carried through for a client, which was out of my own line, George Carter could always be relied upon to get the matter through. We had a working understanding between us; on his side he was never to pass over the border line of strict professional propriety, so as to jeopardize the good name which I was striving to acquire among my brethren in the profession; and on my side I was never to be unduly inquisitive as to his method of working either before or after events, but to trust him implicitly.

In a court running out of Old Broad Street, London, the man Grimes carried on his business, nominally that of a lawyer; his best friend would have felt constrained to admit that his personal character was shady, — the members of the legal profession who had to do business with him did not hesitate to call him, in professional confidence of course, an unmitigated scoundrel. Taken at an early age into the office of a low-class lawyer in London, he had succeeded in making himself so useful in the office, that his employer had, for the sake of securing his continuous services, given him his articles; and before the old man's death, which occurred soon after the five years' apprenticeship came to an end, Grimes had become a fully-fledged attorney and solicitor, and in a few years after starting had established a reputation for smartness which soon procured for him a lucrative practice in criminal cases. Not that his business had been confined exclusively to advocacy; by the skillful use of ready money loaned out in small sums at exorbitant interest to the needy and impecunious he had become a master in the occult science of making money beget money; and after a few years he gave up advocacy and devoted his energies to what he termed his private practice, money-lending. In this delicate walk of life he was an adept; his tongue was so smooth, his manners so engaging that the poor sheep never felt the keen edge of the shears which were fleecing him, until it came to the last tuft of wool left on the poor wretch's back; then, and not till then, was he turned adrift to face, as best he might, the pitiless blasts of beggardom. Such men as Grimes have little difficulty in thriving in London. There are always silly blue-bottle flies or timid moths to be found, willing and indeed thankful to rest for a while on the silken threads so cunningly stretched out before them as to appear nothing more than a quiet resting-place for legs and wings, wearied with battling against the contrary winds of fortune; the true nature of the silken cord is not disclosed till the luckless wretch tries to break loose, then ever tighter and tighter grows the tangled coil, rendering escape impossible. And so Grimes flourished in the city, useful to a certain shady class of clients who want dirty work done, and think him a smart man of business; useful also to the needy and impecunious, as a temporary haven from the storm, until such time as they are made to feel the treacherous nature of the anchorage to which they have been driven; but a living terror to the honest poor; and a veritable Pariah amongst the members of the legal profession.

George Croome had got into the meshes of this man Grimes, who held judgments recorded against him on various notes of hand given for money lent to pay gambling debts; arrest and imprisonment of the person for debt had not then been abolished by the English law, and now I had to summon him to the rectory to take his place as chief mourner at the grave-side, and my dread was that Grimes, who would be sure to hear of the old clergyman's death, would stick at nothing, but have George arrested at the rectory, or even at the grave-side, sooner

than let him leave the country again, and so set him at defiance. In my dilemma, I made Carter my full confidante.

The funeral was fixed for a Friday afternoon in April, a large number of the neighboring clergy had expressed their wish to meet round the grave, and pay their last tribute of respect to the good old clergyman. I had received a telegram from George Croome on the Thursday morning, announcing his arrival in England, and fixing to see me on that afternoon. I wrote over to the landlady of the Green Dragon, an old historic hostelry in Bishopsgate street, within five minutes' walk of my office, asking her to keep a small private sitting-room and bedroom for a client of mine who would arrive from abroad that afternoon to attend a funeral the next day, and who would go abroad again the next evening. I had the misfortune of having a new office-boy in my office, not as yet broken in to the first duty of a lawyer's clerk, viz., to hold his tongue. While George Croome was closeted with me, going through the provisions of his father's will, and learning his actual position as regarded the interest which he took under it, Grimes called at my office, saw George's luggage, a portmanteau with the initials of his name painted on it, and a travelling rug, and he succeeded by a small bribe in eliciting from my office-boy the fact that George Croome was to stay at the Green Dragon, and to leave again for abroad immediately after the funeral. Before my interview with George came to an end, Carter came into the office and managed to draw out from my office-boy all about his interview with Grimes, and at once his keen nose scented mischief in the air. Interrupting our interview he told us of his strong suspicion that Grimes would have George arrested before he could leave London again; and we three sat in solemn conclave discussing what could be done to frustrate Grimes's plans. All at once I noticed a bright flash of intelligence pass over Carter's face.

"You will give me a free hand, will you not, sir?" said he to me.

"Certainly, Carter," said I, "I will trust you; frustrate Grimes by all legitimate means."

"Very well, sir, it shall be done, ask no questions, and leave Mr. George Croome in my hands to do exactly what I tell him and he shall get back to his quarters abroad safe enough; but he must not sleep at the Green Dragon, he must sleep somewhere else, but let his luggage go on to the Green Dragon as a blind to Grimes, just as if his dirty trick had not been suspected; leave the rest to me."

And so it came about that instead of sleeping at the Green Dragon, George took what he wanted for the night out of his portmanteau, and leaving it and his travelling rug with Carter, came out to my house and spent the evening with me, Carter arranging to meet us both at the old Shoreditch station early in the morning, bringing me my morning's mail, so that we could go down to the Rectory without calling at my office on the way.

I felt very little more anxiety now that the matter was in Carter's hands. George Croome and I spent the evening together discussing plans for the future, which included his staying abroad for some time longer, his allowance to be remitted to him monthly through my office.

On the Friday morning Carter met us at the Shoreditch station with my office mail. I was very pleased to note that with great good feeling (as I thought) he had dressed himself in deep mourning, and put a deep band of crape on his hat. I said to him: —

"That is very thoughtful of you, Carter, to dress in mourning: a very nice token of respect to my dead client."

"Well, you see, sir, I thought it would be only proper." Then, as I noticed a curious look on his face, he added, "you might have wanted me to go to the funeral perhaps, sir."

"No, Carter, there is no need for that, thank you; have you heard anything more of Grimes?"

"Yes, sir, I have, and he means mischief. The writ of ca. sa. has been issued and is now in the hands of the sheriff's officer, who was making private inquiries from the 'boots' of the Green Dragon early this morning. Mr. George had better not come back to London after the funeral; he must join the mail train at Stratford Junction, in Essex, the sheriff of Middlesex cannot execute his writ there. I will be there with his luggage unless I am hindered, and, if he does not see me there, he will find his luggage in the first smoking carriage nearest to the guard's van in front of the train; you take a note of that, sir, so that there shall be no mistake, and leave the rest to me."

George Croome and I went on to the rectory, the sad meeting of the bereaved family was got over, the solemn funeral service was held, and at 8.30 P.M. George and I were on the platform of the Stratford Junction station waiting for the mail train to come from London. When the train steamed in there were no signs of Carter, but in the smoking compartment nearest to the guard's van in front of the train was George's portmanteau and his rug, all safe enough.

Good faithful clerk! Carter had done his duty, and George Croome was as good as out of the country.

On arriving at the office on the Saturday morning there were no signs of Carter. I went round to the Green Dragon to settle the bill with the landlady, but she seemed surprised at my calling, and told me that Mr. Croome had slept there on the Thursday as arranged, and had left on the Friday morning to attend the funeral, returning later in the evening; that he had had a hasty dinner there, called for his bill, paid it, and taken a cab with his portmanteau to the Shoreditch station; and she hoped all was right, as there had been a very shabby looking man hanging about asking questions about him. If I felt some little astonishment I did not let my face betray it, and merely remarked that if the bill was settled that was all I felt concerned about.

A little later on in the day I got a short note from Carter, which, so far as I can recollect at this distance of time, ran as follows:

SLOMAN'S, CURSITOR STREET, CHANCERY LANE.

DEAR SIR, — I am afraid I must trouble you to come down here. The fact is the sheriff's officer made a little mistake yesterday, and I want you to come here and identify me as being your faithful clerk. GEORGE CARTER.

I hurried down to Cursitor street, where I found Carter in durance vile in the sponging house kept by Sloman, well known to all London lawyers at that time. His first words to me were: "I will explain how the mistake arose when I am out of here; until then you had better ask no questions, but take the proper steps (which he indicated) to procure my release."

I had to go on to Judges' Chambers and make a special application to the judge sitting there that afternoon. It happened to be Baron Martin, an Irishman, with a keen sense of racy humor, but withal a stern sense of the necessity of maintaining the majesty of the law and the dignity of the court. In addition to swearing that Carter was not George Croome, and had been arrested in mistake for him, the judge required me to swear that I had had no hand directly or indirectly in bringing about the mistake which had occurred; this he required of me as an attorney and officer of the court, and I was glad to be able to swear it with a clear conscience. This done the old judge sat back in his chair and laughed heartily at the discomfiture of the money-lender, and ordered the immediate release of Carter, only adding these significant words at the end of the order: "No action by any party against the sheriff."

It was not until the next day that Carter

told me his story; how he had seen that the only safe course to get George Croome out of the country, and throw the sheriff's officer on the wrong scent, was to take George's place at the Green Dragon, where he was not known; that after closing the office on Thursday evening he went home, dressed himself in black clothes, and betook himself with George Croome's portmanteau and travelling rug to the Green Dragon, informed the landlady that he was the gentleman for whom I had written to secure the room, that he wished to spend the evening quietly by himself, as he was in great grief, having recently lost his father; that he was going to the funeral the next morning early, but would come back again in the evening for his luggage in time to catch the mail train from Shoreditch.

The plan succeeded admirably. The sheriff's officer had been very neatly hoodwinked; he had bribed the "boots" of the hotel, and had pumped him as to the movements of the gentleman who owned the portmanteau with G. C. printed on it, and kept quiet all day waiting for Carter's return in the evening. Carter then told me with much glee how he had got a good start of the officer by arriving earlier and leaving earlier than he told the landlady he would do, and had taken the luggage to the station, and had placed it in the carriage under the care of the guard, and was just hurrying away from the station when he was tapped on the shoulder by the officer, and told he must consider himself in custody. He felt bound to carry out his plot to the finish and merely remarked, "I thought I had managed to get away clear; it is Grimes, I suppose; well, take me somewhere for the night, till I can get my solicitor to arrange the thing to-morrow," and had gone off like a lamb to Cursitor Street, as soon as he saw the train with the luggage safe in the carriage moving out of the station, and knew that before night George would be safely on board the boat steaming to Antwerp.

I felt it my duty to expostulate with Carter for sailing so very near to the wind, but I could not keep it up when he replied, "Well, sir, if that sharp sheriff's officer did not know a poor lawyer's clerk from a born gentleman, he is not up to his business."

Good faithful clerk, he died at his work: he was knocked over by a cab in a crowded thoroughfare of London one day when he was out on some business of mine, and although terribly injured, he would not allow anything to be done for him at the hospital till he had sent for me, to report to me on all the matters he had in hand; after that he let the surgeons do the best they could, but they could not save him, and he died clasping my hand. He was buried at the expense of the two maiden sisters, and, at their brother's request, in the burial ground of their late father's church in the pretty village on the borders of Epping Forest; and I could only echo the words, "good and faithful servant."

WILLIAM CAMPBELL PRESTON.

IV.

By Walter L. Miller of the South Carolina Bar.

I HAVE already stated that Mr. Preston met and had converse with many of the celebrities of his day. Miss Martin tells us that while he was in Europe, he was for a while a guest of Walter Scott at Abbotsford. During his stay in Washington, he had the pleasure of forming the acquaintance of the famous John Bright, the great English statesman. In her journal, Mrs. Preston says: "To-day, Mr. Bright dined with us, and professed himself highly pleased with what he sees this side the Atlantic. Mr. Calhoun asked him about the welfare of England (*not* as to nullification) in general, and London especially, and I was amused to hear Mr. Bright say that London was growing very fast. To my mind it had long seemed full growth."

I must not fail to mention one of Mr. Preston's important and extremely practical qualities — his ability to remember well the names and faces of people.

Like a great many fine scholars, Mr. Preston wrote a hand that was hard to read. In connection with his writing, Dr. Baer relates the following touching incident: "I remember, in December, 1854, going to his house, and asking him for the proper reading of a word in a note he had sent me, along with some volumes he had donated through me to Wofford College. He shook his head, and pointing to a life-size portrait of his wife, standing on an easel near by, remarked, the big tears coursing down his cheeks: 'There was the only person ever could read my writing.'"

Young men who depend on their genius to get along without putting forth much effort will not find their views strengthened by studying the life of Mr. Preston. He was the advocate of work. He told the students of the South Carolina College that, no matter how brilliant they were, they need not expect success without great effort. "He said that he had never spoken without nights and days spent in laborious preparation."

While Mr. Preston's elevation to the presidency of the South Carolina College gave *éclat* to that institution, swelled its roll of students, and, in a variety of ways, contributed to its prosperity and reputation, still, we are informed that as an administrative officer he only ranked fairly well. His administration, however, as a whole, was regarded as a brilliant success. He was a fine instructor, and young men delighted to be under his influence and to catch, as they fell from his lips, words of wisdom. He did not slavishly confine himself to the text-book, but would branch out and seek truth and its illustrations from far and near.

How did Mr. Preston succeed at the bar? I have already anticipated this question, and, on an earlier page, I have answered it to some extent; but I have not discussed it at all fully. Was he a successful lawyer or not? Did he make for himself a reputation as one of the great lawyers of the State? To this latter question, I answer: "No," and then I quickly hurry to change it to "Yes and no." On the criminal side of the court, he was a decided success, and ranked much above the average. He was employed in important cases — those of great magnitude and where life itself was at stake. Not only was he employed, but he managed them with great skill and won that which at last is the crucial test, — the verdict of a petit jury. The reputation which he won on the criminal side of the court, both among lawyers

and the people generally, was that which is accorded to those only who take high rank in their profession. I venture to say that the great majority of the people of this State would, if asked to single out some of our great criminal lawyers in the past, put Mr. Preston among the first. And yet he was absent from the State a good part of the time, attending to his political duties, and did not have a fair chance with other lawyers who were devoting their entire time to their profession.

On the civil side of the court, I hardly think he would be put in the same category. I am frank to admit that he did well. He was employed in some important cases on this side of the court also, and he managed them with ability; but, if we are to judge from our law reports, and they, after all, are the safest thing to go by, then quite a number of other lawyers must stand ahead of him. I do not think, however, that Mr. Preston has been credited with the success which he really did achieve on the civil side of the court. Our people are too quick to conclude that because a man is well versed in literature — that because he is a scholar, he cannot be a practical success in life, and certainly, therefore, cannot succeed in so eminently practical a profession as the law. They seem to forget, or never to have known, that some of the grandest jurists the world has ever known, — some of the ablest of the judges and lawyers of England, have been among its ablest scholars. This foolish and unjust prejudice has existed for a long time and has become deep-rooted, but it ought to be completely extirpated. I am glad to see that there is some tendency even now to remove and counteract this silly notion, and I am particularly glad to note the fact that President McKinley is taking the lead in this matter, and is bestowing upon scholars some of the very best appointments within his gift. The course which has been pursued heretofore has a tendency to put a premium upon ignorance.

However, let us get back and see what Mr. Preston really did do in his profession. I do not suppose I could quote from any one more competent to express an opinon on this point than Judge O'Neall. He was one of the ablest, most learned, and fairest of all the judges that ever graced the bench in Carolina. Here is what he says: "For over forty years I have been in the Court of Appeal, as a lawyer or a judge. I have heard all the great advocates of South Carolina, and I am sure I have heard as fine legal arguments from Colonel Preston as from any other. His argument in Myers *v.* Myers, 2d McC. C. R., 219, will serve as a specimen which can be consulted.

His argument for McLemore, 2d Hill, 680, is not reported, except by the citation of his authorities. They will show his research; but his speech was unrivalled, especially in argument and eloquence. His circuit speeches, especially in criminal cases, were unsurpassed. His defense of Fleming, for the murder of Barkley, sheriff of Fairfield, both in tact, ability, and eloquence, deserves all praise. He selected, contrary to all that was or is usual, the most intelligent men on the panel for his jury. It was a plain case of *murder;* yet, notwithstanding a capital argument by Solicitor Player, and the weight of my authority as the presiding judge, he obtained a verdict of manslaughter." I have read the argument of Mr. Preston in the first of the cases referred to by the learned judge, and I find that it displays strong logical power and shrewd legal acumen, and gives evidence of diligent study and painstaking research.

Dr. Laborde says: "As a lawyer, I do not claim for him the profoundest learning; I know that he does not take rank among the great lawyers of Carolina. To reach such a position, one must consecrate his life to the service; and this he did not do. There are examples of men who united the characters of distinguished jurists and politicians, but they are rare. Among the most

illustrious instances of our day, are Webster of the North, and Berrien of the South."

Says Dr. Baer: "There is, I think, a general impression, that Mr. Preston was a lazy, pleasure-loving man, who did very little hard work of any kind, trusted to his genius, was incapable of wise and profound thought, and delighted rather than convinced and instructed his hearers. To correct this false estimate, the best plan is to study the skeletons of the great arguments made by him before our court of last resort, which are to be found in our State Reports.

"On those occasions, he wrestled with Pettigrew and other legal giants, and it is evident they found in him no light-weight, but a foeman worthy of their steel. These notes of argument demonstrate that he was a great and original thinker, and a lawyer who came to the fight with the fullest and most painstaking preparation."

Mr. James L. Petigru speaks of him as one "formerly eminent among the lawyers of South Carolina."

Chancellor Dunkin calls him, "an able lawyer," and Judge Glover says that he "illustrated all that distinguishes the barrister, statesman, and orator." Ex-Governor B. F. Perry, in his "Reminiscences," says: "In his arguments on the circuit and in the Court of Appeals, he proved himself an able logician as well as a brilliant rhetorician. No lawyer argued his cases with greater ability, or was more successful in his practice."

Mr. Preston had a number of the qualities that go to make a good lawyer. In the first place, he was a splendid orator. In the second place, he was a practical style of man, and not a mere theorizer. He had a fine knowledge of human nature — understood the motives which influence and control men. In the third place, he was a man of good logical powers and was not at all deficient in argumentative ability.

On the criminal side of the court, and as an advocate, both on the criminal and civil sides of the court, Mr. Preston was a great success. He could present a case with great ability. He knew how to argue the law to the court and especially did he excel as an advocate before the jury. I doubt very much, however, if he was very fond of reading the dry pages of the law. I have no idea that he liked what we term black-letter law. The rule in Shelley's case, contingent remainders, executory devises, and conditional limitations, he may and doubtless did study; but they could hardly have been congenial to his taste and temperament. Judge Story says that when he first commenced to read law, he found it exceedingly dry and uninteresting: but that he kept on, and that after a while he took a delight in what at first was tedious and boring beyond measure.

Mr. Preston could hardly have reached this second stage referred to by Judge Story. His mind had been distracted from his profession. He was engaged too long in politics. And then besides, as I have already said, I do not suppose he had any disposition or turn for poring over the pages of a law book. He would much rather spend his time reading Cicero's orations, Macaulay's essays, or Scott's novels. After all we are made upon different lasts. What suits one does not suit another. You cannot make a Calhoun out of a Preston. God made men with diversities of gifts.

And now I have reached the culminating point of Mr. Preston's character — the climax of his life-work, — his matchless oratory and splendid statesmanship. His superb form, his commanding presence, his brilliant diction, his beautiful imagery and charming rhetoric, his short, striking sentences, and his magnificent flights of eloquence, have won for him a reputation as an orator that has never yet been surpassed in the annals of American eloquence, have caused his name to be enrolled on the pages of history, graced with the appellation, "The Inspired Declaimer," and have so exalted his fame as an orator that even to-day, when we would

illustrate the perfection of oratorical attainment, there comes forth spontaneously from our lips the words, "the silver-tongued Preston." The only other Southern orators who could vie with him in the field of eloquence were the soul-stirring George McDuffie, the fiery and impetuous William L. Yancey, and the polished and scholarly Hugh S. Legare. Hon. Leroy F. Youmans, of Columbia, South Carolina, told me that General Wade Hampton said that on one occasion McDuffie spoke of Preston as the finest orator he had ever heard, and on another occasion Preston paid the same high compliment to McDuffie.

In Dr. Baer's address we find related an incident which illustrates Mr. Preston's wondrous power as an orator. The writer says, "Dr. A. S. McRae, of Virginia, who heard Preston's great speech in Richmond, at the Whig Log Cabin in 1840, tries forty years afterward to describe the effect of this matchless specimen of the stump speech. He says, 'The Log Cabin, erected for the accommodation of about three thousand persons, was on this occasion filled to its utmost capacity. Attracted by the great fame of the orator, the wealth, the refinement, and intellect of Virginia's capital here assembled. The learned and distinguished members of the bar and pulpit, and physicians and editors, mingled with the throng, and added *éclat* and inspiration to the occasion. The rain descended in torrents, and yet hundreds of persons, who were unable to gain admittance within the building, remained outside to see and hear what they could through the interstices between the logs. Expectation was aroused to the highest pitch, and when Mr. Preston made his appearance the wildest enthusiasm prevailed, and he was received with an ovation of cheers, which must have excited within him the profoundest gratification. After thanking the audience for their kind and flattering reception, he reviewed and elucidated the issues of the day. But his most miraculous powers of oratory, and that mysterious, impressive, almost omnipotent something called presence, were not fully exhibited and felt until he commenced arraigning Mr. Van Buren's administration for extravagance, malfeasance, and corruption. His mental energies then became fully aroused, and bounded under the burning fire of passion, excited by a sense of high public trusts betrayed, of constitutional provisions violated, and of dangers which he believed threatened the prosperity of the Union itself, to which his great soul was riveted as with hooks of steel. Tall, large, brawny-shouldered, he drew himself up to his full height. His eagle eyes flashed as with electric fire. His powerful, trumpet-toned voice, propelled by the strong fires from his intellectual forge, rang out upon the vast assembly in a succession of rapid, eloquent, startling utterances, that it seemed could emanate from nothing much less than divine inspiration itself. At the conclusion of this remarkable speech, which lasted two hours and a quarter, the audience arose as one man to their feet and, in their almost frantic delight, sent up shout after shout of applause. They then, in a body, escorted him to his quarters at the Virginia House on Grace Street.' I will not quote more from this enthusiastic chronicler. This great speech, I may say in passing, virtually cost Preston his seat in the Senate."

In Dr. Baer's address we also find the following: "Judge Bryan, who knew him well and heard him in his prime, speaks of him 'as the wondrous descriptive orator, whose magic pictures of beauty and glory and majesty had spell-bound breathless senates and ravished thronging multitudes, this magician, potent ruler of the stormy passions of men, whose breath was agitation.'"

An alumnus of the South Carolina College writes: "You have heard, no doubt, of Preston's wig being struck off by a gesture, when pleading for a young friend in the criminal dock. It was not considered an accident, but a master-stroke of the fin-

ished actor." Mrs. Rion relates the same incident, varied only in minor particulars, as follows: "I remember once, when he was defending three negroes for murder (gratuitously), he accidentally knocked off a red wig he wore. Without stopping in speaking, he picked up the wig and put it on, hind part before, but such was the tragic spell that his eloquence held, that his audience did not relax even for the grotesque effect."

Judge D. A. Townsend says that on one occasion one of Mr. Preston's auditors, who was very deaf, and who, at the distance he was from the speaker, could not have heard a single word, was observed to be overcome with tears. Some one inquired why he was so much affected, remarking that it was impossible for him to have heard what was said. He frankly admitted that that was true, but said: "Does he not speak with his hands!"

The celebration of the battle of King's Mountain, in October, 1855, was a memorable occasion in South Carolina. The orator of the day was the Hon. John S. Preston, the eloquent brother of the subject of this sketch. Among the honored guests who were present and spoke was the Hon. George Bancroft. In the interesting account of the day's proceedings which was published at the time, we find the following: "After the presentation of these valued relics of the battle, he proposed the following sentiment: 'Honorable William Campbell Preston: rekindled in the grandson, has been transmitted to us the spirit which gleamed in the sword of the grandsire. While we have assembled to honor the patriotic deeds of the one upon the battlefield, let us not forget the statesmanship and eloquence which have thrown a halo of imperishable glory around the other. In the fullness of age, as in the pride and strength of manhood, South Carolina delights to do him reverence.' When the loud applause with which this sentiment was received had subsided, the once proud and majestic form of 'the inspired declaimer,' now bent with age and tremblingly leaning upon a crutch for support, approached to the front of the stand. For a moment, the fire of genius, almost gone out, which had once commanded 'the applause of list'ning senates,' seemed to enkindle and burn as brightly as ever. He said: 'If anything could now relume the embers of a life which, at times in my youth and manhood, has perhaps burned brightly, it would be the sentiment which has just been uttered. It touches the objects which are dearest to me. It points to a life which has been animated by what I thought and hoped to be elevated objects of ambition, and to an ancestry whose memory has been most fondly cherished. Here, in these scenes of primeval grandeur, and upon a spot with which it has been the fortunes of that ancestry to be associated, it comes upon me with especial force; but if I could ever speak, I can speak no longer, and, if excuse be needed, I would appeal to this' (raising up his crutch), 'and to this' (laying his hand upon locks as white as snow); 'yet, still my heart' (laying his hand upon his breast) — but the utterance failed, and 'the old man eloquent' bowed his head and wept, while the tear, trickling from every eye in that vast assembly, told the story of earnest sympathy, and paid a tribute to the power of true eloquence, the eloquence of feeling and of action and of silence."

Mr. Bancroft responded to a sentiment on that occasion, and Mr. Preston was delighted with him, and when he arose to speak he expressed his pleasure by saying "That as he had listened to him he felt it in his heart to wish that 'he too, like myself, were a South Carolinian,' and then, pausing and holding up his crutches, he added, 'except these bonds.'" I will now quote a high tribute paid to Preston as an orator by Judge Wardlaw. To fully appreciate it we must be told that the latter was one of the ablest of Carolina lawyers, very conservative in his judgment, and not at all given to exaggeration.

I obtained the incident from Dr. Carlisle of Wofford College, to whom I am indebted for inspiring counsel and helpful suggestions in preparing this paper, and others on kindred topics. The venerable doctor is himself a warm admirer of Preston, Calhoun, and McDuffie, three of the great Carolinians of the "old regime." Dr. Carlisle writes: "Columbia papers speak of the original 'Nullification Ordinance' etc., being found, with other documents. This reminded me of an interview I once had with Judge D. L. Wardlaw. Knowing that he had met many of our prominent men of his day, I asked him: "Among all the fine speeches you have heard, which one occurs to you at once as perhaps the most striking?' He answered, "President Jackson's Force Bill reached Columbia late on Sunday night, by stage. The legislature was to meet next morning and adjourn to attend the college commencement. When we met, the proclamation was read, and it was determined not to adjourn. Mr. Preston, delegate from Richland, took the floor, and for ten or fifteen minutes reached the highest flight of effective oratory I have ever heard. Expert reporters were not found then, and Columbia had no daily paper; perhaps the 'Charleston Courier' of that day may have some reference to it."

Mr. Preston, as I have already said, had many of the qualifications of the orator. In the first place, he had a splendid presence. His striking appearance was illustrated by the impression which he is said to have made upon strangers while on his European trip. A writer says: "I have been told that on his visit to Europe, in his younger manhood, both in London and at Paris, admiring crowds followed him when he appeared on the streets. I can well believe it. I suppose no one ever saw Mr. Preston without being satisfied that he was looking at a very extraordinary man."

We may say what we please, but we are obliged to admit that an orator's general style and appearance have a great deal to do with the impression which he makes. A man with the kingly presence and manner of Toombs, a speaker with the courtly style and the majestic, imposing form of Preston, commands the attention of an audience from the very outset, and enlists their interest and admiration. In speaking of Preston a writer says: "I have never seen a face with such a power of expression. When he talked with you, it was his habit to lean forward, and, holding his face straight before you, so that you took it all in, fix you with his eyes. The face and eyes expressed the thought so clearly that you knew what he was about to say before he spoke. It happened to me, in talking with him, not infrequently to answer him before he had spoken. He would seem, I thought, flattered, and would kindly relieve my embarrassment with a pleasant smile. Others have told me of having had a like experience." In the second place, Preston had a magnificent voice; his chest and lungs were well developed. Says Dr. Baer: "Nature had gifted him with a splendid voice. The breadth and depth of his chest were notable. He told me that while in England he was invited on one occasion to speak in the open air to an assemblage of at least ten thousand persons; that some of England's eminent orators were present and spoke; and that he was told that he was the only speaker that had been heard with ease by every one present. He added, modestly, that it was largely to be accounted for from the fact that speakers in America were more frequently than over the water called upon to speak in the open air."

In the third place, his independent spirit and ardent love of liberty had much to do with his success as an orator and statesman. Eloquence thrives best and only in an atmosphere of freedom. Slavery in any form chokes and stifles it. Mr. Preston was in the highest sense of the term an independent man. He cringed and bent the knee before no one. He did not know what it

was to fawn upon those in authority to win position or command emolument. He spurned anything of the kind. Although a South Carolinian by birth and breeding, and proud of my State and people, yet I am frank to admit that Carolinians, especially those of the olden day, have too frequently been intolerant of opposition — have not always accorded to those who differed from them that freedom of opinion — that charitable judgment, which they deserved. Minorities have merited greater rights than they have always received in our State.

In Mr. Preston's time, Mr. Calhoun was the power behind the throne in Carolina. His will was law. The people of the State looked to him for guidance, and they followed implicitly wherever he led. Much as I admire Mr. Calhoun — and my appreciation of him is very high — I am disposed to think that he was impatient of opposition, that he was somewhat arbitrary and imperious in his sway over the people of this State. He was self-assertive in his opinions, and thought that his views and ideas on public matters were necessarily right. Indeed, after forming his opinion he paid very little attention to what others said on the other side. A writer describes this disposition on the part of Mr. Calhoun to pass unheeded the opinions of others, by an expression which was characteristic of him, "Not at all, not at all." And then, too, he would become so absorbed with some subject which was engaging his attention at the time, that what was said to him passed into one ear and out of the other without making any impression. Mrs. Preston refers to his habit in this respect as follows: "As thus during nullification times, if he had asked you how your family were, and you had answered with that disposition to be sympathized with that we all have under suffering, "One of the children is ill," Mr. Calhoun would have exclaimed: "Ah, but, as I was saying, the concurrent majority, etc.," and neither you nor yours would possess his head or heart one minute. When Mr. Calhoun and Mr. Preston were most harmonious, I gave that opinion of him to Mr. Preston, so I have not now formed it under pique."

In another place in her journal, Mrs. Preston says: "The bill was lost to us by an overwhelming majority. Mr. Calhoun always votes with the administration party; and yet last September, he and his friends were in great wrath because Mr. Preston said Mr. Calhoun was an administration man. The truth was too great for Mr. Calhoun to be willing to hear it. Now the "Globe" lauds him, and his men, Pickens, Elmore, and Lewis, call themselves administration men. *Sic transit.* A year ago they were all in arms against my husband because he would not abuse Mr. Van Buren or his party in advance." In Jenkin's "Life of Calhoun," we find the following expressions attributed to him which I have never admired, and which I think are too arrogant and autocratic in their tone: 'I never know what South Carolina thinks of a measure. I never consult her. I act to the best of my judgment, and according to my conscience. If she approves, well and good. If she does not, or wishes anyone else to take my place, I am ready to vacate. We are even." Governor Perry says: "Great men are often egotists. Cicero and Demosthenes were eminently so. Mr. Calhoun was not without this foible of greatness any more than he was of another infirmity, which, it is said, belongs to all great men — ambition."

Mr. Preston was Mr. Calhoun's colleague in the Senate, and differed from him on a number of important questions. This brought him into a position of opposition and antagonism to South Carolina's favorite son, and he had to pay the penalty. That he felt it keenly we have every reason to believe. Indeed, I have already made a reference to it in an earlier part of this paper. Says Governor Perry: "All the South Carolina Nullifiers became Whigs, and united with Clay and Webster to break down the administra-

tion. Colonel Preston and General Waddy Thompson persevered in their error and remained consistent and true to their mistaken principles. This threw them in opposition to their State, which was under the absolute control of Mr. Calhoun. Colonel Preston resigned his seat in the Senate, and resumed the practice of his profession."

In another place Governor Perry says: "In order to break down General Jackson's administration, Mr. Calhoun became a Whig, and the ally of Clay and Webster. He then abandoned the Whig party, and because Colonel Preston and General Thompson would not do so likewise, he drove one from the Senate and took the stump to crush the other. It is, however, the fate of genius to be erratic. For many years Mr. Calhoun was absolute in South Carolina, and all who sought promotion in the State had to follow him and swear by him. He thought for the State and crushed out all independence of thought in those below him. It is said by the historian that on the death of Henry the Eighth of England, that kingdom breathed more freely. I thought, after the death of Mr. Calhoun, the people of South Carolina could think more independently."

That Mr. Preston regarded Mr. Calhoun as autocratic and dictatorial, and that he was restive and determined not to be controlled by him, the following extracts from Governor Perry's book show: "I heard Colonel Preston remark at his own table, soon after the death of Mr. Calhoun, that it was the interposition of Providence for the good of the country in taking off Mr. Calhoun at that time. He thought South Carolina would then have peace and quiet once more. But in this he was greatly mistaken, as the result showed. Had Mr. Calhoun been living at the commencement of our sectional war, he might have opposed it and stayed the attempted revolution.

"Whilst in the Senate together, Colonel Preston thought Mr. Calhoun seemed to think that he ought in all matters to follow implicitly in his lead. This entire surrender of his judgment to that of another was what Colonel Preston could not tolerate, and his proud spirit rebelled against all dictation. I once heard Judge Withers say that Governor Miller made the same complaint of Mr. Calhoun whilst he was his colleague in the Senate, and that this compelled him to withdraw from the Senate. Governor Hammond once made a remark, that he had much rather be Calhoun's successor than his colleague in the United States Senate."

Not only did Mr. Preston show his pluck and spirit by refusing to yield to the dictation of Mr. Calhoun, and by giving up office rather than sacrifice his convictions of duty; but his whole public life bore abundant testimony to his manly, independent character.

Again, Mr. Preston was full of enthusiasm. An orator cannot succeed unless he possesses a fervid soul and an ardent temperament. These cold-blooded speakers chill rather than fire an audience. The successful orator must always be brimful of enthusiasm.

Mr. Preston's eloquence was the joint product of nature and art. He was born an orator. He imbibed a spirit of oratory with his mother's milk. His good old grandmother, we have already learned, was a sister of Patrick Henry, and, like her distinguished brother, was endowed with the gift of eloquence. Indeed, we are told that Mr. Preston resembled his great-uncle, Patrick, not only in his ability to speak, but also in his personal appearance. There was a marked resemblance, too, in their style of oratory.

Not only did Mr. Preston inherit from his ancestry the gift of eloquence, but he was born and spent his youth in a State whose very atmosphere was permeated with a spirit of eloquence and statesmanship; and, further still, he received his education in a city and at a college where great orators dwelt, and

great statesmen were trained and developed. In his travels abroad he met and was associated with some of the foremost orators and rhetoricians of the world, and in the theatres which he frequented in Paris, Edinburgh and other European cities, he learned from famous actors how the voice could be modulated, the articulations made distinct, and the emphasis properly placed. I do not know that Preston, like Demosthenes, ever went to the seashore and spoke with pebbles in his mouth; I do not know that, like Legare, he ever entered a boat and sailed out upon the ocean, there to practice elocution amid the waves and rocks of the sea, but I do know that he availed himself of every opportunity to develop his oratorical powers, and add to his grace as a speaker.

And now I have come to the highest attribute of his eloquence, the crowning quality of his statesmanship, — his deep earnestness — the beauty of his life and the splendor of his character. To succeed as an orator a man must feel what he says, and conviction must precede feeling. The man who desires to become a great orator and statesman must reach out to something above and beyond self. Mr. Preston himself lays down this rule in the concluding parts of some comments he made upon the oratorical efforts of one of his young friends. Said he: "His decided and almost infantile passion for speaking shows an innate tendency; and instinct is but the consciousness of organization. William's consciousness involves the instinct, and this implies the faculty. . . . These things I say because they are true, and that you may check and subordinate William's propensities into a just observance of more solid and important things than speaking. Even in the pulpit I have seen men seduced from the appropriate purpose of their high mission by the fascinating attractions of successful oratory, forgetting the end in the means. It was true of Bossuet; it was true of Whitfield; and I have seen it true at a camp-meeting."

Mr. Preston was eminently right. The highest success in oratory can only be attained when self is relegated to the background. True eloquence comes from the heart. When I was a college student, a favorite subject for debate was: "Which is the better field for a display of eloquence, the pulpit or the bar?" I have often thought that the consecrated Christian minister ought to present, or rather represent, the highest type of eloquence. He has a a theme that reaches beyond time out into eternity. He is dealing with immortality. And then surely he, of all men, should possess this last most essential and most important quality to which I have referred, — the earnestness and sincerity which are backed up by a noble character and a forgetfulness of self.

Mr. Preston was a grand character. He had about him that magnanimity of soul which always attracts. He was the idol of his family, he was loved by a host of friends, and he was popular with the masses. Even now that he is dead, his name is recalled with pleasure, his memory is revered, and, though with the recollection of him the tear starts, yet there comes along with it a smile and a cheerful face, for his very name is suggestive of sparkling conversation, bright wit, delightful anecdote, charming incident, charity of soul, magnanimity of heart, purity of character and nobility of life. And besides all this, Mr. Preston possessed another requisite to the highest success in the department of eloquence and statesmanship. He had behind him a sustaining power. I have read somewhere that when Lord Erskine, the great English advocate, was making his first speech at the bar, he manifested at the beginning a good deal of trepidation and embarrassment, but that after a while he overcame it and delivered a splendid address. In explaining to some one how he overcame his embarrassment, he said that while he was speaking, he happened to think of his little children, and he felt

that he could see them clutching his gown and saying to him: "Father, now is the time to get us bread." And so, too, in Mr. Preston's case was there behind a sustaining force, — a noble Christian wife, who was at the same time an impulse and an inspiration.

Mrs. Preston's journal has, all through it, evidences of her devotion to her husband, her love for him, and her loyalty to him. You can see, too, that she recognized where he was weakest, and that from her lips there went up to heaven in his behalf many a fervent and loving prayer. And what a noble, splendid woman she was! In her heart of hearts she would far rather that her beloved husband should be poor and humble than have high position at the sacrifice of truth and right.

Mrs. Preston had in her heart and about her life the grace of piety. On one page of her journal, I find these words: "Oh, what a grace real piety sheds over poor human nature?"

That she loved her husband deeply and devotedly, that she sustained him with a life of devotion, that she nerved him in the hour of trial with the sweetness of wifely love and the fervency of a Christian's prayer, the following extract from the pages of her journal shows: "But, oh! my heavenly Parent, watch over my husband, and grant that neither love of fame nor high place may cause him to swerve, whatever else befall him. Oh, may he preserve his integrity!"

When we think of Mr. Preston's splendid character, his charming personality, his lofty statesmanship, and his unsurpassed eloquence, we must not forget the power behind the throne — the gentle, sweet, Christian wife, who upheld and supported him with her love, her life, and her prayers.

On Wednesday evening, May 23, 1860, Mr. Thomas M. Hanckel delivered an address before the South Carolina Historical Society, in which he paid a tribute to the eloquence of Mr. Preston, which, though it is somewhat long, is so beautiful, so graphic, so true to life, and so charmingly written, that I cannot resist the temptation to present it here in its fullness to the reader: "And looking up from the grave of Hayne, our eyes but yesterday might have rested upon the noble form of William C. Preston, bowed, indeed, with the infirmities of age and the inevitable sorrows of life, but still recalling the days of his power, when the listening Senate hung upon his words, and the multitude was swayed by his eloquence. To-day he lies in the majesty of death. He, too, during a life which has just come to its close, was a noble representative of the highest qualities of Carolina statesmanship. I think we are apt to underrate his powers of argument in our admiration of his vivid imagination and his brilliant rhetoric. His reasoning was not conceived according to the forms and the method of an elaborate analysis and a strict logical deduction, but he drew such vivid pictures of things, men, and events, in their natural order and according to their true relations, that his hearers for themselves caught the idea upon which he wished to insist, and arrived for themselves at the conclusion to which he wished to bring them. But it is as her great orator that the State is justly proud of him. And to estimate his power as an orator we must not confine ourselves to his powers of argument; but we must recall, also, the nervous magnetism of his nature and all the elements of his unrivalled action; we must recall the quivering muscles, the tremulous lips, the cloud and sunshine of his brow, as his face was swept by the shadowy gust of passion; we must recall that noble form, now lifted to its majestic height and swayed by emotion, like some grand oak with its branches rocking in the gale, now bending with the pliancy of the willow, to the attitude of eager persuasion and pathetic appeal, until it seemed as if 'his very body thought'; we must recall that glorious voice, now clear and strong as an organ's swell, now full and soft as woman's gentlest speech, while every

word was wrapped and penetrated by a tone like the rich clash of stricken silver — the tremulous agitation of a deep and full emotion. We must recall all those physical gifts, as well as his intellectual endowments, if we would realize the power of his oratory in the day of its strength and in the hour of its inspiration, when it was borne forward on some wave of thought which, reaching deeper and rising higher than its fellows, gathered energy and power as it rose, flashed with a snowy crest of gorgeous language, and broke in a glorious burst of eloquence, which swept all lighter objects from its path, and thundered against the bulwarks of the stoutest opposition, and hotly wrestled for the mastery, and tried all the strength of its material. But though his conceptions were bold, his thoughts earnest and vigorous, and his language passionate and almost impetuous, he never for a moment lost the beauty and the grace of a courteous, frank, and generous nature. And now, in the solemn chamber of death, what generous heart will remember aught but his great gifts and his noble services — what voice will not be lifted to crown him with the State's honor and affection, and to ask for peace and blessing upon his memory?"

I know that this sounds like the language of exaggeration; but the recollections of our older citizens who heard Mr. Preston speak and the traditions that hang around his name, and still linger among us, confirm and corroborate it as the "words of truth and soberness."

THE LEGISLATION AND LOCAL GOVERNMENT OF KING ALFRED.

I.

By Warwick H. Draper, Barrister-at-Law.

THE approaching celebration of the millenary of the death of King Alfred the Great is an occasion for learning about the works of him whom Freeman has called "the most perfect character in history." Much that is reliable can be said about the many amazing activities of this "mirror of princes." Readers of this journal, it is to be hoped, will find acceptable the following account of his legislation and local government.

The code of "Dooms" which bears his name, first edited by Wilkins in his "Leges Anglo-Saxonicae" (London, 1721), has been well known since its publication in 1840, by B. Thorpe, in "The Ancient Laws and Institutes of England," where the Anglo-Saxon original is printed, together with a modern version, accompanied by notes, instructive but sometimes inaccurate. A trenchant observation by the learned author of "The History of the Criminal Law of England" justifies the mention of the textual authority for that original as a point of peculiar interest. Stephen (1, 5,) remarks that these early codes, from Kentish Aethelbehrts (560-616 A. D.) down to Eadward's (901-924), are "obviously a compilation made in the time of Henry I, by some private person, of the laws then in force, or supposed to be in force, among the English." This judgment, unless equivocal, is decidedly erroneous, for the two best manuscripts upon which Thorpe's edition was based are proved by the modern and exact science of palæography to be of a far earlier date. These manuscripts are among the treasures of the library of Corpus Christi College,

Cambridge; that numbered 173 is, in the opinion of experts, "the oldest extant copy of Alfred's laws, second quarter of the tenth century"—i. e. only a generation later than the death of the king himself; while No. 383 (the first and third octavos of which have been misplaced in the binding) is assigned to the middle of the eleventh century.

It is fair, then, to give credit to the claim of these dooms, that they represent the body of law enacted by Alfred in the course of his regeneration of the disordered nation of Wessex, which he had saved from the Danes. They show that in his reign religion and morality received their sanction from established law, and that here, at any rate, it was not possible to use of his kingdom the words of Tacitus concerning the ancient Germans, that "among them good habits of morality are stronger than good laws elsewhere." We must, however, guard against the idea that this code pretended to be such a constructive and systematic statement as are the compilations of an Alphonso the Wise, or a Napoleon Bonaparte. If it had been such, it would have been exceptionally foreign to the spirit of all English law. A comparison of the code of Alfred with those of earlier kings shows that he collected and supplemented those of his predecessors; we have his express avowal of this mode of promulgation:

"I then, Alfred King, gathered these together, and bade to write many of those that our foregoers held, those that seemed to me good; and many of those that seemed not good I set aside with my wise men's counsel, and in otherwise bade to hold them; for that I durst not venture much of mine own to set in writing, for that it was unknown to me what of this would like those that were after us. But those that I met with either in Ine's days mine kinsman, or in Offa's King of Mercia, or in Aethelbehrt's that first took baptism in the English race, those that seemed to me the rightest, I have gathered them herein and let alone the others."

The direct words of this preface suggest the very essentials of growth and elasticity which have made our law enviable to all the world. "Our laws," says Bacon, "are mixed as our language; and as our language is so much the richer, the laws are the more complete." Their principle, pleads Alfred himself, is that of Christian morality.

"From this one doom a man may think that he should judge every one rightly; he need keep no other doom-book. Let him take care that he judge to no man what he would not that he should judge to him, if he sought doom over him."

A closer examination of the code itself shows that it opens with an Anglo-Saxon re-enactment of the Mosaic law (Exodus xx-xxiii, roughly translated). As Stephen has justly remarked, "it is hard to decide whether these were practically more than a kind of denunciation of homicide on religious grounds, or whether they were actually executed as law." At least one notes, among other points, a sincere attempt to enforce the distinction between intentional and unintentional homicide. Of the seventy-seven clauses which contain Alfred's own "dooms," over fifty relate to personal injuries of one kind and another; most of these are borrowed, with slight changes in the amounts of fines, from the Kentish codes, especially Aethelbehrt's. The rest are mainly taken from Ine, whose agricultural laws, however, are wholly omitted. The word "Dolz-bot" is a term used, meaning compensation for the striking or stabbing of a man, and it curiously occurs on the hoop of a silver finger-ring found in an Anglo-Saxon cemetery in Cambridgeshire (Lord Braybrooke in Essex Arch. Soc. Trans., ii., 64). In Doom 23 the word is used in the case of slitting or biting by a dog. Of the dooms dealing with assault, no less than seven deal especially with the

protection of women, and there are traces of Alfred's cautious but effective treatment of the slave question, whereby he first practically created a decent and respectable middle-class of society. An amusing doom is that concerning "spear carelessness" (36), which enacts that "if a man have a spear over his shoulder and a man stake himself on it, he pay the were (the value of a man according to his station) without the wite (the fine due to king or lord in respect of the offense)." Important dooms deal with the breaking of oaths and pledges (1), stealing in a church (6), lifting cattle (16), confession of debt (22), slander (32), and house-breaking (40). Doom 41, the only one concerning real property, seems to foreshadow a law of entail concerning boc-lands, or estates created by legal process out of the public land, and suggests a final stage in the triumph of prefeudal individualism..

As regards the administration of his laws, popular legend errs in attributing to Alfred the invention of trial by jury. Traceable, indeed, in far earlier time, this mode was not really developed until after the Conquest, when it is first mentioned in the Constitutions of Clarendon; it did not fully supersede the trial by duel until Henry III's reign. Equally fictitious is the fourteenth century note in "Eulogium Historiarum" (IV., 173), that Alfred translated into Anglo-Saxon the laws of "Dunwallo Molmnucius, primus legifer in Anglia"; and we may regard as apocryphal the French story of the thirteenth century, that "le Roy Alfred fist prendre XLIV justices en un an tout come homicide, par leur faux judgements" ("Miroir des Justices," 296–8). There is every reason to accept the generous tribute of William of Malmesbury, that Alfred was "a searcher into the judgments made by his officers, a stern corrector of those wrongly delivered": his rigor and justice were such that, as is said by Richard of Cirencester (iii., 4), he so restored order in the country that gold bracelets could be safely hung up by the roadside! Even if Alfred was no such legislative genius as Edward I, yet he was a worthy exponent of this high function of responsible royalty.

The Green Bag.

PUBLISHED MONTHLY, AT $4.00 PER ANNUM. SINGLE NUMBERS, 50 CENTS.

Communications in regard to the contents of the Magazine should be addressed to the Editor, HORACE W. FULLER, 344 Tremont Building, Boston, Mass.

The Editor will be glad to receive contributions of articles of moderate length upon subjects of interest to the profession; also anything in the way of legal antiquities or curiosities, facetiæ, anecdotes, etc.

FACETIÆ.

HERE is a story which Baron Dowse, the celebrated Irish judge, once told in that exaggerated "brogue" which he loved to employ.

"I was down in Cork, last month, holding assizes. On the first day, when the jury came in, the officrr of the court said: 'Gintlemen av the jury, ye'll take your accustomed places, if ye plaze.' And may I never laugh," said the baron, "if they didn't all walk into the dock."

JOHN CLERK, afterward known as Lord Eldin, was limping down High Street of Edinburgh one day, when he heard a young lady remark to her companion: —

"That is the famous John Clerk, the lame lawyer."

He turned round and said, with his "not unwonted coarseness": —

"You lie, ma'am! I am a lame man, but not a lame lawyer."

THE good advice of the Laird of Waterton, in Aberdeenshire, to a sheep-stealer, reads like a very practical joke. He had himself sent the man to jail; and in those days sheep-stealing was a capital offense. Visiting the prisoner the night before the trial, he asked him what he meant to do; to which the prisoner replied that he intended to confess, and to pray for mercy.

"Confess!" said Waterton; "what, man, will ye confess and be hanged? Na! na! deny it to my face."

He did so and was acquitted.

"WELL, James," said the parson, sympathetically to a discharged convict, "have you decided on what you want to do?"

"Yes, boss," replied the ex-crook. "Seeing as how I'm a pretty good mechanic, I thought I might open a bit of a shop."

"A shop!" replied his benevolent friend. "What kind of a shop?"

"A plumber's shop," said the burglar.

"Oh!" exclaimed the minister, rising suddenly and picking up his hat, "I was under the impression that you wanted to reform."

IN one of the remote counties of the Panhandle of Texas two lawyers were trying a case before a justice of the peace. It was sixty miles as the crow flies to the nearest law book, and the attorneys differed, of course, as to the law upon the main issue in the case. They were trying the case without the intervention of a jury, and his honor, who conducted a gambling-house in connection with his hotel, saloon, and livery stable, was in doubt as to what his decision ought to be. Finally Miller, the plaintiff's counsel, offered to bet Hoover, the defendant's attorney, $10 that he was right. Hoover did not happen to have that much of the circulating medium concealed about his person, and was naturally at a loss how to parry this forcible argument. The court waited a few moments for Hoover, and finally said: —

"Well, Mr. Hoover, the court has waited long enough. Miller's proposition seems to be a fair one, and, since you don't put up, I will decide this case in favor of the plaintiff."

"FIGHTING BOB" BOWLING, whilom a Kansas City (Mo.) justice of the peace, one time made a ruling in the trial of a case that was not acceptable to the attorney on one side, and he demurred to the decision of his Honor.

"Your Honor, you are overruling the Supreme Court," said the lawyer.

"I do that every day, my friend; sit down," replied the justice, and his decision was recorded.

THE old man was being cross-examined by an eminent counsel. The latter had used him rather hardly, and the old man was beginning to look a little the worse for wear, when the lawyer said:—

"You say you are a doctor?"

"Yes, sir; in a way I am."

"What kind of a doctor, may I ask?"

"I make 'intments, sir. I make 'intments."

"Oh, ointments. And what may your ointments be good for?"

"It's good to rub on the head, to strengthen the mind, sir."

"What effect, for instance, would it have if I were to rub some of it on my head?"

"None at all, sir; none at all. You must have something to start with, you know."

The lawyer curled up a little, and the old man felt proportionately better.

NOTES.

ALTHOUGH it is not usual for the patient to prescribe his own medicine, it is natural that he should feel considerable interest in it, especially when his malady is criminological, and the medicine a long term behind the bars. In "The Star of Hope," the new periodical edited by the convicts at the Sing Sing State prison, some of them have been discussing the long sentence, invariably reaching the conclusion that it is a bad thing. The discussion reveals the fact, however, that the inmates of the State prison have advanced further than some who live outside, in considering the sentence a means of reform rather than a punishment. Convict No. 440, for example, who writes in the issue for August 12, shows that the long sentence is a survival of the old idea of revenge, while the parole system aids the convict to what all convict writers profess to desire — reformation. He writes: —

"I put the question to all fair-minded men, does it require ten or fifteen years to reform a man? No. If he does not reform in a year, there is no reform in him. I say to society, give him a chance. Manifest an interest in him through applied efforts in a beneficent direction.

"The greater portion of the men who return to prison have left the prison doors behind saying that 'I committed the crime, the commonwealth has punished me, so I owe the State nothing.' They go in search of work, but the doors of society are closed against them. With little money, no results in their efforts to procure work, they become despondent and discouraged. In such an environment they resort to crime, and prison is the result.

"If the State would . . . pass a parole law, there would be a great decrease in crime. For example, under such a law, if a man sentenced to twenty years' imprisonment, after serving two years be paroled under the conditions that, if he violates his parole, he will have to return to prison and serve the eighteen years on the old sentence in addition to his new sentence, I dare say, not five per cent would return. To-day eighty per cent of the men who leave the prison walls return.

"Ignorance has a great deal to do with increased prison statistics. Education is what men need and require who have criminal tendencies.

"There are many men here to-day who did not even know or realize the penalty for the crime they committed. For one out of the hundreds behind prison walls, I hope that our legislators and other public officials will come to our rescue along the line we have feebly noted, which will result not only beneficially to the State, but to our mothers, wives and children."

THE police and the magistrates have long been accustomed to treat juvenile law-breakers less severely than they treat older criminals, acting from their own sense of justice rather than in obedience to specific law. Now, however, the legislature of Illinois has taken the step of establishing a court to have special cognizance of crimes committed by or affecting children. "The American Lawyer" (New York) describes it as follows:

"By the provisions of the law, no child under twelve years of age can be held in a police station. A room for the detention of children must be provided. The law also enacts that under the age of twelve there shall be no arrests, but that the child shall be brought into court upon summons, and if the parent or guardian of the child ignores the summons he may be arrested for contempt of court. In the case of neglected children without parent or guardian the offender may be taken in charge by an officer and delivered by the court to a probation officer.

"The court is empowered to provide for both dependent and delinquent children (by the former being understood children not guilty of offenses,

but without oversight and in need of it), being authorized to use its own judgment as to commitment. The child can be released upon the responsibility of the probation officer, or it can be committed to industrial or other schools. All offenses of whatever character committed by children under the age of sixteen years come under the provisions of the law, which is modeled upon the Massachusetts statute."

The same journal says in comment: —

"It is useless to refer to the many times stated fact that our law is notoriously insufficient in so far as infants are concerned, in that it seems to recognize no real distinction between the juvenile offender and the hardened criminal. Crime is crime, it says, irrespective of the age of the offender, and the same hard and fast rules are to be applied whether the wrong-doer be a mischievous schoolboy or a hardened criminal. The reform school, while a step in the right direction, meets the difficulty only half way, as the child comes from it with more or less of a stain upon its reputation which only time removes. The special need of a court which will not administer strict rules of law, but to which some latitude of discretion will be permitted in cases of infant depravity, is certainly apparent."

CURRENT EVENTS.

AMERICAN wage-earners will be interested in the report from Vice-Consul General Hanauer, which shows that in Coburg-Gotha there are 5455 children under fourteen years of age employed at their homes in making buttons, dolls and toys for the factories. They work from four to six hours a day, and earn in button-making daily from 15-16 of a cent to 7 cents; on dolls from 2⅛ to 8¼ cents; and on toys from 1⅞ to 14 cents.

THE little town of North Perry, in Maine, will henceforth have a unique distinction. Some time ago the United States government directed a geographical survey to make an exact location of the forty-fifth parallel of latitude. Its location disclosed the fact that the village of North Perry was situated directly on the line, and the government has ordered the erection, in the center of the village, of a granite shaft bearing the inscription, "This stone marks latitude 45° degrees north, half way from the equator to the north pole."

THE name Boer has its counterpart in the German word bauer, signifying a peasant or farmer. The first Dutch who colonized South Africa in 1652 were of the bauer or farmer class, as were those who immediately followed them, except the officials of the Dutch East India Company who governed Cape Colony. These were of an educated and higher class. Later, the colonists were of various nations, especially Germans and Flemings, with a few Poles and Portuguese and some Huguenot French, who left their country on the revocation of the Edict of Nantes.

IT has been discovered that what may be called the first daily newspaper was a manuscript letter written by salaried correspondents, and forwarded by them every twenty-four hours from London to the provinces. That was in the days of the early Stuarts. During the Commonwealth these London letters were printed in type, and circulated in large numbers. Even so long ago as 1680, the law of libel was such as to be characterized by Judge Scroggs as making any newspaper publication illegal, and tending to provoke a breach of the peace.

SOME highly interesting experiments upon the absorption of x-rays and cathode rays by various kinds of matter have recently been described by Signor Guglielmo. They were undertaken, says "The Electrical Review," "with a view to deducing the dimensions, absolute weights, and densities of atoms. The discussion is too long to be abstracted here, but the result reached is that the density of atoms is . . . . 80,000,000 times that of water, or that atoms weigh about 28,000,000 pounds per cubic inch."

"AT the excavations now in progress at the Roman Forum, over thirty 'styli,' or bone pens, have come out of the mud of two thousand five hundred years," says "Biblia." "They are in perfect condition. Near by was found the *tholus*, or store-pit, which was used as the corn-bin of the pontifices. Into it the corn was emptied from the jars in which it arrived. A clerk must have stood by, keeping tally of the number of jars received and emptied therein. Occasionally, looking over the edge to see the cavity filling up with grain, the stylus he used to put behind his ear being of smooth bone, slipped and fell and buried itself in the wheat, until to-day. There was also found here a black bone *tabella*, or writing tablet, six inches by four in size, somewhat worn down at one corner by the thumb of the holder, and still showing scratches where the wax once spread upon it had been penetrated by the sharp point of the *stylus*. The specimens of the *stylus* are very beautiful; some are are short and stubby, others long and graceful; some have been favorites with their owners, others scarcely used at all."

ACCORDING to M. I. Holl Schooling, of Brussels, there is a very easy way of calculating the age to which a human being may reasonably expect to live, but it is only applicable if his present age lies between twelve and eighty-six years. The method is really an old one, and was originally discovered by the mathematician Demoivre, who in 1865 emigrated from France to England, and became a member of the Royal Society. The rule is this: Subtract your present age from eighty-six, divide the remainder by two, and the result will give the number of years which you may expect to live. The rule may be approximately correct for some ages, and represents perhaps the nearest solution of an insoluble problem at which we can arrive.

THE recent publication of Lord Rosebery's "Appreciations and Addresses" led to a curious suit, the "London Times" having brought an action on the ground that it was not permissible to make use of reports of Lord Rosebery's addresses which had appeared in its columns. As all the proof-sheets were revised by Lord Rosebery's secretary, from the original manuscripts, it would seem as if the author's rights, in this instance, transcended those of the newspaper reporter. But the court thought otherwise, and decided in favor of "The Times."

LITERARY NOTES.

MR. SYLVESTER BAXTER tells the story of "The Great November Storm of 1898," in the November SCRIBNER'S, one of the most destructive ever known on the New England coast. President Hadley of Yale College writes an article of the most timely interest on "The Formation and Control of Trusts." Mr. Alfred Stieglitz writes of "Pictorial Photography." In their paper on "The Paris of Honoré de Balzac," Benjamin Ellis Martin and Charlotte M. Martin describe the many localities and homes associated with the great French author. The stories of the number are "The Man on Horseback," by William Allen White, and "The Real One," an amusing bit of romantic comedy by Jesse Lynch Williams.

AMERICAN readers will have an opportunity to become familiar with the most striking work which M. Rene Bazin has thus far done, in the translation of "The Perishing Land," which is published serially in THE LIVING AGE, beginning in the number for November 4.

THE cover design of THE CENTURY MAGAZINE for November includes a portrait of Cromwell redrawn on stone by Ernest Haskell and printed in tints; while the frontispiece — also in tints — is a wood-engraving from Cooper's painting of the Protector in Sidney Sussex College, Cambridge. Apart from the beginning of Mr. Morley's important Cromwell series, and Mr. Thompson's bear biography, there is a hitherto unpublished poem by the late James Russell Lowell ("Verses Written in a Copy of Shakespeare"); the true and terrible story of the adventures of a boat-load of castaways on the Pacific is told by Mark Twain; Governor Roosevelt writes of "Military Preparedness and Unpreparedness"; and a humorously gruesome piece of realistic fiction by Dr. Weir Mitchell entitled "The Autobiography of a Quack." President Eliot of Harvard resumes his occasional contributions on "The Forgotten Millions." Fiction in short story form is furnished by Abraham Cahan, Ella D'Arcy, and Seumas MacManus.

THE chief editorial topic in the AMERICAN MONTHLY REVIEW OF REVIEWS for November is the war in South Africa. In "The Progress of the World" the editor gives a full exposition of the British and Boer sides of the quarrel, respectively, and Mr. Stead contributes a character sketch of Cecil Rhodes. Mr. Frederick W. Holls contributes a carefully prepared paper on "The Results of the Peace Conference in Their Relation to the Monroe Doctrine."

"THE Real Problems of Democracy" by Franklin Smith, is the subject of the leading article in APPLETON'S POPULAR SCIENCE MONTHLY for November. Under the title "An English University," Mr. Herbert Stotesbury describes Cambridge. The curious "kissing bug" epidemic is next discussed by no less an authority than Prof. L. O. Howard, chief of the Division of Entomology at Washington. The subject of "Food Poisoning" is of the first importance to every householder, and Professor Vaughan's article on this subject is so careful a study, that every housekeeper should study it carefully. The principles of "Wireless Telegraphy" are explained and illustrated by Prof. John Trowbridge. The question of "Improvements in Theater Sanitation" is treated by William Paul Gerhard. In "The New Field Botany," Prof. Byron D. Halsted tells of the study of the surroundings of plants and their adaptation to them.

THE November NEW LIPPINCOTT contains a complete novel by Mark Lee Luther, entitled "The Livery of Honor," and deals with the capture of Burgoyne and with events in London and Cambridge which surrounded it. Almost a novel in its artistic completeness is "A Landlocked Sailor," by Sarah Orne Jewett. Of admirable papers, skillfully treated, there are the following: "The November Meteors," by Charles A. Young; "The Last Victory of 'Old Ironsides,'" by George Gibbs; "Old Age Pensions from

a Socialist's Stand-Point," by the Hon. John C. Chase, "Bal des Quat'z' Arts," by W. C. Morrow, and "An Unwritten Chapter in our Relations with Spain," by Rev. Francis S. Borton.

BOOKER T. WASHINGTON, opens the November ATLANTIC with "The Case of the Negro." Apropos of the Philippine troubles, Hugh Clifford, British resident at Pahang, Malay States, contributes a striking article, "A Lesson from the Malay States." In "The Good Government of an Empire," William Cunningham furnishes a brief and valuable exposition of the management of great colonial empires. Prof. Kuno Francke discusses Goethe's "Message to America." Elizabeth Robins Pennell discusses the rank of Van Dyke as a painter. Bradford Torrey furnishes an appreciative tribute to "The Attitude of Thoreau toward Nature." In "Some New Letters of Tourgeniev," Rosa Newmarch comments upon the recently issued correspondence between Tourgeniev and his friend Stassov. There are also a number of brilliant short stories.

WHAT SHALL WE READ?

A new collection of stories by Bret Harte has just been issued by Messrs. Houghton, Mifflin & Co., entitled *Mr. Jack Hamlin's Mediation*.[1] Bret Harte is a prince of story-tellers, and the eight tales which make up the volume are among the best which have come from his pen. Nothing could be more deliciously humorous than "An Esmeralda of Rocky Canon," and the other stories are all inimitably told.

The great trouble with all novels "written for a purpose" is, that while they depict in strongest terms the evils of our social system, they rarely, if ever, suggest a remedy. In *Henry Worthington, Idealist*,[2] Miss Margaret Sherwood has written a thoroughly enjoyable story, the theme of which is the wretched condition of the employés in our large "bargain" stores, and, incidentally, the sufferings of those who are forced to gain a livelihood in "sweater-shops." Annice Gordon, discovering that her father, who has the reputation of being an honorable merchant, is really at the head of two or three large "bargain" stores, in different cities, determines to find out for herself how the business is conducted. Taking advantage of the absence of her father, who is called away for some weeks, she enters one of these establishments as an employé. There she learns all and even more than she feared. We all know the miseries of starvation wages, and the strong colors in which Miss Sherwood paints them are perhaps none too forcible, but, alas! she offers no solution to the problem. The story is well worked up, and there is in it, of course, a love affair, which runs not smoothly, but ends satisfactorily to the two concerned.

Mr. Zangwill's new collection of Ghetto tragedies, published under the title of *They that walk in Darkness*,[1] fully maintains the high reputation of this gifted author. The stories cover a wide range, and the reader is conducted through a great variety of scene. No more vivid, and undoubtedly true to life, pen pictures of the tragedy, the poetry, and the dreams of Israel of to-day have ever been offered to the reader, and the book cannot fail to make a deep and lasting impression.

One of the most powerful and absorbingly interesting novels published of late has just been issued by the Macmillan Co. It is entitled *Miranda of the Balcony*,[2] and while the plot is by no means new, the author has used consummate skill in working up the story, and holds the reader's rapt attention to the end. The principal actors in the drama are a hero who falls in love with a supposed widow, who is the heroine, and a blackmailer, who, knowing the husband to be alive, uses his knowledge to extort money from the wife. The hero's love has the true ring, as he is willing to hunt up the missing husband, whom he restores to the wife. He has his reward, however, as the husband is, shortly after, providentially removed from these earthly scenes, and hero and heroine are happily united. The book is well worth reading, and far above the average novel.

In *Young April*[3] we have a remarkable story of a young English aristocrat, who, while traveling on the Continent, receives notice of his sudden accession to a dukedom. He still lacks one month of being of age, and he determines to enjoy these thirty days to the uttermost, before assuming the responsibilities of his new position. And surely no greater amount of romantic adventure was ever encountered in so brief a time. "For one April span life led the hero by the hand and taught him every sweet note in her gamut, from laughter to tears and from longing to ecstasy." The book is well written, and there is not a dull page in it.

A volume of short stories by Paul Bourget, translated by Miss Katherine Wormley, is a pleasing addition to the number of interesting books which have recently come to our table. It is entitled *Pastels of Men*[4] and is made up of a number of brief character sketches which are drawn by a master hand. Miss Wormley's translation is admirable, and but little of the original French flavor is lost. We commend the book to our readers as one from which they will derive much satisfaction and pleasure.

Another volume of documents illustrative of American history has been prepared by Mr. William Macdonald, under the title of *Selected Charters*.[5] It

[1] MR. JACK HAMLIN'S MEDIATION, and other stories. By Bret Harte. Houghton, Mifflin & Co. Boston and New York. 1899. Cloth. $1.25.

[2] HENRY WORTHINGTON, IDEALIST. By Margaret Sherwood. The Macmillan Co. New York. 1899. Cloth. $1.50.

[1] THEY THAT WALK IN DARKNESS. By I. Zangwill. The Macmillan Co. New York. 1899. Cloth. $1.50.

[2] MIRANDA OF THE BALCONY. By A. E. W. Mason. The Macmillan Co. New York. 1899. Cloth. $1.50.

[3] YOUNG APRIL. By Egerton Castle. The Macmillan Co. New York. 1899. Cloth. $1.50.

[4] PASTELS OF MEN. By Paul Bourget. Translated by Katherine Prescott Wormley. Little, Brown & Co. Boston, 1899. Cloth. $1.50.

[5] SELECT CHARTERS and other documents, illustrative of American History, edited with notes by William Macdonald. The Macmillan Co., New York, 1899. Cloth. $2.00.

forms a companion volume to the author's "Select Documents illustrative of the history of the United States." The Charters selected cover a period from 1606 to 1775, and the list contains the significant portions of the most important colonial charters, grants, and forms of government, and the acts of Parliament most directly affecting the American colonies. The work is a valuable contribution to historical literature and will interest all students of American history.

An interesting story of Revolutionary days comes from the press of Messrs. Houghton, Mifflin & Co., entitled *An Unknown Patriot.*[1] The scene is laid in Connecticut and a vivid description is given of the hardships and sufferings endured by the inhabitants of our sister State in the cause of liberty. There is plenty of exciting incident and dramatic situation to keep the reader's attention constantly enlisted, and at the same time a good deal of historical information is imparted.

Two Pilgrims' Progress[2] gives an account of a trip taken on a tricycle, from Florence to Rome by Joseph Pennell, the artist, and his wife. The book is charmingly written and gives one a good insight into the manner and customs of the smaller Italian cities and towns. It may well take a place beside Mrs. Dodd's "Three Normandy Inns." It is fully illustrated with pen drawings by Mr. Pennell.

NEW LAW BOOKS.

THE CIVIL LIABILITY FOR PERSONAL INJURIES ARISING OUT OF NEGLIGENCE. By HENRY F. BUSWELL. Second edition, revised and enlarged. Little, Brown & Co., Boston, 1899. Law sheep. $6.00 *net.*

Mr. Buswell's work has met with the hearty endorsement of the legal profession, and has, since its first appearance in 1893, been regarded as an authority upon the subject of which it treats. About seventeen hundred decisions have been added to this new edition, and the text of the treatise has been thoroughly revised. In its new form its value has been materially increased.

FORMS OF PLEADING IN ACTIONS FOR LEGAL OR EQUITABLE RELIEF. Vol. II. By AUSTIN ABBOTT, LL.D. Completed for publication after his death by CARLOS C. ALDEN, LL.M., of the New York Bar. Baker, Voorhis & Co., New York, 1899. Two vols. Law sheep. $13.00 *net.*

This volume completes the long-promised work of Dr. Abbott, a work upon which he had been engaged continuously for several years before his death. It has been prepared with especial reference to the codes of proceeding of the various States, and adapted to the present practice in many common law States. Its preparation involved an enormous amount of patient labor and closest research, and as a result we have what is probably the most comprehensive and complete collection of forms of pleading ever published. It fully maintains the high reputation of its distinguished author, and is invaluable to the practising lawyer.

THE CLERK'S AND CONVEYANCER'S ASSISTANT. A collection of forms of conveyancing, contracts, and legal proceedings, with copious instructions, explanations and authorities. By BENJ. V. ABBOTT and AUSTIN ABBOTT. Second edition, revised and enlarged by CLARENCE F. BIRDSEYE of the New York Bar. Baker, Voorhis & Co., New York, 1899. Law Sheep. $6.00 *net.*

This work, which was originally published in 1866, has always been recognized as a standard book of forms for contracts, deeds, cases, wills, and other legal documents. In this new edition the entire work has been revised, and many new and valuable forms added. It is now adapted to the present state of the law, and is intended for use in all parts of the country. It is a work which should find a place in every lawyer's library.

QUESTIONS AND ANSWERS FOR BAR-EXAMINATION REVIEW. By CHARLES S. HAIGHT of the New York Bar and ARTHUR M. MARSH of the Connecticut Bar. Baker, Voorhis & Co., New York, 1899. Law canvas. $3.75 *net.*

Law students about to apply for admission to the bar will find this work a valuable assistant in their preparation for examination.

In many of the previous books, old examination papers have been largely relied upon in choosing the questions to be treated, and in some cases that plan has been so far followed that only questions have been discussed which have actually been put by some examining board. The result of such a system was that all of the principles of the law upon which former examiners had not touched, were entirely ignored, and the book was practically useless if a new board of examiners saw fit to prepare new questions. In the present work, however, such a plan has been carefully avoided, and the different subjects of the law have been treated in the same logical way for review that they would originally be studied by the student. By this method of treatment the whole ground has been covered, and the book has thus been made as valuable for use in one State as another, and students of any law school may use the book with equal advantage, no matter at what bar they are seeking admission. A radical change has also been made in the form of questions asked, and the present book is the only one of the kind which requires the application of legal principles to a statement of facts given in the question. The work thus meets the requirements of students, in view of the marked change in this respect in the nature of the questions now asked by bar examiners.

[1] AN UNKNOWN PATRIOT. A story of the Secret Service. By Frank Samuel Child. Houghton, Mifflin & Co., Boston and New York. 1899. Cloth. $1.25.

[2] TWO PILGRIMS' PROGRESS. from fair Florence to the eternal city of Rome. By Joseph and Elizabeth Robins Pennell. Little, Brown & Co. Boston. 1899. Cloth. $1.50.