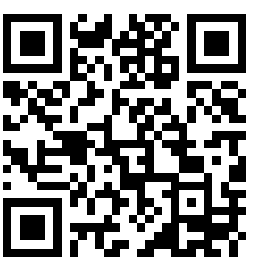

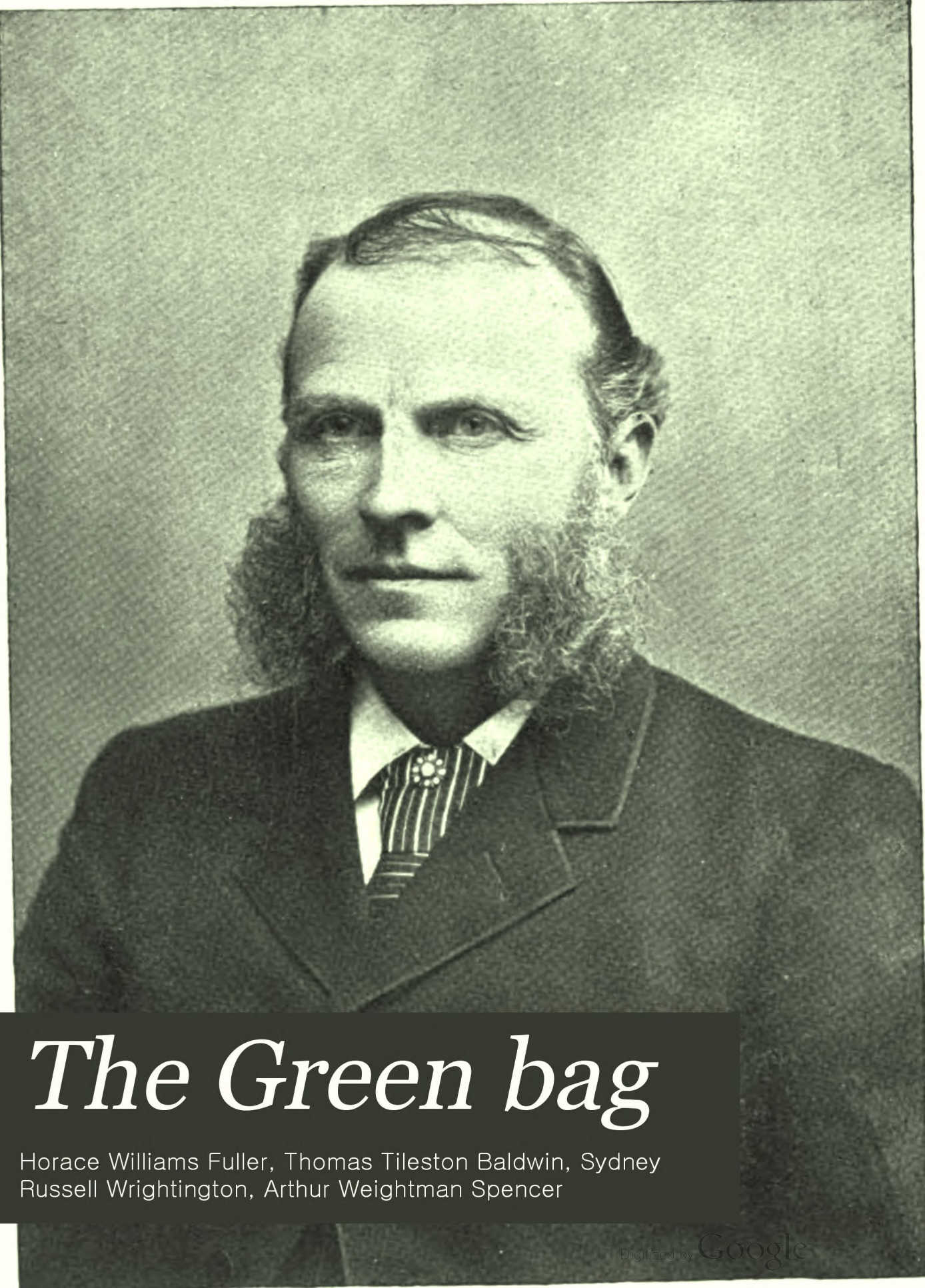

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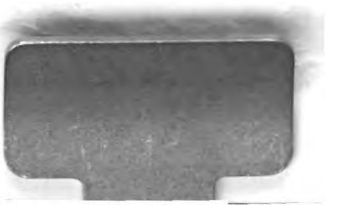

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EDITED BY HORACE W. FULLER

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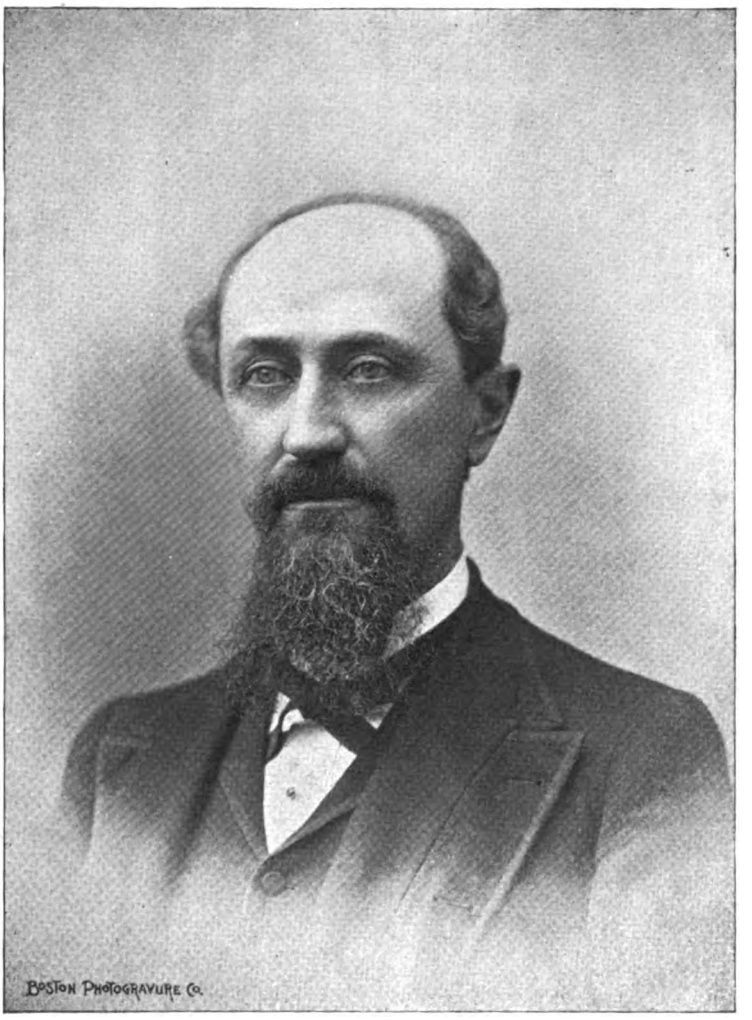

David J. Brewer

The Green Bag.

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DAVID JOSIAH BREWER.

BY HON. ALBERT H. HORTON.

DAVID JOSIAH BREWER, recently appointed by the President an Associate Justice of the Supreme Court of the United States to fill the vacancy caused by the death of Mr. Justice Matthews, was born in Smyrna, Asia Minor, June 20, 1837. His father, Rev. Josiah Brewer, was a missionary to the Greeks in Turkey at the time of his birth, but returned to this country when his son was three years old. His mother, Emilia Field Brewer, was a sister of David Dudley, Cyrus W. and Stephen J. Field, — the latter one of the senior Justices of the Supreme Court of the United States. For the first time in the history of that court, it will therefore contain an uncle and a nephew.

The subject of this sketch commenced his collegiate studies at the Wesleyan University at Middletown, Conn., but subsequently entered the junior class at Yale College, New Haven, Conn., from which he graduated with high honors in 1856. He completed his law studies at the Albany Law School, from which he graduated in 1858. He then went West, spent a few months in Kansas City, and then journeyed farther west, up the Arkansas River to Pike's Peak. He remained in Colorado until the following June, when he returned to Kansas, and after a short visit to his Eastern home, settled, Sept. 13, 1859, at Leavenworth, Kan., where he has since resided. He at once took a front rank in his profession. In 1861 he was appointed United States Commissioner; in 1862 he was elected Judge of the Probate and Criminal Courts of Leavenworth County; in 1864 he was elected Judge of the District Court for the First Judicial District of the State of Kansas; in 1868 he was elected County Attorney of his county; in 1870 he was elected a Justice of the Supreme Court of Kansas, and re-elected to the same position in 1876 and again in 1882. In April, 1884, he was appointed by President Arthur, United States Circuit Judge for the Eighth Circuit, which then included Minnesota, Iowa, Nebraska, Kansas, Colorado, Missouri, and Arkansas; recently the two Dakotas have been added to it.

Judge Brewer was married, Oct. 3, 1861, to Miss Louise R. Landen, of Burlington, Vt. They have four daughters, — Harriet E., Etta L., Fannie A., and Jennie E. The oldest, Harriet E., was recently married to Aaron P. Jetmore, Esq., a young lawyer of ability and merit residing in Topeka, Kan. Misses Fannie A. and Jennie E. are finishing their education at a Ladies' Institute in Detroit, Mich. Miss Etta L. Brewer is at home.

Judge Brewer has always taken a lively interest in educational matters. He is a popular speaker before Teachers' Associations and Lyceums, and also upon Commencement days. He has been for many years an active member of the Congregational Church in Leavenworth, and is a regular attendant upon religious services. He possesses quick perceptive faculties, and works with great facility and ease. He has discharged all the duties of his various judicial positions with untiring industry, acknowledged ability, and recognized im-

partiality. He has great executive ability, and is very energetic in the despatch of business. He is a cultivated, courteous, and Christian gentleman, with all that these terms imply. He has social qualities of a high order, being genial, companionable, and an expert story-teller. He is possessed of a vigorous constitution, is in excellent health, and capable of performing the severest literary or judicial labor. As a scholar, as a lawyer, and as a jurist, he ranks among the very ablest in the great West. If he carries with him to Washington his Kansas habits of early rising, he will surprise his associates upon the bench, as he is often found in his library reading court papers or preparing an opinion in an important case as early as six A. M.

Judge Brewer was not an applicant for the position to which he has been chosen. Several prominent members of the bar of his circuit suggested to him, after the death of Mr. Justice Matthews, that he should be a candidate for the vacancy. He declined, and said "that the office was not one to be contested for, being too high and sacred." Notwithstanding his positive refusal to make any effort to be placed upon the Supreme Bench, his eminent qualifications for the place were called to the attention of the President by many distinguished members of the bar and bench both in the East and West. It is widely reported that he was largely assisted in securing his promotion through an act of courtesy and generosity on his own part.

The choice lay, finally, between him and Judge Henry B. Brown, of Michigan. The two men had been classmates at Yale. Judge Brewer wrote a letter to a mutual friend, highly praising his old college-chum and expressing the hope that he would secure the appointment. This letter found its way to the President, as a recommendation for Brown; and its fairness so impressed the President that he appointed Brewer.

The new Justice is notably fitted by character, temperament, learning, industry, and experience, to be a member of the highest judicial tribunal of the nation, and his appointment is distinctly one that will strengthen the Supreme Bench.

PUNISHMENT IN EFFIGY.

IN the earlier stages of civilization, the effigy of a person was never held to be a mere likeness, but was identified more or less with the very person himself. The least educated classes in civilized countries still exhibit a survival of the old belief in the punishments they bestow upon effigies. They serve the figure as they would like to serve the original, if he were not dead or absent. There was probably much of this temper in our English forefathers when they first burned Guy Fawkes; the 5th of November was no mere day of amusement. It is in this temper, mixing religious conviction and pleasure, that the effigy of Judas is so severely punished in Holy Week by the nations of southern Europe and their descendants in America.

Execution by effigy seems to the practical minds of the English (as it did to the Romans) too puerile to be used by a serious nation. We should find no satisfaction for our own indignation, and see no indication of the majesty of our law, in punishing a criminal's picture, because we could not punish the criminal himself. The French, however, have always treated symbols with gravity; the defacing of the portraits of the last emperor, and the destruction of the Vendôme Column were forms of effigy punishment. Execution by effigy was a solemn legal institution in France prior to the first Revolution. It was

treated of at length, some thirty years before its suppression, by M. Boucher d'Argis. He attempted to find its origin in the custom (mentioned by Plutarch) of sometimes substituting a proxy effigy for the person destined to be sacrificed at a triumph. He says that some execution by effigy was used by the ancient Greeks; but the Greek punishment of *Stele*, to which he probably refers, consisted simply in engraving the name and the offence of the criminal in large letters upon a pillar.

The French law vindicated its outraged honor upon the effigy of a criminal in cases of contumacy, that is, when the criminal absented himself or took to flight. It is not impossible that the condemned sometimes secreted himself in the crowd, and saw with comical relief his picture or his doll suffering in his stead. The usage first appeared in France in the time of Louis VI., at the beginning of the twelfth century; and the most ancient example we have of such an execution is that of Thomas de Marne, the foe of the bishops, whom this royal favorite of the Church condemned for the crime of high treason. Passing over some centuries, we find in the *Ordonnance Criminelle* of 1670, an attempt to regulate these histrionic executions. Punishments in effigy were only to be permitted when the criminal was condemned to death; when he was condemned to the galleys, perpetual banishment, the whip, or the wheel, but could not be got at, his name only was to be written on a ticket, and fastened up in some public place, to put the people in mind of his crime, and make him infamous. When the criminal was condemned to death, but had managed to escape from the grasp of the law, the arrest and punishment of the guilty seem to have been ludicrously carried out from point to point with his effigy. The "guy," as we should call it, of the defaulter was incarcerated in the prison; the executioner solemnly entered its cell with an escort and all the apparatus of punishment; the picture or doll was given up to him, and it was led to the place of punishment with pomp and circumstance, and made to undergo the fate intended for the fortunate deserter whom it represented. Whether or not the *Ordonnance* restricted the effigy to a single counterfeit presentment, it is certain that before this regulation effigies had been multiplied to a considerable extent. Thus, the Duke of La Villette, who was condemned to the block in 1639, was beheaded in effigy in three different cities on the same day — Paris, Bordeaux, and Bayonne. The criminal himself was all the while safe in England.

Although the Revolution abolished the legal executions by effigy, popular animosity still continued to visit its dislike of its contemporary enemies upon their images. Burnings and hangings of stuffed dolls became parts of the programme of the festivals of the Republic.

Popular vengeance upon the effigies of the unpopular always appears with the regularity of a law in epochs of unusual excitement, and even in the most enlightened countries we have striking instances of the absurd length to which political or religious frenzy will carry a usually sober-minded and intelligent population. The moral of this punishment by effigy is indicated about as distinctly as is possible in the argumentation of the citizen of Utica who visited Artemas Ward's show: "He walks up to the cage containin' my wax figgers of the Lord's Supper, and ceases Judas Iscariot by the feet and drags him on the ground. He then commenced fur to pound him as hard as he cood. 'What onder the son are you about?' cried I. Sez he: 'What did you bring this pussylanermus cuss here for?' and he hit the wax figger another tremenjus blow on the hed. Sez I: 'You egrejus ass, that air's a wax figger, a reprensentashun of the false Postle.' Sez he: 'That's all very well fur you to say; but I tell you, old man, that Judas Iscarrot can't show hisself in Utiky with impunity!' — with which observashun he caved in Judassis hed."

SLANDER IN THE MIDDLE AGES.

By Prof. F. W. Maitland.

IT seems to be a common opinion that English mediæval law gave no remedy for slander or libel. For his soul's salvation the defamer might indeed be chastened by the ecclesiastical courts; but they could give no damages to the defamed, and the pleasure, such as it is, of seeing one's adversary doing penance in a white sheet can hardly be reckoned as a legal remedy for the wrong that he has done, the pecuniary loss that he has very possibly occasioned. A great deal might be said in support of this opinion. In the first place the silence of the Year Books, save just the last,[1] is very significant; nor can we argue that men may well have brought actions for defamation without raising any points of law that were thought worthy of being reported, for soon after the Year Books have come to an end the reports begin to teem with such actions. Add to this that the law as we see it in these reports seems very young and unsettled; the courts are only beginning to draw those distinctions between slander and libel, between "words that are actionable per se" and "words that are actionable with special damage," which become the main outlines of the law of later days, and they seem to be much troubled by the notion that many kinds of defamatory imputations are "merely spiritual," and are within the legitimate province of the Courts Christian. The statutes about "scandalum magnatum," again, cannot be appealed to as showing that an invasion of the right to one's good name has been regarded as an actionable tort; they protect none but the great men, and seem to be directed rather against sedition and turbulence than against ordinary defamation. Once more, when the action for defamation does appear, it is an action on the special case, "an action on the case for words," and from this we might infer that it was a comparatively new action; the Chancery had not among its old formulas any that would meet the very common case of one who has suffered from a slander.

Then, again, if we will go back to remote times we may read the very curious case of *Vesey* v. *Fitz Thomas*, which fills a large space on the Parliament Rolls of 1294 and 1295.[1] William de Vesey brought an action for defamation (*super diffamatione*) against John Fitz Thomas before the king's Council in Ireland. The defamation consisted of a charge of treason lodged by Fitz Thomas against Vesey before the king's Council in England. Fitz Thomas did not admit that he had done exactly what Vesey charged him with doing, but added that if pressed he had more to say. Thereupon he proceeded to charge Vesey with having spoken certain treasonable words about the king, saying among other things that King Edward was the most cowardly knight of his realm. Vesey then gave the lie to Fitz Thomas as to a false traitor, and offered to defend by his body. Thus the action for slander seems to have been converted into an appeal of treason. The battle was waged, but before it was fought the king caused the record to be removed from Ireland to England, where, after many delays, the whole process was annulled by the king and Council as full of errors. The first and foremost of these errors was that the case had begun with a charge of defamation, "and it is not used in this realm that pleas of defamation should be pleaded in the king's court ('non sit usitatum in regno isto placitare in curia Regis placita de defamationibus')." Doubtless there were many good reasons of policy why Vesey and Fitz

[1] Year Book, 27 Hen. VIII. f. 11, 14.

[1] Rolls of Parliament, i. 127, 132.

Thomas should not be allowed to fight a duel and the quarrel should be appeased; still, here we seem to have a good round statement of law; it is not customary for the king's court to entertain a plea of defamation. Not that defamation is no wrong; the possibility of such things as *placita de defamationibus* seems admitted, but king's court is not wont to entertain them.

How are we to explain all this? Are we to say that our rude forefathers were so rude that they did not much mind each other's rudeness? Such an explanation would have to fight against an army of facts. The rudest monument of barbarian law, the Lex Salica itself, deals severely with those who give bad names,[1] such as "wolf" or "hare." Say of a man that he has thrown his shield away and fail to prove your charge; you must pay for it. Call a woman "meretrix" and fail to prove your charge; you must pay forty-five shillings for it, and you may do a good deal of miscellaneous violence at a cheaper rate. Indeed, there is much to show that reputation is dear to barbarians. When we look at the pleadings in our local courts, those courts in which old formulas lingered longest, we find that shame, disgrace, dishonor, is regarded as one of the elements in every or almost every cause of action. If the defendant has beaten the plaintiff, this was done to the plaintiff's damage (Lat. "dampnum;" Fr. "damage") to the amount of so many shillings, and to his dishonor (Lat. "vituperium, dedecus, pudor;" Fr. "huntage") to the amount of so many shillings; nay, even when the cause of action is the mere detention of a debt, the plaintiff claims satisfaction not merely for damage suffered but for honor wounded. So widespread was this mode of pleading in the local courts that we may be surprised that it never prevailed in the king's courts, or became extinct there at an early date.

Now, we might argue, *a priori*, that courts which could see "huntage" in every wrong must in all probability have had some remedy for the slandered. But we are not driven to argue about this matter. On manorial rolls of the thirteenth and fourteenth centuries proceedings founded on defamation are common. Sometimes such proceedings might be described as exercises of the police power of the court; bad language, like misplaced dunghills, is presented by the jurors and punished by amercements. But in other cases we have regular civil actions.

Some such cases have lately been put into print;[1] I could give many more examples. A few taken from the rolls of the Bishop of Ely's court at Littleport, which rolls have been kindly lent me by Mr. O. C. Pell, may suffice. All these entries belong to the time between 1307 and 1327.

"It is found by inquest that Rose Bindebere called Ralph Bolay 'latro' and that he called her 'meretrix.' Therefore both are in mercy. And because the trespass done to the said Ralph exceeds the trespass done to the said Rose, it is considered that the said Ralph do recover from the said Rose 12*d.* for his taxed damages."

"It is found by inquest that Alice wife of William Huckster defamed Mabel wife of Richard Mauntele, whereby the said Mabel was put to loss in the chapter [i. e. the ecclesiastical court] to the damage of Richard and Mabel 40*d.*

"It is found by inquest that Richard Mauntele [amerced 2*s.*] and William of Helgeye [amerced 12*d.*] have falsely and maliciously defamed the lord's court here, by saying that no one can obtain justice in the said court, in contempt of the lord."

"From Alice Bale 3*d.* because she defamed the lord's corn, whereby other purchasers forbore to buy the lord's corn to the lord's damage."

"It is found by inquest that Richard Maunteley and Maud his wife committed a trespass against John of Gunton and Alice his wife, by charging them with having sold oats and beer by false measure, to their damage taxed at 6*d.*"

[1] Lex Salica, tit. 30, Hessels and Kern, col. 181.

[1] Select Pleas in Manorial Courts (Selden Society), 19, 36, 82, 95, 109, 116, 143, 170.

"It is found by inquest that John Curteys and John Gardhaut have defamed the sedge of Hugh Beld in the fen,[1] whereby the said Hugh has lost the sale of the said sedge, to his damage taxed at 2*s*."

But the most curious and instructive extract that I can put in evidence consists of a hypothetical case found in a book of precedents for pleadings in manorial courts. This book — of which several manuscripts are extant, at the British Museum and in our Cambridge Library — can hardly, as it seems to me, be of much younger date than the beginning of the fourteenth century; it certainly ought to be in print. The point of the following case is that the defendant omits from his plea certain essential words. He denies the charge as against the plaintiff, but forgets that he must also deny it as against the plaintiff's suit, — the body of persons who, either in very truth or perhaps at this time by fiction, have appeared and expressed their willingness to support the plaintiff's claim. A point of law being thus raised, the lord's steward who is presiding over the court proceeds to consult the suitors of the court who are still acting as "judicatores," or "doomsmen." The original precedent is in French, but I will venture to put it into English.

"**Of defamation.** Sir Steward, William of Weston, who is here, complaineth of John of M., who is there, that against the lord's peace hath he defamed him in divers places to divers good folk of the country and his free lawfulness ('leauté') hath blemished insomuch that he called him thief and lawlessman ('deleaus')[2] and whatever entered his head save only his right name, by reason whereof he is deemed such as he ought not and is not wont to be, to his damages of 40*s*. and shame of 20*s*. If confess, etc.[1]

"Tort and force, defendeth John, who is here, against W[illiam,] who is there, and the defamation and the damages of 40*s*. and every penny thereof and all that he surmiseth against him; and ready is he to acquit himself in all such wise as this court shall award that acquit himself he ought.

"'Fair friends,' (saith the steward,) 'retire ye; for the court will consider.'

"'Willingly, Sir.'

"'Fair Sirs,' (saith the steward,) 'ye who are of this court, how seemeth it to you that John hath defended this?'

"'Sir,' (saith one Henry of C.,) 'it seemeth to us that he hath defended himself as he ought against William, but not against his suit; therefore as thou give them thy opinion.'

"'Fair friend John,' (saith the steward,) 'thou hast answered in this court to William of Weston touching a defamation whereby thou hast blemished his lawfulness and his person in divers manners and in divers places and to divers good folk and in full market, and thou hast answered him by the words of court on these points according to the usage of the court, save only that thou hast not defended against his suit as thou oughtest to have done, since thou shouldest have said more, namely, against William and against his suit and all that he surmiseth; and therefore doth this court award that thou make amends to W[illiam] in love by the award of good folk, and that thou be in mercy against the lord.'"

After this it will hardly be doubted that our mediæval law knew the action for defamation perfectly well. The king's courts, it may be true, did not entertain, or at all events did not usually entertain, such actions. They had got shut out from those courts by the premature rigidity of the writ system. But a denial of remedy in the king's court was, in the thirteenth and even in the fourteenth century, no denial of a right. There were plenty of other courts;

[1] Littleport is in the Cambridgeshire fen; the inhabitants seem to have made profit by selling sedge (*leschia*).

[2] One can hardly tell whether to construe "leauté" and "deleaus" by *lawfulness* and *lawless*, or by *loyalty* and *disloyal*, for at this time the French words seem to be hovering between the two meanings. But I think that John must be taken to have imputed to William that he was not "a good and lawful man," possibly that he was a "lawlessman" in the old sense, i. e. an outlaw.

[1] The full formula is, "If confess he will, well and good it is. If deny he will, tortiously he denies, for we have here suit good and sufficient."

and only as the old local courts fell into decay did denial of remedy at Westminster come to be equivalent to denial of right. This may serve to explain why at a very early time and in exceptional circumstances we do come across an action for slander in one of the king's courts. Prynne unearthed from an Exchequer roll of 1265 an entry which when Englished runs as follows: —

"Richard of Chesterford, a clerk of the Receipt of the Exchequer, complains that Bonenfant, a Jew of Exeter, on such a day, in the presence of the clerks, serjeants, and other ministers of the Exchequer, spoke to him opprobrious and contumelious words, charging him with being a falsifier of the king's rolls; and this he said to his shame and damage which he would not have suffered for £100."[1]

This certainly looks like a count in slander. The Jew, making no effectual defence, was adjudged to be in mercy and to make satisfaction to Richard for the trespass ("de transgressione prædicta"). Here the words seem to have been spoken in the Exchequer, and had not the plaintiff been an officer of the Exchequer, that court would not have been the proper tribunal for his action; still, the cause of action seems to have been defamation, though aggravated it may be by a contempt of court.

The opinion, then, which I venture to submit to readers of the "Green Bag" is that from a very remote time — in the face of the Lex Salica, who shall say how remote? — defamation was an actionable wrong. During the period when the jurisdiction of the king's courts was being rapidly extended by means of newly invented writs, those courts gave no remedy, for the right was quite adequately protected by the local courts, feudal and communal. Some centuries afterwards these local courts had fallen into decay, chiefly because most of their business had been taken away from them by the royal courts. Then the royal courts had to take upon themselves the protection of character, and found some difficulty in doing so. The time was past when a new form of action could be created without statute, and their new duty they had to discharge by means of an action on the special case. Meanwhile the ecclesiastical courts, which from a remote time had corrected the slanderer for his soul's health, had, owing to the decay of the local courts, come to be regarded as having, in some sort, an exclusive right to deal with defamation, and the king's courts had some difficulty in establishing a distinction between slanders that are "merely spiritual" and those that are temporal, — a distinction to which some of the curiosities of our modern law may be traced. The imputation conveyed by the word "meretrix" is, we are told, "merely spiritual;" but the manorial rolls are full of proofs that during the Middle Ages that word had unpleasant temporal results for him who used it.

[1] Animadversions on Coke's Fourth Institute, p. 58, citing the Exchequer Memoranda for Mich. 50 Hen. III.

F. L. WHITE vs. J. P. LANG.

(128 Mass. 598.)

By Austin A. Martin.

[*If a person, while unlawfully travelling on the Lord's day, is injured by the assault of a dog, the act of travelling is not a contributory cause of the injury, and he can maintain an action against the owner of the dog, under the Gen. Stats., chap.* 88, § 59, *to recover double the amount of damage sustained.*]

IT was a peaceful Sabbath day,
The long week's work was done,
And F. L. White, with his smart nag,
Was driving round *for fun;*
No deed of charity, or e'en
Of needful work, his aim, I ween

Swift fly the rolling buggy-wheels,
White deftly plies the lash;
A pardonable pride he feels,
To think he cuts a dash.
Alas! brave White, you did not know,
E'en buggy-riding has its woe.

Now J. P. Lang a dog possessed,
As many dogs you find,
Whose bounden duty thought it was,
To bark at all mankind, —
To bark and growl, and eke to bite
Each passing steed or luckless wight.

The dog, he is the friend of man, —
Poets have sung his praise,
Llewellyn to his noble hound
A monument did raise, —
But yet, sound thinkers firmly feel,
The dog *may* show excess of zeal.

But to our tale. The dog of Lang
Rushed forth with dreadful roar.
Swift at the horse's head he sprang;
Away the courser tore,
The buggy dashed upon the ground,
And dire ruin spread around.

Then White good counsel did procure,
  Commenced a suit in tort,
And prayed for judgment swift and sure,
  In the Superior Court;
The damage done, doth also pray
That J. P. Lang twofold must pay.

"Not so," defendant cries with spite;
  "Whate'er your rights *might* be,
You are a Sabbath-breaking wight,
  No cash you 'll get from me.
The law doth clear and surely say,
On Sunday you sha'n't work or play."

"That naught avails," retorted White;
  "For, sinner though I be,
To punish me with canine bite
  Is not allowed to thee.
Go to! thou overweening elf,
I 'll answer for my sins myself.

"'T was no contributory cause,
  That on that Sabbath day
I drove for pleasure with my horse,
  About the streets so gay;
On *any* day dog's bark or bite
My high-bred courser would affright."

This view the learned Court sustained,
  To plaintiff's great delight;
Defendant, too, was deeply pained
  To lose his shekels bright,
To serve brave White, if need befall,
Promptly to pay his fine withal.

In foro conscientiæ,
  Or e'en in Police Court,
May Sabbath-breakers punished be,
  And good behavior taught;
But they have rights which must, I ken,
Respected be by dogs and men.

WOMEN LAWYERS IN THE UNITED STATES.

By Lelia J. Robinson, LL.B.

THIS is an era of experimental philosophy. New departures of every kind have been taken in all directions, physical, mental, and moral, many of which must lead their followers entirely away from the broad paths, smooth-trodden by the myriad feet of custom through the ages, into fields unknown, perhaps to gracious heights beyond, and possibly into pitfalls and quagmires; and of all nineteenth-century novelties, there is probably no one that would have amazed our good ancestors of a century ago more than the woman lawyer as she exists to-day.

Not that she is, strictly speaking, a new invention. The oft-quoted proverb, "There is nothing new under the sun," has been well verified in this respect by the valuable brochure entitled "La Femme Avocat," which was recently published in Brussels by Dr. Louis Frank, an advocate at the bar of that city, in view of the application of Mlle. Marie Popelin, in September, 1888, for admission to the Order of Advocates. An able translation of this pamphlet by Miss Mary A. Greene of the Suffolk Bar, Massachusetts, has been running for the past year in serial form in the "Chicago Law Times," and has made us all familiar with the litigious Calphurnia, upon whose ancient shoulders seems to have been thrown all the burden of woman's legal inferiority since the old Roman days, when she made herself obnoxious. "The forwardness of Calphurnia appeared to all the ancient jurists a peremptory reason for excluding women from the forum," says Dr. Frank; and his citations from legal authorities in many countries prove him quite correct. Eve plucked the apple and shared it with Adam; Calphurnia argued loud and long, and occasionally won cases which presumably some man lost. The race of women ever since has borne the yoke of these wickednesses. Sisters in the law, one and all, let us take heed that we walk not in Calphurnia's footsteps, thereby becoming a hindrance and a stumbling-block to those that shall follow us!

In various countries and at different times since the ill-fated Calphurnian epoch, a very few women have been noted students of law, and one or two Italian ladies lectured and taught in some legal branches; but it remained for the United States to inaugurate the era of the woman lawyer of to-day. And this was so short a time ago, — for the woman lawyer in the abstract has not yet attained her majority, — that the novelty of her very existence has scarcely begun to wear off, and the newspapers publish and republish little floating items about women lawyers along with those of the latest sea-serpent, the popular idea seeming to be that the one is about as real as the other.

I have often been asked how many women there are in the law, and until the returns came in from a somewhat extended system of correspondence which I started a few weeks ago for the purpose of gathering material for this article, I had to give very vague replies; for though I have preserved every scrap of information which I could gather on the subject for a dozen years past, this gave me only a mass of unreliable data. Another difficulty in the way of a direct reply to this question is the fact that many women who have studied law, who have taken degrees in law, or who have been admitted to the bar, are not at the present time in active practice, owing to a variety of reasons; yet as we do not cease to regard as a lawyer the politician who spends his days at Washington in his country's service, so neither should the woman who has temporarily or even permanently abandoned the office and the court-room for the platform or the nursery, thereby lose recognition as a lawyer. One of the things

to be said in defence of the woman lawyer, indeed, is that she exists to quite as numerical a degree in the married state as in that of single-blessedness; so that it cannot be charged against her, any more than it can against the college girl of the period, that she does not marry. Perhaps a majority of the married women lawyers, however, were wives before they began the study of law, many of them studying in their husbands' offices; while in several instances a young couple has entered law-school and taken the entire course together, as will be shown later on in this paper.

MARILLA M. RICKER.

Webster's first definition of a lawyer is: "One versed in the laws, or a practitioner of law." And inasmuch as lawyers of both sexes who have studied but have not followed the profession in practice are liable to resume it at any time, and as it seems of interest to know how many women have studied law to the point of a degree or of admission to the bar, as well as the number of actual practitioners, I have opened up a line of inquiries intended to secure the names at least of all such women in the country. But as many addresses have been lost, especially by means of the somewhat inconvenient custom of changing a woman's name at marriage, and as it is a very difficult matter to get trace of women who have lately studied in offices and been quietly admitted to the bar in States where such an occurrence is no longer so rare as to create any sensation, the list must necessarily be more or less incomplete. Many of the most interesting letters which I have received have come to me from ladies whose names I only secured by accident and at the last moment of my investigations.

My first move was to send a circular letter to the Deans of the principal law-schools, asking whether any women had ever been enrolled as students in these schools, or would be so enrolled on application, and for names and addresses of women graduates. To all these letters, save two, prompt and courteous responses were received, containing the desired information; and as the question where women may study law is pertinent to that of women in law, I will refer from time to time to the facts contained in these letters.

From the Southern schools to which I wrote, only one responded in favor of co-education in law. The Cumberland University Law School of Lebanon, Tenn., the Law Department of the Washington and Lee University in Lexington, Va., and the Law Department of the University of Virginia, do not admit women as students. It is possible that the time may not be far distant, however, when women will not be refused admission to the law schools of Virginia, for even now a woman is knocking at the bar of that State for admission. Mrs. Annie Smith, wife of P A. L. Smith, Esq., an attorney in Danville, Va., has studied law the past two years and a half

in her husband's office. Last July she applied to the Corporation Judge of Danville for the necessary certificate to enable her to be examined for admission to the bar, but her application was refused on the ground that a special statute would have to be enacted before a woman could be admitted to practise law in that State. Mr. and Mrs. Smith propose to lay the matter before the Legislature this December, and possibly before this article gets to press news may arrive that the desired legislation has been enacted.

Widely different from the decision of the Virginia judge just referred to was that of the Supreme Court of the neighboring State of North Carolina, in 1878, when Miss Tabitha A. Holton, of Dobson in that State, appeared before them for examination and admission to the bar. Miss Holton (as a letter from her brother, with whom she was afterwards associated in practice, informs me), having lost her mother in early childhood, was thrown much into the company of her brothers (three of whom are now practising attorneys in North Carolina), and with them she read law under the instruction of their father, the Rev. Quinton Holton. Her taste for the study grew with what it fed on ; and no obstacle was put in her way, for the court examined her, and on the 8th of January, 1878, duly granted her a license. She practised in association with her brother, Samuel L. Holton, devoting herself chiefly to office work, until a short time before her death, which occurred in June, 1886.

There can be no better place than the present, perhaps, in which to speak of the other State in which is now pending an application by a woman for admission to the bar. The North and the South march together in this, for the State that is keeping step with Virginia is New Hampshire, — or perhaps I should rather say that the two States are running a race, which shall first admit the woman who has applied for a license to practise law.

Mrs. Marilla M. Ricker, of Dover, N. H., has for a number of years been a resident of the District of Columbia, where she was admitted to the bar in May, 1882, after four years' study in a law office. She was in practice there until some three years since, appearing as counsel in some important cases, — among them the famous Star Route trial, where she represented Dorsey, one of the defendants, and the test case whether a barber could keep open shop on Sunday. She was appointed commissioner and examiner in Chancery by the Supreme Court of the District, and several cases were heard before her. Her special interest, however, is in the defence of criminals, and she has been known as "the prisoners' friend." On Mrs. Ricker's return to her home in New Hampshire recently, she made application for admission to the bar there. Her petition came up for a hearing before the Supreme Court of that State, a few days previous to the present writing, and she made an argument in support of her brief, followed by myself on a point of construction which she had not fully covered. The court reserved the question for consideration, but a decision may be looked for at any time. Her argument for admission rests chiefly on the decision upon the similar application of Miss Hall of Connecticut in 1882, which will be referred to later on ; and the principal obstacle in her way is the unfavorable Massachusetts decision in my own case in 1881.

Among other prominent law schools which do not admit women as students are those of Harvard, Columbia, and Yale. One woman, however, does wear the honors of the degree of Bachelor of Laws as conferred by Yale. This is Miss Alice R. Jordan, now Mrs. Blake, who, after a year of study in the law school of Michigan University and admission to the bar of Michigan in June, 1885, entered the law school at Yale in the fall of the same year, and graduated at the close of the course with the degree as already stated. Since that time she has mar-

ried, and has not practised as yet because she has been travelling most of the time; but to my question whether she intends to practise, she replies, "Yes; my husband is a lawyer, and the profession is to be our future life." Their home is in the beautiful city of Seattle, in Washington. Dean Wayland, of Yale Law School, sends me a catalogue of the University, and writes that "the marked paragraph on page 25 is intended to prevent a repetition of the Jordan incident." The paragraph referred to appears on the page devoted to departments of instruction, and reads as follows: —

"It is to be understood that the courses of instruction above described are open to persons of the male sex only, except where both sexes are specifically included."

MYRA BRADWELL.

The Southern law school to which I have referred, as an exception to the rule against the admission of women as students, is located as much West as South, and it is undoubtedly owing to the Western spirit of liberality that women have ever been recognized at the bar in this country at all. The Law Department of Washington University in St. Louis, Mo., was always open to both sexes without distinction. The first woman to enter as a student was Miss Lemma Barkaloo, of Brooklyn, N. Y., who had been refused admission to the Law School of Columbia. She entered the St. Louis School in the fall of 1869, but probably did not take a full course, as her name is not found on the rolls as a graduate. She was admitted to the bar of the Supreme Court of Missouri in March, 1870; and I learn from an article on "Admission of Women to the Bar," by Miss Ellen A. Martin, published in the initial number of the "Chicago Law Times," that Miss Barkaloo was the first woman in this country to try a case in court. She died of typhoid fever in September, 1870. In 1869, also, Miss Phebe W. Couzins, of St. Louis, entered this law school, graduated in May, 1871, and was immediately admitted to the bar, but I understand that she has never practised. For some time, however, she acted as deputy under her father, who was United States Marshal, and at his death she was appointed to fill the unexpired term as marshal. She has also been well known as a public speaker and lecturer. Another woman, Miss A. E. P. McAlister of St. Louis, attended the school in 1886–1887.

But though Miss Couzins graduated in 1871, there were two women ahead of her, — one by a year, the other by a couple of months. The palm of seniority in this new departure of conferring a degree for a regular course of legal study upon a woman must be awarded to the Union Law College of Chicago, and Chicago is altogether the banner city in the number of its women lawyers as well. Dean Henry Booth of this college sends me the names of women graduates as ten in number, and adds that some

five or six others have been in the school at different times. The first woman to graduate was Mrs. Ada H. Kepley, of Effingham, Ill., who took her degree in June, 1870, having previously studied in her husband's office. She was not admitted to the bar at that time, the adverse decision in Mrs. Bradwell's case (which will be referred to later on) barring the way against her; but in 1881 she was given her license, and has practised to some extent, having good success with all that she has attempted. Her most active efforts have been given to temperance work. Miss Alice D. Merrill, of Chicago, was the next woman to graduate, in 1878, but of her I can learn nothing. Neither do I hear from Miss Phebe M. Bartlett, also of Chicago, who graduated in 1880.

Miss Bessie Bradwell, of the same city, graduated in 1882, being chosen orator of her class for the commencement exercises, and was admitted to the bar. This young lady is one of a legal family. To quote from an article in a Western paper: — "Through ex-Judge James B. Bradwell, the family of which he is head achieved legal distinction. Through Myra, his wife, it attained legal celebrity." Mrs. Bradwell studied law under her husband's instruction, and in August, 1869, she passed the examination for the Chicago Bar, but admission was refused her on the ground of sex.[1] On a writ of error, the case was taken up to the U. S. Supreme Court, where, however, she was again unsuccessful,[2] though Chief-Justice Chase dissented from the opinion against her. Later on, in March, 1882, the Legislature of Illinois passed a law forbidding the exclusion of any person "from any occupation, profession, or employment (except military), on account of sex." But meanwhile Mrs. Bradwell had established on a solid foundation the well-known paper, "The Chicago Legal News," and had no time for law practice, and she has never been admitted to the bar, except by courtesy as an honorary member. The two children of Judge and Mrs. Bradwell, a son and a daughter, are both lawyers; and the daughter has also married a lawyer, Frank A. Helmer, Esq. Mrs. Helmer is not in active practice, but aids her husband in his business, and has also compiled, unassisted, the last ten volumes of Bradwell's Appellate Court Reports.

Another legal editor, Mrs. Catharine V. Waite, comes next in the list of graduates from the Union College of Law, in 1886. Mrs. Waite writes me that she read law at different times with her husband, ex-Judge C. B. Waite. In 1885 she entered the law school, graduated, and was admitted to the bar in 1886. She has practised little, but immediately upon graduation she established the "Chicago Law Times," a quarterly magazine of great interest and merit, which she has edited and published ever since. She has five children, one of her daughters being a physician of unusual ability; and as is the case with Mrs. Bradwell, her family relations are of the closest and pleasantest.

But the women attorneys of Illinois are by no means all middle-aged nor all married. In the same class with Mrs. Waite, there was another woman, Miss Catharine G. Waugh, of Rockford, Ill., who was at that time about twenty-two or twenty-three years of age. She is one of the brightest and ablest of the young women of the profession in the West, though she modestly disclaims any such merit. She studied a year in a law office, and the following year in the Law School, was admitted to the bar in 1886, and has been steadily in practice at Rockford since. She does all varieties of work, foreclosing mortgages, obtaining divorces, drafting wills, collecting claims, settling estates, and occasionally appearing in probate and justice courts, but seldom doing anything in criminal law. She was for a year or two professor of commercial law in the business college of her city. She is entitled to write the title A.M. as well as LL.B. after her name.

[1] Bradwell *v.* The State, 55 Ill. 535.
[2] Bradwell *v.* The State, 16 Wall. 130.

From Miss Annie M. McCoy, who graduated from the Union College of Law in 1888, I hear nothing; but the three ladies who graduated last June have all replied to my letter of inquiry. Mrs. Mary A. Ahrens, of Chicago, was admitted to the bar upon graduation, and has been in practice since, her special object being to settle without litigation all cases which with justice to clients can be kept out of court. She is of middle age, well-known as an active worker in philanthropical and charitable lines, and is spoken of as a bright, ambitious, energetic, and intellectual woman. Miss Bertha E. Curtis, another of last summer's graduates, and a bright young girl, was admitted to the bar and began practice in Chicago at once. Her practice thus far has been miscellaneous in its nature. Miss Minerva A. Doyle, the last of the women graduates from the Union College of Law, is a very fortunate young woman indeed. Upon her graduation last June at the age of twenty-three, she was admitted to the bar and went immediately into her father's office in Watseka, Ill., as a member of the firm, which reads at present Doyle, Morris & Doyle, and has been very actively at work since that time in preparing pleadings, briefs, and written arguments. Her father's health requiring his absence this winter, much extra work has fallen upon her young shoulders in preparing for the November term of court, and taking on cases of his in the Supreme and Appellate Courts. Many women lawyers, old and young, will envy Miss Doyle her exceptional opportunities.

CATHARINE V. WAITE.

There are at present four women students in the Union College of Law. Miss L. M. Starr and Miss K. E. Wallace do not intend to practise the profession. Miss Alice M. Albright, of Chicago, has been engaged for some years in court reporting, and is studying with the intention of practising. Miss L. Blanche Fearing, of Chicago, who will graduate next June, is a student of whose abilities I hear unusual praise, and who intends to devote herself to practice, though it is hoped that she will not altogether abandon literary work, in which she has gained a reputation above the ordinary as a poet.

There is also in Chicago another legal institution, the Evening College of Law, in which three women are studying, — Miss Emma Bauman and Miss Cora B. Hirtzel, both of Chicago, who expect to practise the profession eventually; and Miss Husten, from whom I have not heard.

There are well-known women practising law in Chicago who graduated from other schools, but I will refer to them here. First, however, must be named the lamented Alta M. Hulett, a young and beautiful girl of remarkable ability and brilliant prospects, who lived only long enough to demonstrate what a woman could accomplish in a very brief time in her chosen profession of the law; and this proof, given when the new departure was still in its earliest infancy, has

been invaluable to the women who have come to the bar since that time. She studied about two years in law-offices, was at first refused admission to the bar, but secured the passage of the new law under which she was admitted in 1873. From this date till that of her death in the spring of 1877 she had a lucrative business, following general lines of work without limiting herself to any specialty, and succeeded marvellously well both in handling her cases and disarming prejudice.

Miss Ellen A. Martin, who has been in uninterrupted practice in Chicago for thirteen years, studied two years in a law office, and two years more in the Law School of Michigan University, where she graduated in 1875, together with Miss M. Fredrika Perry, who had also pursued the study of law for four years. These two ladies were admitted to the bar of Illinois shortly after graduation, and formed a legal partnership, doing a general practice until the death of Miss Perry, which occurred in June, 1883, since which time Miss Martin has continued the business alone.

Miss Kate Kane, also of Chicago, is one of the active women lawyers, whose business is largely in court. She was admitted to the bar in Janesville, Wis., in 1878, after a course of study in a law office and in the Law School at Ann Arbor, where she duly graduated. She began practice at once in Milwaukee, continued there five years, and then went to Chicago, where she has remained since. Her business is general, and she writes me that in criminal law she has either prosecuted or defended in every crime known to modern times except treason and piracy ; that she has represented clients from every quarter of the globe, of every hue and every religion except the followers of Zoroaster and Mahomet.

Miss Alice C. Nute studied in law offices in Chicago for several years while engaged in her business of court reporting, and was admitted to the bar of Illinois in 1885. Miss Jessie E. Hutchinson, who is now engaged as law clerk in Miss Martin's office in Chicago, has studied law during the past five years, during part of which time she held an appointment as deputy clerk of the Circuit and District courts in Fayette County, Ind. This was followed by active experience in a law office, and a regular course in the Law Department of the University of Wisconsin, where she graduated last June, and was admitted to the bar. She intends to practise for herself later on.

Another woman who is a member of the bar in Illinois, but is not in practice, is Miss Cora A. Benneson, of Quincy, who graduated from the Law School at Ann Arbor in 1880, and was admitted to the bar. She has used the profession chiefly in connection with literary and historical work. In 1886 she was law editor for the West Publishing Company of St. Paul, Minn.

The Bloomington Law School, a department of the Illinois Wesleyan University, makes no distinction on account of sex, but has graduated only one woman, Mrs. Marietta B. R. Shay, of Streator, Ill., of whom the Dean writes me in the highest terms. She is the author of a work on law entitled "Students' Guide to Common-Law Pleading," of which I have seen favorable criticisms from many authorities.

The only remaining woman lawyer of Illinois of whom I have learned (excepting Miss Emma Strawn, of Lacon, with whom by an oversight I have failed to correspond) is Miss Lettie L. Burlingame, of Joliet. She is one of our able and successful women practitioners, whose years are yet so few as to give great opportunities for the future. She began study in 1883 in a lawyer's office, where she continued till she entered the Law School at Ann Arbor, where she graduated in 1886, and was admitted to the bar of Michigan and afterwards to that of Illinois. She speaks of the kindness and encouraging attitude of the professors in the school, but says one of them used to "arouse my indignation by picking out easy questions to ask us women." After a few months' delay Miss

Burlingame opened her office for practice in Joliet, her home, in January, 1888, since which time she has had a remarkable degree of success, business coming in much more rapidly than a newly fledged lawyer can ever reasonably expect. Her practice has been varied in nature, including considerable civil work in the Circuit Court and a little criminal work. She has had clients from several different counties, and has been consulted on legal matters by parties in distant States. Some of the cases which she has successfully handled before court or jury have been important ones, and she now has, among others, a contest pending on the construction of a trust deed, involving several legal points which have never been decided in Illinois. It may be of interest to those who question whether a woman's strength, physical and mental, is equal to the strain of a legal practice, to mention that Miss Burlingame's friends were very anxious when she opened her office, because she had always had, as she writes me, "the weakest constitution ever given to mortal; but legal practice agreed with me, I continually grew stronger, gained fifteen pounds in weight in six months, and now enjoy the best health I ever had."

CATHARINE G. WAUGH.

The Law School of the Michigan University, located at Ann Arbor, has graduated more women than any other in the country; but my facts concerning some of these ladies are meagre, owing to my inability to get the list of their names in season to correspond with all of them. The greater part of the information which I have concerning them was very kindly furnished me by Miss Martha K. Pearce, at present resident in Chicago, who is herself a graduate of the school of the class of 1883, and a member of the Michigan Bar, but who has devoted herself to literary rather than professional work. As Secretary of the Equity Club, Miss Pearce is well informed concerning the graduates of her school and women lawyers generally; and before proceeding further, a word right here concerning the Equity Club may be in place.

This society originated at Ann Arbor in the fall of 1886, when it chanced that seven women were attending lectures at the law school there, and two women who had graduated were still resident in the place. From a local club for personal meeting, it became a correspondence club, which women lawyers and law students everywhere have been invited to join. Some forty in all have been members of the club; and the "Equity Club Annual," consisting of letters from members and restricted to private circulation among members only, is a most interesting and valuable yearly visitant, making us better known to each other, and extending to each the sympathy and fellowship of other women of similar tastes and experiences.

The first woman to enter the Law Department of Michigan University was Miss Sara Kilgore, who had previously studied one year in the Chicago Law School and then entered the school at Ann Arbor, where she graduated in March, 1871, thus being the second woman in the country to receive the degree of LL.B. Miss Kilgore was admitted

to the Supreme Court of Michigan in 1871, and was, so far as I can learn, the third woman to become a member of the bar in this country, the first being Mrs. Mansfield of Iowa, who will be referred to later on, and the second Miss Barkaloo of Missouri, already mentioned. Not long after her graduation Miss Kilgore married J. S. Wertman, Esq., of Indianapolis, where they practised law together for a few years, until domestic duties caused her to withdraw from the active profession of the law. For several years past, however, Mrs. Wertman has resumed business in Ashland, Ohio, where the family now make their home, devoting herself especially to real-estate matters and the abstracting of titles. It is their intention soon to remove to Port Townsend, Washington, where Mr. and Mrs. Wertman will engage together in law and real-estate business, thus making the second couple of husband and wife, both lawyers, who will practise the profession in partnership on the shores of Puget Sound.

The second woman to graduate in law at Ann Arbor was Harriet A. Patton, of that city, of the class of 1872. She was admitted to the bar, but has never practised. Miss Emma L. Hubbard and Miss Susannah Roper graduated in 1873; but the former has been lost sight of, and the latter has embarked in a business enterprise in Auburn, N. Y. In 1874 Jane M. Slocum, now of Canandaigua, N. Y., and Mary Stockbridge, now of Fort Wayne, Ind., took their degrees in law. Of these ladies, the former is one of the proprietors of the Granger Place School in Canandaigua, and the latter is engrossed in domestic duties. Mrs. Mary E. Foster, of Ann Arbor, graduated in 1876, was admitted to the bar and practised for several years. Miss Hattie Mason graduated in 1877, and married a classmate, named Willard, shortly after; their present address I have been unable to learn.

In the same year Elizabeth Eaglesfield graduated from this school; but I learn from Miss Martin's article, before referred to, that she had previously been admitted to the bar of Indiana, at her home, Terre Haute, in the summer of 1875, under a statute which provided for the admission of "every person of good moral character, *being a voter*." Mrs. Eaglesfield practised for a time in Terre Haute, after which she abandoned practice temporarily, resuming it, however, in Indianapolis; and she has now been established for some three years in Grand Rapids, Mich., where I understand she is doing well. In 1880 Miss Maud A. Kelsey graduated and was married the same day. I have not learned her husband's name, nor whether she has ever practised. In 1881 Miss Leona Taylor took her degree in law, was admitted to the bar of Michigan, and soon after married a classmate, J. R. Lounsbury, Esq., with whom she removed to Omaha, Neb., where they have resided until the death of Mr. Lounsbury, which occurred last May. Mrs. Lounsbury writes me that it was always their intention that she should unite with him in his practice, but the fulfilment of this purpose was postponed until it was too late. In 1882 Miss Laura A. Woodin took her degree at Ann Arbor. Having studied previously with her father, she was admitted to the bar of Michigan a few months before her graduation. In December of the same year she married a lawyer, D. W. Le Valley, Esq., and they immediately entered together upon the practice of the profession in East Saginaw, Mich., where they are still located. Mrs. Le Valley's share of the work has been principally in the office. Mrs. Martha Strickland graduated at the Ann Arbor school in 1883, was admitted to the bar and began practice in Detroit of that State, where she has continued to the present time. Miss Mary C. Geigus graduated in 1885, was married soon after, and removed to Los Angeles, Cal. Her plans for practice have been postponed, owing to continued illness. Miss Mary Merrill took her degree in law in 1886, was admitted to the bar, and began practice shortly after in Wichita, Kan., where I understand she is doing a flourishing business, though for some

reason my letter of inquiry addressed to her has not been answered.

In 1887 four ladies graduated from the Law Department of Michigan. Mrs. Margaret L. Wilcox and her husband entered the school and pursued the course of study together, and graduated in the same class. He began practice at once in Chicago, and she assists him materially in his work; but they are waiting until he shall have an office alone, for her to formally enter the profession as his partner. Another couple, husband and wife, belonged to this class of '87, — Hamilton Douglass, Esq., of Atlanta, Ga., and Corinne Williams Douglass. Mr. Douglass replies to my letter that his wife was admitted to the bar in Michigan after graduation, though not with the view to practising. He writes that "she finds her hands full in the 'Domestic Relations,' so to speak, in taking care of her boy and other duties. She studied law for the purpose of helping me and not for the practice generally. In fact, women are not admitted to the bar in the State of Georgia." Miss Rebecca May was the third woman of '87's quartette; and after graduation she was admitted to the bar and began practice at once in Topeka, Kan., where she remained a year, doing remarkably well during this time, but was called home by illness in her family; and I understand that she has not yet resumed her active legal work. Mrs. Mary C. Whiting also graduated in 1887, was admitted to the bar in Michigan immediately after graduation, and entered at once on the active practice of her profession in Ann Arbor, where she is still located.

LETTIE L. BURLINGAME.

In 1888 there graduated from the Law School at Ann Arbor a young lady for whom opportunities are not lacking, and she is happily just the one to make the best use of them. This is Miss Almeda E. Hitchcock, of Hilo, Hawaii Islands, whose father is one of the circuit judges of that far-away land. The time within which this article had to be prepared did not permit me to write and receive a reply from Miss Hitchcock, but Miss Pearce agrees with me in thinking she would allow me to take a few ideas from her letters to the Equity Club. About 1882, after she had finished the usual education of a young lady and tried teaching, which proved uncongenial, she began to be with her father in his law office and on his circuits; and her highest ambition was to know enough to help him. Soon, however, she met Miss Cora A. Benneson (of the class of '80, already referred to), who was then making a journey around the world; and the idea flashed upon this little island girl that she might be a lawyer herself. Her father encouraged her, and she entered the next class at Michigan University Law School. She was admitted to the bar in Ann Arbor in December, 1887, and graduated with her degree the following June. Her letter to this year's "Equity Annual" (not yet issued) is intensely interesting. Almost im-

mediately on her landing at Honolulu she was, with her father's help, admitted to the Hawaiian bar, on presentation of her license from the Michigan Court. The same day she was appointed notary public. Her father made her his law partner at once; and instead of going directly home to Hilo, they went to Waimea, Hawaii, where the Third Judicial Circuit was sitting. There she made and won her first motion. She writes that the natives were all astonished to see a "Wahine Loio" (woman lawyer), and the remarks which she heard in passing were often amusing, they not realizing that she understood their language. She speaks of a journey of two hundred miles which she made on horseback last March, to attend a sitting of the Circuit Court in one of the out-districts where the firm had some cases which it was decided she should try. Before she got far towards her destination, a telephone message from her father overtook her, telling her to return as soon as the most urgent cases could be disposed of. She did so, and found herself deputed to act for the sheriff of Hilo for several weeks, during which he was obliged to be absent. When it is realized that the sheriff is to one of these islands practically what the Governor is to one of our States, the responsibility devolving upon this young girl can be imagined. To be sure, this little kingdom is a well-regulated and law-abiding place in general; but during the five weeks in which Miss Hitchcock acted as sheriff of Hilo, a bold burglary was committed on the island. Happily, by prompt action the man was caught, and nearly all the money recovered within four days.

J. ELLEN FOSTER.

I hear that three ladies are now studying at the Law School of Michigan, but have not learned their names.

The last of Michigan's women lawyers with whom I am acquainted, and one of the best and brightest, is Miss Ada Lee, of Port Huron, Mich. She began to study in June, 1882, in the office of one of the Circuit Judges, and was admitted to the bar of St. Clair County in March, 1883, and has practised the profession constantly since the day of admission. In June, 1888, she was admitted to the bar of the District Court of the United States for the Eastern District of Michigan. In the fall of 1884 Miss Lee was nominated for the office of Circuit Court Commissioner by the Republican, Democratic, and Greenback parties, with no solicitation for the nomination; and she was duly elected, receiving the entire vote cast in the county. She performed the duties of this office, and held it until the expiration of her term, despite the fact that thirteen suits were begun to oust her, during which time two hundred and seventeen cases were tried before her. This brave little woman, who has not yet seen a quarter of a century, has earned her own living and education, being without either home or money.

The first woman who was ever admitted to the bar in this country or in the modern

world has yet to be referred to. Her name I have seen in every article I ever read on this subject, but until I received a letter from her recently, I had not known whether she was yet living, and her letter was exceedingly welcome. Not that it was so long ago, however, for it was only in June, 1869, that Mrs. Belle A. Mansfield was admitted to the bar of Iowa at Mt. Pleasant in that State, after having studied in a law office and at home. The statute under which she was admitted provided only for the admission of "any white male person," but there was also the section common to most compilations of statutes, that "words importing the masculine gender only may be extended to females." And Mrs. Mansfield writes me that the presiding judge said very significantly that when any of those restrictive words did a manifest injustice to individuals, the court was justified in construing statutes as extending to others not expressly included in them. Mrs. Mansfield studied law because of her love of it, and when admitted to the bar fully intended to begin practice soon, but delayed till she should return from a European trip which had been planned. During her stay in Paris she spent some months in the École de Droit, pursuing her legal studies under most favorable auspices. On her return to America circumstances led her into teaching rather than professional work, and she now fills the chair of history in the De Pauw University of Greencastle, Ind.; but her interest in law and women lawyers has never been lost, and she is glad that her pioneering along this line has helped open up the way in which others are now achieving success.

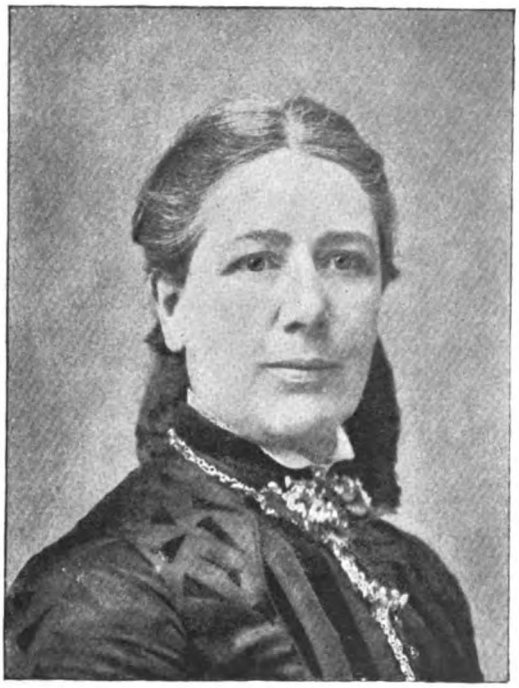
ADA BITTENBENDER.

The name of Mrs. J. Ellen Foster, the successful speaker on temperance, is generally known through the country both to the profession and the laity. Mrs. Foster's son, W. H. Foster, Esq., an attorney in Geneseo, Ill., sent me the following particulars which his mother, who is fulfilling a series of platform engagements, was too busy to write out. Mrs. Foster studied law for two or three years in Clinton, Iowa, at home in her family and in the office of her husband, E. C. Foster. She has frequently said in public that she read Blackstone while she was rocking her babies. She was admitted to the bar of the Supreme Court of Iowa in 1872, and was the first woman to practise before that court. She practised alone at first, and then formed a partnership with her husband. She followed the profession generally up to within a few years, with good success; but lately her platform work has taken her entire time, though this has been largely along and upon the legal phases of the questions which she has treated. Mr. Foster speaks of a murder case in Indianapolis where his mother was engaged in the defence of a woman who had been convicted and sentenced to be hung, but for whom a new trial had been secured, as probably her most celebrated cause. She was successful; for the prisoner was only

sentenced to imprisonment for a term of years, which was the most that could be hoped for in the case.

The Dean of the Law Department of the State University of Iowa, located at Iowa City, writes me that women are admitted on the same terms as men, and gives me the names of five women who have graduated there.

Miss Mary B. Hickey graduated in 1873. She writes me that after her graduation she was admitted to the bar, but was married soon, and has never practised. She says, however, that her love for the law has never flagged, that she keeps up reading to some extent, and will enter the profession yet if home affairs are shaped so that she can do so. She is now Mrs. Wilkinson, and her home is at Hutchinson, Kan. Mrs. Mary E. Haddock, of Iowa City, a graduate of the class of '75, is a woman of whom I have often heard, and always in terms of highest respect and deepest affection. She seems to be a sort of mother in Israel to young women lawyers of Iowa. Mrs. Haddock writes me that after graduating in 1875, she took an extra year's course, receiving a certificate of special proficiency. She was admitted to practise in the Iowa State courts in 1875, and later in the United States Circuit and District Courts. She practised law in her husband's office in Iowa City from 1875 till June, 1887, devoting herself principally to office work and briefing cases. In 1887 it became necessary for Mr. Haddock, who is secretary of the University, to devote his entire time to the management of the business of the University, and since then she has been employed with her husband in this work. She was for several years appointed by the Supreme Court to examine students of the University for graduation and admission to the bar.



LAURA DE FORCE GORDON.

Mrs. Anne N. Saveny, of New York City, also graduated in 1875, and was admitted to the bar in Iowa soon after, but not with the intention of practising, unless to help some poor woman who should be without money. Miss Mary A. Terrell, now Mrs. Sanders, graduated in 1877. Miss Emma L. Brayton, of Delhi, Iowa, graduated in 1883, and was admitted to the bar of the State and to the Federal Courts, but has not practised.

Two ladies are now studying in this school. Miss Myrtle O'Lloyd, of Charles City, Iowa, writes me that she fully intends to practise; and Miss Edith M. Prouty, of Humboldt, Iowa, writes that after leaving the school, she will continue study in the office of her father, J. N. Prouty, Esq., with the purpose of active practice in the profession.

The only remaining woman lawyer of Iowa, of whom I have heard, is Miss Ce Dora Lieuellen, of Iowa City. She had studied for five years before her admission to the bar three years ago, and has continued her studies since. She has been teaching during most of this time, but has now given it up, and after taking a course

of lectures in the law school to perfect her familiarity with the subject, she will begin active practice.

In Tiffin, Ohio, there are located two women who have pursued the steady, straight practice of law for a longer period of time than any other woman has ever done. They are sisters, and began the study about the same time, in the year 1871, though in different offices. Miss Nettie W. Cronise was admitted to practise in the State Courts of Ohio, in April, 1873; and Miss Florence Cronise was admitted in September, 1873. A fellow-student in the same office with Miss Nettie and admitted to the bar at the same time, was N. B. Lutes, Esq.; and little more than a year after their admission as attorneys, they were married, but for some years afterwards the two sisters continued to practise together as partners. In 1880, however, Mrs. Lutes and her husband formed a partnership, and Miss Florence Cronise went on with her work alone, and has continued to do so until the present time. She writes me that her practice covers all classes of business, and by way of illustration states that in the seven weeks' session of court which had just closed, she had tried, among others, cases involving questions of partnership, easements, the holding of a wife's separate property for her husband's debt under various circumstances, a civil action for damages for assault and battery, an action of foreclosure and marshalling liens, one on the question whether the payment of a legacy may be offset by indebtedness to the estate, another on alimony, etc. "The fact is," Miss Cronise goes on, "if a woman wants to practise law just as men do, she can. But it requires patience and long waiting, — so does it likewise for young men, — and I know I have the same feeling for young men coming into the practice as the older lawyers may have had for me."

BELVA A. LOCKWOOD.

My letter to Mrs. Lutes was answered by her husband, who says: —

"Our practice is general in character, and extends to the courts of this State and the United States Courts for the Northern District of Ohio. The following facts will enable you to form an estimate as to the nature and extent of her practice and experience at the bar. The bar of this county, as you will see by the printed list enclosed, has forty-five members. The total number of civil cases on the trial docket of the term just closed was 226; of that number, our firm was retained in fifty cases, which is probably a fair average of our share of the business for this county, and our practice also extends to a considerable extent to the adjourning counties of this district. Now, when I tell you that I am *totally deaf* and have not heard the sound of the human voice since 1881, you will understand that Mrs. Lutes is at least a busy lawyer, and has no cause for complaint for the want of recognition or business."

Mr. Lutes adds that both his wife and her sister "have won their standing at the bar solely upon their merits as lawyers, in every-

day practice, and the fact that they are women seems to have been almost lost sight of, so far as their practice as lawyers is concerned; and this, we think, is as it should be. So far as they are concerned, the law has been a success with them, far beyond the average of their brethren of the profession, taken as a whole." Elsewhere in his letter Mr. Lutes mentions his three daughters, the two eldest of whom (aged fourteen and twelve, respectively) are in attendance at Heidelberg University, at Tiffin, taking the full classical course, for which they were prepared under Mrs. Lutes's instruction, as she never permitted them to enter the public schools. Thus it is apparent that in attending to her large practice this able lawyer has *not* neglected her children.

Another woman, Miss Edith Sams, studied in Miss Cronise's office two years, and was admitted to the bar of the Supreme Court of Ohio in 1881, standing third in a class of twenty-six, and then practised for a while in partnership with Miss Cronise, until 1883, when she married C. A. Seiders, Esq., an attorney, and removed with him to Paulding, Ohio, where she has been since in partnership with him, though for the past few years, owing to domestic duties, she has not been in active practice. She writes that she took up law as a life work, and expects to resume it actively in the future. There was also a Miss Agnes Scott who read law with Miss Cronise for two years and who seemed very determined to gain admission to the bar, concerning which some question was raised, but after securing admission her ambition seemed to be gratified, and she has disappeared from public life.

Still another woman is practising law in Ohio, — Mrs. Spargo Fraser, of Cleveland. She studied in an office, and was admitted to the bar in 1885, and has been in steady practice since.

The first woman to be admitted to the bar in Wisconsin was Miss Lavinia Goodell, of Janesville, who was admitted to the Circuit Court of Rock County and began practice, but the following year she was refused admission to the Supreme Court of the same State.[1] The decision in this case did Chief-Justice Ryan little credit, for he allowed himself to depart from the legal point at issue to discuss the question of "Woman's Sphere" from a standpoint of domestic economy quite out of *his* proper sphere as a judge on the bench. The Legislature promptly passed a law allowing the admission of women, and Miss Goodell was admitted under it, though Judge Ryan dissented even from this decision. She was an able lawyer, and did good work until her death in 1880 from sciatic rheumatism. At the time of her death I cut the following clipping from the "Independent:"

"The Chicago Journal says the early death of Miss Lavinia Goodell, the Wisconsin lawyer, suggests the query whether women are able to endure the hard usage and severe mental application incidental to a legal professional career. Miss Goodell was forty-one years of age. Henry Armitt Brown, the noted young lawyer of Philadelphia, died recently at thirty-two. We would like to suggest the query whether men are able to endure the hard usage, etc. One swallow does not make a summer."

In the same Wisconsin city of Janesville, Miss Angie J. King began to study law in 1871, was admitted to the bar of the Circuit Court in 1879, and was in partnership with Miss Goodell until the latter's death, since which time Miss King has continued in steady active general practice alone, succeeding, as she writes me, far beyond her most sanguine expectations, retaining all her old patrons and gaining new ones every year.

Another woman lawyer, Miss Kate H. Pier, of Milwaukee, is one of a family of lawyers. Her father, Col. C. K. Pier, is an attorney of long standing, and Mrs. Pier and their daughter Kate graduated from the Law Department of the University of Wisconsin in 1887, and were admitted to the State and Federal Courts. All three practise together,

[1] *Re* Goodell, 39 Wis. 232.

and are doing a fine business. Recently Miss Pier argued and won a case in the Supreme Court which secured her much praise. The balance of the family, consisting of two younger sisters (I am told that Miss Pier herself is only about twenty-two years of age), are at present taking the legal course in the same school from which their mother and sister graduated.

Two other sisters, named Spaulding, also students in this school, will practise in Janesville. Miss King speaks of them in the highest terms. From the same school was graduated a Mrs. La Follette in 1885, from whom I have not heard; and last June Miss Jessie M. Hutchinson, already referred to.

CARRIE BURNHAM KILGORE.

The name of Mrs. J. M. Kellogg, of Topeka, Kan., has become familiar of late, owing to newspaper items announcing the fact of her appointment as chief clerk — or as that officer has been usually called there, assistant attorney-general — to her husband, the attorney-general. She studied in her husband's office at Emporia for two years, and was admitted to the bar of the Supreme Court in 1881, after which they formed a law partnership and practised together until Mr. Kellogg's appointment to office, with the exception of about four years during which she was not in active practice. Another lady, Mrs. Ella W. Brown, of Holton, Kan., is studying in her husband's office with the purpose of practising with him as soon as she gains admission to the bar.

Another well-known name is that of Mrs. Ada M. Bittenbender, who has been for the past two years active in the Women's Christian Temperance Union movement, representing the association in Washington. Her home is in Lincoln, Neb., where she read law for two years in her husband's office, was admitted to the bar in 1882, and in partnership with him she pursued a general practice until 1888, when she went to Washington. At the State convention of the Nebraska Prohibition Party two years ago, Mrs. Bittenbender was chosen as the nominee for the position of Judge of the Second Judicial District. She is only out of practice temporarily, her legal partnership in her husband's business continuing, as I understand.

Another Nebraska couple who are practising law together is the firm of E. M. & Addie M. Billings, of Geneva, Neb. Mrs. Billings read law in her husband's office several years, was admitted to the bar of Nebraska in 1887, and has practised continually, trying cases, civil and criminal alike. She writes me that occasionally a man comes into the office with work who does not want "the woman" to meddle in his case; but such clients are exceptional.

A little farther west, and the Pacific coast is reached. From the Dean of the Hastings College of the Law in San Francisco, I learn that three women have graduated from that institution. The first was Miss Mary McHenry, of San Francisco, a daughter of Judge

John McHenry, for many years Judge of the First District Court of New Orleans, and a noted man both in Louisiana and California. She graduated in 1882, as one of the class speakers, was immediately admitted to the bar, and practised for seven or eight months with marked success, when she married Mr. William Keith, a well-known artist, removed to Berkeley, Cal., and retired from the law. She writes me that she hopes to resume practice before long, but that her husband laughingly says, "Not much you will."

Miss Emily Buckhout, of Oakland, Cal., now Mrs. Baker, graduated and was admitted to the bar in 1883, but has never practised, owing, she writes me, to "two reasons, — ill-health and disinclination. The more I see of life the stronger is my belief that public life for women is not desirable, individually or for society. I began life a woman-suffragist, but my own experience and observation have worked a radical change in my opinions." I quote this from Mrs. Baker's letter, which was very promptly and courteously sent in response to my inquiries, because out of all the hundred and odd letters which I have received from women lawyers and law students of the present and of the past, it is the only one which has been expressed in discouraging terms, and I cannot help but wonder whether the misfortune of ill-health has not had at least some part in forming the disinclination.

From Miss Josephine L. Todman, of Stockton, Cal., I hear nothing, but understand she is doing a good office business. Three other ladies have been enrolled as students at this school, — Mrs. Ida Hatch, of Los Angeles; Mrs. Clara S. Foltz, who was for several years in practice at San Francisco, and is now, I understand, practising in San Diego, but from whom I have not heard; and Mrs. Laura De Force Gordon, of Stockton, Cal. Mrs. Gordon writes me that in 1877, while attending the session of the California Legislature to report its proceedings for her own paper, the "Oakland Daily Democrat," she assisted in procuring the passage of an act permitting women to practise law. At the same session the Legislature accepted or founded the Hastings College of Law; but when open for the admission of students, the applications for admission made by Mrs. Foltz and herself were rejected. They brought a writ of mandamus, which was successful; and a year later these ladies were admitted. In the mean time Mrs. Gordon had studied diligently, and was admitted to the bar in 1879. She immediately began practice in San Francisco, and continued there for five years with very gratifying success. She sought no specialty, but seemed to drift into criminal practice, as the result of successfully defending a Spaniard charged with murder, within two months after her admission to the bar. Mrs. Gordon is now located at Stockton, where she is in steady active practice of a general nature. Among her most noted criminal cases was that of The People *v.* Sproule, which was indeed in some respects the most remarkable trial in the whole range of criminal jurisprudence in California. The defendant had shot and killed a young man named Andrews, by mistake for one Espey, the seducer of Sproule's wife. It was a fearful tragedy, and the excitement was so great that the jail had to be guarded for a week to prevent the lynching of the prisoner. Mrs. Gordon undertook his defence, against the advice of the most distinguished lawyers in the State, and obtained a verdict of "Not guilty" amidst the most deafening cheers of men and hysterical cries of women, half-weeping jurymen joining in the general clamor of rejoicing.

Mrs. Josephine Young was admitted to the bar at Sacramento about 1882, and has practised with her husband at San Francisco.

Mrs. Marion Todd, now located at Albion, Mich., but formerly of San Francisco, writes me that she studied two years in the Hastings College, graduated and was admitted to the bar in 1881. Probably by some mistake

her name was omitted from the list furnished me by the Dean. She practised three years in San Francisco with good success, but she proved to be specially adapted to platform work, and gradually drifted out of law and into politics, as so many lawyers of the other sex do. She was an active advocate and speaker in the various Greenback campaigns, as delegate to conventions and in regular canvassing tours. This party in California nominated her in 1882 for attorney-general of the State, and she ran far ahead of her ticket. During the past few years her time has been devoted to the cause of the Knights of Labor, and she has written a work entitled "Protective Tariff Delusion," which has been favorably criticised.

MARY HALL.

Since preparing this article, a young lady called at my office and introduced herself to me as Miss Alice Parker, of the San Francisco Bar. She studied there in a judge's office, and was admitted on examination over a year ago, since which time she has devoted herself to practice, having all the business she could attend to. She is a Massachusetts woman, however, and has returned to her home in Lowell, with the intention of pursuing her profession in this State, probably in Boston.

In 1884 Mrs. Mary A. Leonard was admitted to the bar in Seattle, Wash., and subsequently removing to Portland, Ore., was admitted to the bar there in 1885, after a law had been passed providing for the admission of women. She practised about a year, and then retired on account of ill-health.

The East was slower than the West to recognize women as lawyers. The struggles of Mrs. Belva A. Lockwood, of Washington, to obtain admission to the bar, are too generally known to need repetition here. Suffice it to say that she began to study law in 1870, graduated in 1873 from the Law School of the National University in Washington as it existed at that time, was admitted to the bar of the Supreme Court of the District in 1873, to the United States Court of Claims and the United States Supreme Court in 1879, after securing the passage of an Act of Congress providing for the admission of women to this the highest court in the country. (Since that time Mrs. Bittenbender and Mrs. De Force Gordon have also been admitted to the bar of the United States Supreme Court.) Mrs. Lockwood has been in general practice since her admission, with a specially large business before the Court of Claims. She writes me that she has never had any difficulty in securing plenty of good paying work, has succeeded fairly well throughout her whole course, and has made a good living.

The Law School of the National University, as it now exists, has never admitted women, as I am informed by its Dean; nor has that of Georgetown College. But the Howard University, also of Washington, makes no distinction of sex, race, or color in

its students. Several ladies have graduated from its Law School, two of whom were colored; but I understand that the male students are nearly, if not all, colored men. The first woman student in this school was Mrs. Charlotte E. Ray, colored, who graduated in 1872, and was admitted to the Supreme Court of the District, where she practised for a time, afterwards going to New York, where I have lost trace of her. I have been told that her admission to the bar was secured by a clever ruse, her name being sent in with those of her classmates, as C. E. Ray, and that she was thus admitted, although there was some commotion when it was discovered that one of the applicants was a woman. In 1880 the names of four women were enrolled as students of this school, all of whom graduated in due time. One of these, Mrs. Louise V. Bryant, of Washington, I have not heard from; Mrs. M. A. S. Carey, a widow, colored, graduated in 1883, took her diploma as attorney at law, and has been practising four years in Washington. This lady writes me that she took a course in this same school at an earlier date, being enrolled as a student in September, 1869, — the first woman to enter the school, — but that she was then refused graduation on account of her sex. Mrs. Ruth G. D. Havens, also of Washington, graduated in 1883, but did not seek admission to the bar owing to illness. She has an appointment in the Treasury Department, but intends to be admitted and practise later on. Miss Emma M. Gillett, of Washington, also graduated the same year, was admitted to the bar and has been in active practice ever since, with, I am told, an unusual degree of success. Her work has been principally in office lines, — the drawing of papers, taking testimony in equity causes, and probate business, together with a large amount of notarial and some financial work. Mrs. Eliza A. Chambers entered the same law school about five years ago, completed the full three years' course, took both diplomas which are earned thereby, and was then admitted to the bar. She writes me, however, that the Law School faculty refused to hand in her name to the examiners, for admission to practice, omitting her from the list of her male classmates whom they recommended, simply because she was a woman. She has been in practice since her admission, giving special attention to matters in equity, with patents, pensions, and land claims.

The statements of Mrs. Carey and Mrs. Chambers concerning the discrimination made against them on account of sex is in direct contradiction to the claim of the school that no such distinction was ever made there; but I feel that the statements should be given to the public just as they were given to me. Mrs. Havens, already referred to, speaks in the highest terms of the school and its faculty.

Mrs. Carrie B. Kilgore, of Philadelphia, was one of the first women in the country to ask for admission to the bar, and one of the last to gain it. Her struggles for recognition as a lawyer began in 1870, when she was registered as a student. In 1872 she was ready for admission; being refused, she applied for a writ of mandamus, but this was also refused. She sued the Board of Examiners, tried to get the Legislature to pass a law admitting women, sought admission repeatedly in the different courts, and at last in 1883 was admitted to the Orphans' Court, in 1884 to one of the Courts of Common Pleas, and finally in 1886 to the Supreme Court, which last admission compelled all the other courts of the State to recognize her. At first, when studying, she was refused admission to the Law School of the University of Pennsylvania, but ten years later she secured admission and graduated with her degree in 1883; and now this law school is open to women, and the Dean in his letter writes with apparent appreciation of Mrs. Kilgore as its only woman graduate. Ever since her admission she has been in active general practice. Nearly two years ago she lost her husband, in whose office she had studied and worked, and she was able to

take up all his business just where he left it and carry it on, being requested to do so by his clients in all cases which were at issue except one. Mrs. Kilgore has won the respect and the confidence of the bar and the courts. She has twice been appointed Master by the courts, and the character of the business intrusted to her proves that she has gained also the confidence of the public. Among other valuable business she is retained as the solicitor of a corporation. She regrets that no other women are practising or studying law in Philadelphia, and says she would like to have a lady student in her office, and would give such an one a good chance with her after admission to the bar.

MARY A. GREENE.

There is, however, another woman studying law in Warren, Penn., who has been for three years a registered student in a law office. This is Miss Alice G. McGee, and she is ready now for examination, but is obliged to wait till February, when she will be twenty-one years old, before making her application.

In New England Mrs. Clara H. Nash was the first woman to secure admission to the bar. She was admitted by the Supreme Judicial Court of Maine, at Machias, in the October term, 1872. She had studied about three years in the office of her husband, F. C. Nash, Esq., and after admission formed a partnership with him, and they practised together in Washington County, and afterward in Portland, until recently, when they removed to Boston. Here Mrs. Nash has taken a less active part in the business owing to domestic duties, and she has not yet been formally admitted to our bar.

In July, 1877, Miss Mary Hall, of Hartford, Conn., began to study law in the office of her brother, Ezra Hall, Esq. His death occurred the following November, but soon after she resumed her legal studies in the office of John Hooker, Esq., the State reporter, and continued there for three years. She then thought seriously of going to some State where women were admitted to the bar, dreading the noise and criticism to which a pioneer in such a matter is always subject, but was induced to make her application for admission in her own State, which she did in March, 1882. She passed the examination successfully, and the question of her admission under the statute went before the Supreme Court on briefs. In July of the same year a decision was rendered favorable to her admission,[1] and she was sworn in as an attorney soon after. She has been in constant practice since that time in Hartford, supporting herself comfortably. Her work has been largely for women. She does little court work, usually turning that over to her brothers of the profession.

Boston University has strongly favored coeducation from its foundation, and all of its departments have been open to women. In 1874 Miss Elizabeth G. Daniels, of Hyde Park, this State, was a student in the Law

[1] *In re* Hall, 50 Conn. 131.

School, but did not graduate. She married, and I have not been able to learn her name or address. In 1877 Miss Mary Dinan Sturgess, of Mansfield, Ohio, was enrolled as a student. She did not graduate, and has never been admitted to the bar nor practised, but she writes me that her legal training is of great advantage to her in the management of her estate.

In the following year, 1878, the writer of this paper entered the school, took the regular three years' course, and graduated with the usual degree in 1881. About the time of graduation she duly applied for examination for admission to the bar; but her application was referred to the Supreme Court, before whom the question was submitted on briefs. The following November the rescript came down, holding that under the statute a woman could not be admitted to the bar.[1] Shortly afterward the Legislature passed a unanimous bill permitting women to practise law on the same conditions as men.[2] She then took the examination, and was admitted to Suffolk County Bar in June, 1882. The next year the Legislature extended the powers of women attorneys by authorizing their appointment to a newly created office termed special commissioner, which enabled them to administer oaths, take depositions, affidavits, and acknowledgments.[3] This act was made necessary by the decision of our Supreme Court that a woman could not be appointed a Justice of the Peace.[4] This act was further extended last year, the powers of a special commissioner being more fully defined, and the authority to issue summonses for witnesses added.[5] Since her admission to the bar she has been in constant practice in Boston, with the exception of the time that she practised in Seattle, Wash., during which she had the remarkable experience of trying cases before mixed juries of men and women, and some time also which was spent in the preparation and publication of a book intended to give rudimentary information on legal subjects to the public at large.

[1] Robinson's Case, 131 Mass. 376.
[2] Acts of 1882, c. 139.
[3] Acts of 1883, c. 252.
[4] Opinion of the Justices, 107 Mass. 604.
[5] Acts of 1889, c. 197.

The next lady to enter the Boston Law School was Miss Anne C. Southworth, of Stoughton, in this State. She entered in 1882 and remained two years, ranking very high in her class as I have always understood from the faculty, but dropped the study at this point. Miss Jessie Wright was enrolled as a student in 1884, graduated in 1887, married a classmate, G. H. Whitcomb, Esq., and removed to Topeka, Kan., where she was admitted to the bar in March, 1889, and is now assisting her husband in some of his work.

In 1885 Miss Mary A. Greene, of Boston, but formerly of Providence, R. I., entered our Law School as a student, and graduated in 1888, ranking number two in a large class of men. The following September she was admitted to the bar of Suffolk County, and has been in practice here in Boston since that time. Last winter she made an exceedingly able argument before the Judiciary Committee of the Legislature in support of a petition for the validity of contracts between husband and wife in this State; and this argument she has embodied in a paper entitled "Privileged Communications in Suits between Husband and Wife,' which has been accepted for early publication by the "American Law Review." Miss Greene has been engaged to deliver a course of lectures the coming season before the students of Lasell Seminary, on Business Law for Women. Her reputation for scholarly legal learning and her ability as a lawyer rank very high, and promise the best grade of work from her in the future.

There are at present eight women enrolled as students in the Boston University Law School. Two are members of the middle class, — Mrs. E. M. Campbell, of Maplewood, this State; and Miss Lydia Colesworthy, of Boston. The others are juniors. Mrs.

Anna Christy Fall, wife of a young lawyer practising in this city but resident in Malden, will practise with her husband, though under the existing law in Massachusetts they cannot form a legal partnership. Mrs. Leonora M. Martin is the widow of William H. Martin, Esq., late of Cambridgeport, a well-known attorney. Miss Ellen A. Stone, Jr., of Lexington in this State; Miss Lizzie A. Smith of Newburyport, also in this State; Miss Alline C. Marcy, of Rockville, Conn., daughter of the late Hon. Dwight Marcy, Esq., an attorney of prominence; and Miss Anna B. Curry, of Ishpening, Mich., complete the list of women students. There are two or three women also who are studying in offices; and from these students, together with Miss Greene and myself, are gathered the members of the Portia Club, which meets periodically for dinners and discussions, with women lawyers from other States as our guests whenever any such are known to be in the city or neighborhood.

LELIA JOSEPHINE ROBINSON.

New York was the latest State to refuse to admit a woman to the bar under the statute, and to pass a law remedying the omission. Miss Kate Stoneman, of Albany, studied in an office, passed the examination, and was refused admission; but the Legislature, which was sitting at the time, rushed a bill through, under which she was admitted in May, 1886.[1] Since that time I understand that no woman has been admitted to the bar in New York State. From the Deans of the Law School of Cornell University and the Buffalo Law School, I learn that these schools will welcome women students, though none have as yet been enrolled.

Another school has recently been opened for women in New York City, concerning which I regret inability to give very definite information. Little more than a year ago, Madame Émile Kempin-Spyri came to this country from Zurich, Switzerland. She had pursued the regular course of legal study in the School of Jurisprudence in Zurich, graduating with the title of Doctor Juris Utriusque in 1887. I understand that this degree is not conferred as a matter of course on all graduates, but denotes special proficiency in those on whom it is bestowed. The application of Madame Kempin for admission to the order of advocates being refused, she came to this country and settled in New York. She did not enter any of our law schools as a student, but has, I understand, been studying common law and code law in an office. Last summer I received from her a circular concerning a proposed institution for women called "Dr. Emily Kempin's Law School." Courses of lectures for two years' study are laid out, and the circular closes with the following statement: "Examinations will be held at the end of each course before some of the most prominent jurists, and the degree of 'Bachelor at Laws' [*sic*] (LL.B.) will be publicly conferred on those who have passed the approved

[1] New York Code of Civil Procedure, § 56.

examination, both oral and in writing, upon the required studies." Other printed communications have been sent me more recently concerning the "Women's Law School Association" connected with this school, and giving a list of "Visitors of the Law School for Women," including well-known names such as Noah Davis, LL.D., David Dudley Field, LL.D., Mrs. Jeanette Gilder, and Dr. Mary Putnam Jacobi. Desirous of giving full information concerning this new venture in my paper on women lawyers, I wrote Madame Kempin, asking whether it was by incorporation or otherwise that she advertises to confer a degree on graduates, and asking also for the names of some of the lecturers on subjects which it could scarcely be supposed that one comparatively unused to our language, and bred to the civil rather than the common law, would herself undertake to teach. I mentioned also the hope that she would be admitted to the bar of New York as soon as the rules would permit, thus establishing beyond question her knowledge of our system of law, and asked whether the law of New York differed from ours in Massachusetts, which allows the admission as attorney at law of an alien who has made his primary declaration of intention to become a citizen. I casually asked also whether her title of Doctor Juris was commonly abbreviated LL.D., as she uses it. I received a letter, rather hastily written, in which she explains at length her use of the title, but entirely omits any reply to my more important questions. I wrote again repeating them, but have received no answer, and must therefore leave them for the consideration of any who may be interested. Probably she expects an act of incorporation soon, or she may have already received one.

The foregoing names by no means include all the women law students of this country, nor all who have been admitted to the bar. There are unquestionably many of whom I have never heard, and there are a very considerable number also of whom I have heard or read, but, the limits of this paper having been reached, I am unable to give even the list of their names. Women are coming into the profession so rapidly that in a few years it will be impossible to attempt in one paper, of whatever length, to treat of the women lawyers of the United States. As it is, I have been obliged to omit much of genuine interest which I had expected to use, and to cut down every personal mention to the fewest possible words.

In closing I must not neglect to say that although no question was asked in my circular letter of inquiry concerning the reception which women have met from the men of the profession, there have been very few replies received by me in which there has not been some word of acknowledgment of the courtesy, kindness, and cordial helpfulness with which we have been welcomed into the legal ranks by our brothers of the bench, the bar, and the law school; and one letter expresses what I think many women have felt, when the writer says, speaking of the uniform courtesy and kindness shown towards her by both faculty and classmates, that it "was perhaps the better appreciated since it was in marked contrast to the treatment then received by ladies in the medical department of the University." In some places the public is slow to intrust legal business to women attorneys; in others it readily does so, as some of the testimony contained in this paper abundantly proves. But in time, sooner or later, the lawyer everywhere who deserves success and can both work and wait to win it, is sure to achieve it, — the woman no less than the man.

FOOT-BALL IN LAW.

THE distaste with which the game of foot-ball is regarded by the vast majority of our college authorities seems to be legitimately inherited from our old English ancestors. Although the game was known in England before 1175, the law has never smiled upon it. A writer in the "Canada Law Journal" has collected some curious legal facts concerning the game which make extremely interesting reading.

The first law against it was passed in the thirty-ninth year of the reign of Edward III., 1365, and it was then forbidden in consequence of its tendency to impede the progress of archery. A similar law was enacted in 12 Richard II., chap. 6, 1388. In the kingdom of Scotland, in "the first parliament of King James the First, holden at Perth the XXVI day of May, the Yeir of God, ane thousand foure hundreth twentie foure yeires: and of his reigne the nineteene yeir," a law was passed saying, "That na man play at the fute-ball." "It is statute, and the King forbiddis, that na man play at the fute-ball, under the paine of fiftie schillings to be raised to the Lord of the land, als oft as he be tainted, or to the Schireffe of the land or his ministers, gif the Lords will not punish sik trespessoures." Under James II., in 1457, it was "decreeted and ordained, that the fute-ball and golfe be utterly cryed downe, and not to be used . . . and to be punished by the Barronis un-law, and gif he takes not the un-law, that it be taken be the Kinges officeares." James III. decreed against it at his sixth parliament held in Edinburgh in 1471. And in 1491 King James IV. enacted "That in na place of the Realme there be used fute-ball, golfe, or other sik unprofitable sportes, for the common gude of the Realme and defence thereof," and directed the use of the bow.

Seeing that his ancestors held these views, we are not surprised that James I. of England — the magnificence of whose court and the fame of whose wisdom and justice and of the civility of whose subjects allured divers foreign princes, and other strangers of all estates, to make frequent visits to his country (Scots Acts, 24 June, 1609), — we are not surprised that he should deem the game too rough for his heir-apparent; and in his "Basilikon Doron" he writes: "From this Court I debarre all rough and violent exercises, as the foot-ball, meeter for lameing than making able the users thereof."

James's famous predecessor — "that bright occidental star, Queen Elizabeth, of most happy memory" — was also against foot-ball. In the eighteenth year of her reign there was found at the Middlesex Sessions a true bill against sixteen persons, — husbandmen, yeomen, artificers, and the like, — "with unknown malefactors to the number of a hundred, who assembled themselves and unlawfully played a certain unlawful game, called foot-ball, by reason of which unlawful game there arose amongst them a great affray, likely to result in homicides and fatal accidents." Some seven years after there was a coroner's inquest at "Southemyous" on the body of Roger Ludford, yeoman. It was shown that the deceased, with one Nicholas Martyn and Richard Turvey, were playing at foot-ball in a field, when Ludford ran towards the ball with the intention of kicking it; whereupon Nicholas Martyn, "cum cubiti dextri brachii sui," struck Ludford on the forepart of his body, under his breast, giving him a mortal blow and concussion, of which he died in a quarter of an hour. The jury found that Nicholas and Richard in this manner feloniously slew the said Roger.

In Cromwell's days, a youth was indicted for the playing of the game; this is how the indictment ran: —

"Kent. — Before the justices of the peace it was presented that at Maidstone, in the county aforesaid, John Bistrod, of Maidstone, etc., apothe-

cary, with force of arms, did wilfully and in a violent manner run to and fro, and kicked up and down in the common highway and street within the said county and town, called the High Street, a certain ball of leather, commonly called a foot-ball, unto the great annoyance and incumbrance of said highway, and to the great disquiet and disturbance of the good people of this commonwealth passing on and travelling in and upon the same, and in contempt of the laws, etc., and to the evil example of others, and against the public peace."

In early times among the English, the great foot-ball festival of the year was Shrove-Tuesday, — though why Shrove-Tuesday, Heaven only knows, unless there was supposed to be some resemblance between the state of some of the players after the scrimmage and the pancakes they had eaten at dinner on that day. Chitty (2 Chit. Crim. La., 494) gives an indictment drawn in the year 1797, by a very eminent pleader, for the purpose of suppressing the ancient custom of kicking about foot-balls on Shrove-Tuesday at Kingston-upon-Thames. We give it in the hope that some of our American officials will have the courage to prefer a similar one against players in our towns.

"Surrey. — That A. S. B., late of, etc. (and other defendants), together with divers other evil disposed persons to the jurors aforesaid unknown, being rioters, routers and disturbers of the peace of our said Lord the King, on, etc., with force of arms, at the town, etc., unlawfully, riotously, and routously did assemble and meet together to disturb the peace of our said Lord the King, and being so assembled and met together, did then and there unlawfully, riotously kick, cast and throw a certain foot-ball in and about the said town, and then and there wilfully, riotously, routously made a great noise, riot, disturbance and affray therein, in contempt, etc., to the evil example, etc., and against the peace, etc. And the jurors, etc., do further present, that the said defendants, together with divers other evil-disposed persons to the jurors aforesaid as yet unknown, on the said, etc., with force and arms, at, etc., did unlawfully assemble and meet together, and being so assembled and met together did then and there wilfully kick and cast and throw a certain foot-ball in and about the said town, near the dwelling-houses of divers liege subjects of our said Lord the King, and also in divers streets and common highways there, to the great damage and common nuisance of all the liege subjects of our said Lord the King, residing in the said dwelling-houses and passing and repassing in and along the said streets and highways, to the evil example, etc., and against the peace, etc."

These fellows evidently played according to the Rugby rules.

IDENTIFYING THIEVES IN PARIS.

AMONG the visitors who have been attracted to the Paris Exhibition are gangs of professional pickpockets. In the arrangements, however, these unwelcome guests were not forgotten. A special detective force was organized to look after them. The French system of identifying prisoners, coupled with the prompt and severe punishment meted out to them, has struck terror into the ranks of professional pickpockets. One of the first things done when the French police arrest any one is to measure him and see if he is not in their books already. The measurement and identification department in Paris is in the Palais de Justice; and our correspondent had an interview there the other day with M. Alphonse Bertillon, the inventor of the anthropometrical system. M. Bertillon was operating in a large square room. There were shelves on one side containing thousands of cards, with the photographs and records of criminals. Several assistants were busy taking measurements to add to the collection.

"My system for identifying criminals," said M. Bertillon, "was adopted by the

French police four years ago, and is now in operation throughout the whole of France. It was found that many old offenders escaped detection. The classification of criminals under their names was not satisfactory. It is in their interest to keep their antecedents hidden, and to give false names. The Paris police had amassed in ten years one hundred thousand photographs, but it was impossible to search this collection every time an arrest was made. Now the search can be made in a few minutes. We now classify our photographs and cards, giving the antecedents of prisoners under measurements, based on a system of anthropometrical descriptions. This system is simple and certain. Identification does not depend on the uncertainty of a name or the doubtfulness of a photograph. We take no notice of names, and photographs might be dispensed with. Criminals are classified under measurements of certain bony parts of the human frame. We have here sixty thousand photographs and cards, with the record of adult male prisoners who have passed through the hands of the police. We begin our classification with the measurement of the length of the head. We found, by experience, that it was better to begin with the head rather than the stature. The size of the skull cannot be changed, but prisoners refuse to stand up straight when their height is being taken. The exact height could not be obtained, except to within three centimetres, while the length of the head can be measured to a millimetre. We divide the length of the head into three classes,— short, medium, and long, — which reduces our collection to twenty thousand. Then we take the width of the head, and making three subdivisions — of narrow, medium, and wide — we have six thousand left. Next, we take the length of the middle finger, and again, making three classes, as we do with all our measurements, we have two thousand photographs left. We continue, on the same system, with the measurement of the foot, the forearm, the height, etc., until we reduce our collection of sixty thousand photographs to six. But you will see the system in operation.

"'Call in that man who was arrested on the race-course yesterday,' said M. Bertillon to an assistant. The charge against the man was watch-stealing, but he swore that it was all a mistake.

"'Have you ever been here before?'

"'Mon Dieu, no.'

"'Never been measured here?'

"'Certainly not.'

"'Where did you come from?'

"'Geneva.'

"'Where did you reside last?'

"'Brussels.'

"A peculiarity of the international thief," remarked M. Bertillon. The prisoner submitted calmly to be measured. He was placed on a stool, and the length of his head taken with a special compass made for the purpose. One leg of it was placed in the hollow above the bridge of the nose, and the other moved round to find the greatest length behind. The compass shows the length to a millimetre. Next the breadth of the head was taken, — from one parietal bone to the other. Another instrument was used for taking the length of the middle finger. "These three are the surest measurements," said M. Bertillon, "and give the best results." The measurement of the left foot was next taken. The prisoner was barefooted, and was made to stand on the left foot when its measurement was being taken. The process continued with the length of the ear, of the forearm, length of the arms extended, the height, and the color of the eyes. The color of the eye is registered according to the intensity of the pigmentation of the iris, but it requires some experience to record this description accurately. It is used most in the classification of young persons who have not reached maturity. After the man was measured, a search of five minutes showed that he was an old thief who had been expelled from France, and was now liable to a very heavy punishment. — *Pall Mall Gazette.*

CAUSES CÉLÈBRES.

XIII.

THE MARCHIONESS DE BRINVILLIERS.

[1676.]

ON the 31st of July, 1672, there died in Paris a gentleman named Gaudin de Sainte-Croix. His death occurred after an illness of five months; and as he had a wife from whom he had been separated, and numerous creditors, a commissary was summoned to place seals upon his effects.

During his lifetime this Sainte-Croix had had the reputation of being an honest, upright man, and had been greatly respected by his neighbors.

On the 8th of August, at the request of his widow and his creditors, the seals were removed, and a notary called to make an inventory of the property. Among other things was found a little roll of papers upon which were written these words: "My Confession." Such a document being considered a sacred thing, and one neither to be seen nor read, by consent of those present it was burned unopened.

There was also found a small box, about eighteen inches long and ten inches wide; and on opening it a half-sheet of paper was discovered, on which was written, in the handwriting of the deceased, the following lines:—

> I earnestly entreat those into whose hands this box may fall to place it at once in the hands of the Marchioness de Brinvilliers, living in the Rue Neuve-Saint-Paul, as its contents concern her alone, and no other person in the world has any interest in them. In case she shall be dead, as well as myself, I request that the box shall be burned with all its contents, without opening or disturbing anything. . . .
>
> (Signed) SAINTE-CROIX.

Out of respect to the wishes of the deceased, the notary contented himself with a glance into the box, which contained some packages of papers, a few small packets, and several glass vials; and it was then locked and sealed.

However, as they proceeded with the inventory, and but little property of value was discovered, the creditors and the widow became uneasy. They began to imagine that the box contained more than had at first been supposed. Madame Sainte-Croix was not ignorant that her husband had lived on terms of great intimacy with this Marchioness de Brinvilliers, to whom the paper found in the box attributed the ownership of its contents. She suspected that a valuable gift was in this manner to be made to the Marchioness to her own prejudice, and by unremitting efforts she finally carried her point that the contents of this mysterious box should be investigated. In the presence of the proper authorities, the seals were once more removed from the box, and the result of the examination was the discovery of a number of small packets carefully sealed and containing what was supposed to be antimony, corrosive sublimate, and vitriol. The box also contained several letters from the Marchioness to Sainte-Croix. In them there was only one allusion to poison, and that was in one of her most impassioned letters, in which she declared that she had determined to put an end to her existence, and pretended that she had taken some of the poison which Sainte-Croix had given her. This poison she described as Glazer's receipt. Suspicion, however, was excited by the discovery of so many mysterious packets, and by the recollection of the sudden deaths of three near relatives of the Marchioness. It was also remembered that she had frequently been heard to allude to the means she possessed of getting rid of an enemy, when she

used the singular expression, "On lui donne par exemple un coup de pistolet dans un bouillon."

Suspicion, once aroused, was speedily strengthened by new developments which left, apparently, no doubt as to the character and guilt of the Marchioness.

Marie Marguerite d'Aubray was the daughter of M. d'Aubray, who held the office of *lieutenant-civil* in Paris. In 1651 she married the Marquis de Brinvilliers, a man of fortune, who was connected with some of the most distinguished families in France. She was a woman of great personal beauty. Her eyes were remarkable for their soft and gentle expression. She was also distinguished for unusual conversational powers, and was one of the leaders of the brilliant society of Paris in the early part of the reign of Louis XIV.

At the end of a year after their marriage, the affection of the Marquis for his wife seemed to lessen, and she imagined, perhaps not without reason, that she was treated with neglect. At this time Sainte-Croix appeared upon the scene. Under the mask of a pleasing exterior he concealed the villany of his character, and being invited by the Marquis to his house, he soon became there a favorite inmate. He watched the conduct of the wedded pair, and soon observed the discontent of the Marchioness. It is needless to detail the arts by which he inspired her with a passion for himself. The result was that the *liaison* became too manifest to escape the eyes of others, although her husband remained in absolute ignorance of it. Her aged father, terrified and indignant at her conduct, implored her to abandon a course which could only bring upon her shame and infamy. His entreaties having no effect, he resorted to summary measures. He solicited and obtained a *lettre de cachet*, and Sainte-Croix was arrested and taken to the Bastile. In prison he made the acquaintance of an Italian named Exili, who was an expert chemist, and who instructed Sainte-Croix in the horrible art of preparing secret and deadly poison. At the end of a year he was released from his confinement, and at once renewed his relations with the Marchioness. Armed with the terrible power of life and death, he found a willing accomplice in the wretched woman. How soon or in what manner she consented to become his pupil in the infernal trade of murder we know not; but there is every reason to believe that she visited the hospitals of Paris, under the pretence of charity, and there tried upon the miserable inmates the effects of the poisons Sainte-Croix had given her. After experimenting upon strangers with more or less successful results, she finally turned her attention to her own flesh and blood. In 1666, while on a visit to her father at his country-seat in Offermont, she mixed some poison in his soup. The old man received the soup from his daughter's hands, ate it, and died soon after. The physicians attributed this sudden death to natural causes. No suspicions were aroused, and the inhuman woman was now hardened in crime.

Madame de Brinvilliers had two brothers and a sister. The older brother succeeded his father as *lieutenant-civil;* the younger brother was councillor of Parliament; the sister was in a convent in Paris. In order to possess herself of the whole fortune of her family that she might squander it on Sainte-Croix, this human monster resolved to destroy them all.

In the winter of 1670 the *lieutenant-civil*, on returning from the Palais, asked for something to drink. A valet-de-chambre of his brother's, a certain La Chaussée, brought him a glass of wine and water. This drink had a singular taste; the councillor threw it aside in disgust, crying, "I believe that rascal means to poison me! What he has given me is hot as the devil." La Chaussée, taking the glass, emptied its remaining contents into the fire, excusing himself as best he could.

In the evening La Chaussée said to M. d'Aubray: "Monsieur, I have discovered the cause of the singular taste of that drink. Lacroix, your valet-de-chambre, had taken

some medicine in the glass." This incident was presently forgotten.

Early in April, 1670, the *lieutenant-civil* went to Beauce to pass the Easter holidays. The councillor accompanied his brother, taking with him his valet, La Chaussée.

At a great dinner which was given at the *lieutenant-civil's* house, a certain dish of pastry was served. All those who partook of it found themselves seriously ill the next day. Those who by good chance did not touch it, escaped unharmed.

On the 12th of April the *lieutenant-civil* returned to Paris, still suffering greatly from the effects of his sudden indisposition. Upon arriving at the city, he soon grew worse, and on the 17th of June, 1670, he died.

As the affair of the pastry had aroused some suspicions of a crime or an accident, an autopsy was made. The physicians and surgeons called to take part in this operation found nothing extraordinary. They attributed the death to natural causes.

But presently the councillor, D'Aubray, was seized with an illness the symptoms of which were similar to those manifested by his brother. He languished for three months, and in November he also died.

The physicians and surgeons who had made the autopsy on the body of the *lieutenant-civil*, were again summoned to examine the body of the councillor. As in the first case, the result of an autopsy was a declaration that there was nothing to indicate that death had not resulted from natural causes.

The instinct of self-preservation, surer and more reliable than science, gave to the *lieutenant-civil's* widow the certainty of impending danger. Her father-in-law, her husband, her brother-in-law, in rapid succession carried off by a mysterious malady, warned her to be on her guard. She said to herself that her death would profit those who had profited by these three deaths. She was, henceforth, the sole obstacle to the concentration of the entire D'Aubray property in the hands of the only remaining heir, Madame de Brinvilliers. Consequently, she surrounded her life with every precaution, and kept a careful watch upon her sister-in-law.

About the time of her brothers' deaths, the Marchioness attempted the life of her only sister, but for some unknown reason on this occasion she failed.

Such was the record of the Marchioness de Brinvilliers at the time of Sainte-Croix's death. Upon learning of his decease, she made the most strenuous efforts to get possession of the box, but in vain, and soon afterward she quitted France for England.

La Chaussée was arrested, and various poisons were found upon his person. Subjected to the question ordinary and extraordinary, he bore the torture courageously, and pain could not tear from him a confession. He persisted in his denials of crime, and declared that he was innocent. But once released from the instrument of torture, he made a confession. He stated that he had poisoned the two brothers D'Aubray; Sainte-Croix had given him the poison, and he had been paid one hundred pistoles for his criminal services. Sainte-Croix had said to him, "Madame de Brinvilliers knows nothing of this;" but La Chaussée had not been duped. In fact, the day after the death of the younger brother, Sainte-Croix had given him a letter for the Marchioness, and after reading it, she had urged him to fly. La Chaussée was condemned to be broken alive upon the wheel; but before his death he retracted so much of his previous confession as implicated the Marchioness, and declared that she was innocent of the murder.

At the instance of the French Ambassador, Madame de Brinvilliers was forced to leave England. She fled first to Brussels, and finally sought an asylum at Liege. There she entered a convent. At first she appeared to be sincerely devout; but the calm and peaceful life accorded little with her worldly aspirations, and she soon became weary of her surroundings. Within the convent walls, however, she was safe, and under the circumstances she must take every precaution. But the avenger of blood was upon her track.

An officer of justice, named Desgrais, was despatched from Paris to arrest her, and having arrived at Liege and communicated the purpose of his journey to the authorities of the town, he received from them permission to carry her away, if he could. Fearing that if he attempted force she might destroy herself, he resorted to ruse. Disguising himself as an Abbé, he made several visits to the convent, and finally succeeded in making her believe that he was passionately in love with her. She, yielding to his entreaties, agreed to meet him outside the town at an appointed hour. On repairing to the place of rendezvous she was immediately seized by the guard whom Desgrais had in attendance, and hurried off to France. During the journey she attempted to commit suicide, but was prevented, and she was at last safely lodged within the walls of the Conciergerie. Before leaving Liege, Desgrais obtained from the Council of Liege permission to search the chamber occupied by the Marchioness. He found underneath her bed a box which contained a paper written by her, which purported to be a confession, and in which she admitted to the fullest extent all her guilt.

Once in France, feeling herself lost, the Marchioness abandoned herself to despair. She sought to kill herself. She attempted to eat glass, and she swallowed pins, but all her efforts at self-destruction were in vain.

The trial excited the most intense interest. Dark as was the cloud of suspicion which hung over her, it was not improbable that the evidence would prove insufficient for a conviction if the fatal confession could be kept back. This was the damning fact which, if admitted in evidence, rendered defence hopeless; and to the point of its inadmissibility, her advocate, M. Nivelle, addressed all his energies. But supposing this line of argument to be successful, it was still necessary to do away with the presumptions of guilt afforded by the other facts of the case, and Nivelle performed his difficult task with admirable tact and ability. His eloquence was, however, all in vain. The facts of the case were too strong to be got over, and the court found the prisoner guilty, and pronounced against her the following fearful sentence: —

"The court condemns the said D'Aubray de Brinvilliers to make the *amende honorable* before the principal door of the church of Notre-Dame, where she shall be placed on a cart, with her feet bare, and a rope around her neck, holding in her hands a lighted torch of the weight of two pounds; and there, being upon her knees, she shall say and declare, that wickedly, out of vengeance and to obtain their property, she poisoned her father, her two brothers, and attempted the life of her deceased sister, of which crimes she repents and asks pardon of God, the King, and Justice; this done, she shall be taken and conducted in said cart to the Place de Grève in this city, there to have her head struck off on a scaffold, which shall be erected for said purpose in said Place, her body burnt and her ashes scattered to the wind; but she is first to undergo the torture ordinary and extraordinary, that she may reveal the names of her accomplices."

On being taken to the torture-chamber, in conformity with this sentence, Madame de Brinvilliers, before being subjected to the torture, said: "Gentlemen, it is useless; I will tell all voluntarily. I do not do this because I expect to avoid the torture; my sentence imposes that, and I do not believe that it can be dispensed with; but I will declare all first. I have denied everything up to this time, because I thought it to be for my interest to do so."

She then commenced her confessions, acknowledging the crimes imputed to her. She did not name a single accomplice; and the torture, afterwards applied, extorted nothing more from her.

"I have told all," she kept repeating. "I have no living accomplice. I do not know of what the poison was composed, and I am ignorant as to what the antidote for it may be."

Being unable to obtain anything more satisfactory from her, the authorities removed

her to her cell, there to await the hour of execution.

In one of the letters of Madame de Sévigné, is contained a graphic but flippant narrative of the last moments of the ill-fated Marchioness de Brinvilliers. In it she says:

"At last it is done. La Brinvilliers is no more: after the execution her poor little body was thrown into a great fire, and her ashes scattered to the winds, so that we shall now breathe her. . . . She was condemned yesterday. In the morning her sentence was read to her; she underwent the torture; she said there was no necessity for it, that she would tell all. In fact, for four hours she related the story of her life, which was more frightful than had been imagined. . . . At six o'clock she was taken *naked* in a chemise, and a rope about her neck, to Notre-Dame, to make the *amende honorable*, and then thrust into the cart, where I saw her thrown backward upon the straw, a doctor on one side of her and the executioner on the other. Really, that made me shudder. Those who saw the execution say that she mounted the scaffold with courage. . . . She died as she lived; that is to say, resolutely."

It is almost incredible; but we are told that this atrocious criminal was a popular favorite, and that on the day after her execution a mob assembled in the Place de Grève, and demanded, with loud cries, the ashes of the saint who had been sacrificed the evening before.

The Green Bag.

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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.

THE GREEN BAG.

ENTERING, as it does with this number, upon its second year, the "Green Bag" congratulates itself that it has safely passed that critical period so often fatal to new literary ventures. For the mortality among the infant journals of to-day is almost as great, proportionately, as among the human race. Having escaped, however, all the dangers incidental to infancy, the Magazine now stands firmly upon its feet, with all the strength and vigor of early manhood, and possessed of a firm determination to hold the position it has already attained. When started one year ago, it was felt that there was not only a field for just such a magazine, but that it would fill a long-felt want among the profession. A year's experience has demonstrated the correctness of this view; and our efforts at being at the same time "useless but entertaining" have met with the most hearty commendation from our legal friends in every State and Territory in the Union, as well as England, Ireland, Scotland, Canada, Germany, Australia, India, New Zealand, the Hawaiian Islands, Japan, and we might almost say the *whole* civilized world. Thus encouraged in our undertaking, we propose to keep on in the path that we have chosen, and shall continue to be "useless" (from the technical case-law point of view) and we trust more and more "entertaining." The Editor's Green Bag is filled with a host of most interesting papers, which will be drawn forth from month to month for the delectation of our readers.

WE will bind Vol. I. of the "Green Bag," for such subscribers as may desire, for $1.50. The binding we furnish is a handsome half morocco, making a most attractive-looking volume. Those sending parts to be bound will prepay the expressage on the same.

A CORRESPONDENT writes from Denver, Col., as follows: —

Anent the admirable picture and sketch, in November's "Green Bag," of that genuine man and wonderful lawyer Jerry Mason, I have heard — what well might be true, but *is* it? — this tradition: that when pitted against Webster in jury-trials, and when the great expounder had exhausted his thunderous arguments and declamation in the when-my-eyes-shall-be-turned-for-the-last-time-to-behold-the-sun-in-heaven style, Mason's habit was to hoist one of his big feet up into a chair before the jury, and with elbow on knee and with the air of the veriest rustic begin: "Gentlemen, I ain't eloquent like my friend Webster; but jest let me state a few p'ints to you in reply to his fine speech," — and so forth. After some such exordium he would go on and go on, it might be for hours, in the plainest, simplest talk about the evidence in the case, with arms akimbo, and forefinger beating emphasis on the palm of his left hand, — his only gesture. But such clear, convincing logic, such adaptation to the mental habits of his listeners! The Ancient Mariner held not his auditor with so firm a grip and spell.

According to Webster's own admission, he feared an encounter with Mason more than with any other member of the New England Bar. *Quære:* Is not Mason's style of discourse far above what is commonly called oratory, and is it not far more difficult to attain?

FROM Holton, Penn., comes a complaint against the profession: —

Editor of the "Green Bag":

Our counsel has been disputing my wishes for a year or more, to have a defect in our title corrected which comes from a deed recorded in 1842, reading "Benjamin" instead of "Bernard" for the name of the vendor. I settled him by quoting what our witty lawyer Reardon said. Coming into court and seeing three attorneys engaged in a case, he said, in a stage-whisper, "Three members of the bar

in such a case! Why don't the fellow get *one* lawyer?" Now, our counsel insisted that the defect in our title was no defect, that "any lawyer will say so;" but I settled him by reminding him that we might not always meet "lawyers," we might have to do with a "member of the bar," and what he might do the Lord only knows. Many of them are like our late Judge who was said to be "the twin brother of necessity;" or might equal the sapient judges (a minority) of our Supreme Court who decided that it was a criminal violation of the license laws to ship liquor by express, C. O. D., but not to ship it without this provision! (that is, in shipping out of one county to another where there were no liquor licenses). This is the kind of "law" that makes the layman cuss both law and lawyers.

LEGAL ANTIQUITIES.

AN ordinance of Charles VI. of France in 1413 says that —

"Advocates as well as attorneys in all the courts of the kingdom are accustomed to extort from our poor subjects too great fees and profits which they have not earned, in the matter of written proceedings, which they make longer and more prolix than necessity requires, and we forbid the aforesaid advocates and attorneys, on the oaths they have sworn, and under pain of exemplary punishment, to take any other fees than such as are moderate, or to use prolixity in their writings; but they must make them as short as the case will allow. And if it is found that they do the contrary, we strictly enjoin upon the members of our present and future parliaments, and upon all to whom it may appertain, to punish and correct the aforesaid persons rigorously, and in such a manner that it may serve as a warning to all others."

And in the famous ordinance of Charles VII., in 1454, which was issued on the subject of "law reform," we find the following in regard to advocates: —

"They are accustomed in their pleadings to use harsh and opprobrious language towards the opposite side, which serves no good purpose, but is a practice contrary to reason and all proper decency, to the great scandal of justice;" — and they are forbidden in future to engage in the unseemly strife of mutual abuse in any manner or degree, or to say anything which tends to vilify another, and is not necessary for establishing the facts of the cause in which they are engaged.

THE following is one of the most remarkable laws which ever graced the statute-books of any State: —

The General Assembly of Maryland on the 23d of February, 1822, passed the following resolution in favor of one Luther Martin: —

Resolved, "That each and every practitioner of law in this State shall be and he is hereby compelled from and after the passage of this resolution to obtain from the Clerk of the County Court in which he may practise, a license to authorize him so to practise, for which he shall pay annually on or before the first day of June the sum of five dollars; which said sum is to be deposited by the Clerk of the County Court from which he may procure such license, in the treasury of the western shore or eastern shore, as the case may be, subject to the order of Thomas Kell and William H. Winder, Esqr's, who are hereby appointed trustees for the appropriation of the proceeds raised by virtue of this resolution to the use of *Luther Martin*," with proviso that it should be only necessary to obtain license in one court and the resolution to continue in force only until the death of Luther Martin.

FACETIÆ.

A CORONER'S jury, after listening attentively to the evidence given in a case of suicide, brought in the following sage verdict: "We are of the opinion that the want of the common necessaries of life drove the deceased to commit the desperate act with the greatest deliberation; therefore we find him guilty of culpable insanity."

A CASS County justice of the peace, commenting on Judge Gresham's leaving a life position for a short term in the Cabinet, remarked that he could not understand Judge Gresham's motive, unless it was that he was tired of leading a *judicious* life.

AN Irish witness, having been "sworn to the truth" of a statement he had made regarding an attempted murder, afterwards confessed that the major part of it was false.

"Did you not swear to the truth of it?" he was asked.

"Yes, begorra!" answered the witness; "but I did n't swear to the loyin part, I 'll take me oath on that, sorr!"

AN action was brought by an attorney against a defendant for calling him a thief, a rogue, and a *fiend;* and as the plaintiff had no proof of any pecuniary special damage, he had to rely on the injury that must necessarily be inflicted on him in his professional capacity by such imputations. In summing up, Sir William Maule said: —

"As to the word 'thief,' it is a very ambiguous one, and does not necessarily impute what the law considers an indictable offence. For instance, to steal a man's wife, to steal away the affections of another, to steal a march upon any one, would be no crime in law. Wives, human affections, and such things as marches are not at present the subjects of larceny. 'Rogue' is different; it might certainly affect the plaintiff professionally, because a rogue ought not to be allowed to practise as an attorney. But the same principle does not apply to the term 'fiend;' it may not be a complimentary expression, but I do not think to be a fiend disqualifies a man from being an attorney. If the learned counsel will point out to me any case where the court has refused an application to place a fiend upon the rolls, I shall be happy to consider it." — *Bench and Bar.*

A SARCASTIC lawyer, during the trial of a case, remarked: "Cast not your pearls before swine." Subsequently, as he rose to make the argument, the judge said facetiously, —

"Be careful, Mr. S——, not to cast your pearls before swine."

"Don't be alarmed, your Honor! I am about to address the jury, not the court." — *Irish Law Times.*

LAWYER. Do you understand the nature of an oath, madam?

WITNESS. Well, I should say I did. My husband took off the screens yesterday, and is putting up the stovepipes to-day. — *The Critic.*

A LITTLE darky boy was recently brought before the police court of Richmond, Va., charged with some trifling offence. He asked to have his case postponed for one day, so that he might bring as a witness another darky boy who would exonerate him. The next morning his friend was in court; but, to the surprise of everybody, his testimony was entirely against the accused boy, and resulted in a conviction. When the prisoner was asked to explain this fact, he remarked philosophically: "Oh, he done been seen since I sawn him."

DURING a breach of promise case heard in Indiana recently, the counsel on both sides chattered considerably about the "fire of love," "Cupid's flames," "the burning passion," etc. The jury brought in a verdict that both plaintiff and defendant were guilty of arson, and recommended them both to the mercy of the court.

A GOOD story, but one rather hard upon the profession, is told of a certain Dean of Ely. At a dinner, just as the cloth was being removed, the subject of discourse happened to be that of extraordinary mortality among lawyers.

"We have lost," said a gentleman, "not less than seven eminent barristers in as many months."

The Dean, who was very deaf, rose just at the conclusion of these remarks, and gave the company grace: "For this and every other mercy, make us devoutly thankful."

A MAN who had stolen a mirror was imprisoned for theft and fined for drunkenness. He had taken a glass too much.

A JUDGE of Milesian extraction charged a jury as follows: "Gentlemen of the jury, you must find that the defendant is guilty beyond a reasonable doubt. A *reasonable* doubt is *such* a doubt as will *convince* a *reasonable man* that the defendant is *not* guilty."

WHILE summing up evidence in a case for the opinion of the jury, Lord Eskgrove spoke thus: "And so, gentlemen, having shown you that the argument is utterly *impossibil*, I shall now proceed to show you that it is extremely *improbabil*."

NOTES.

As tending to show the warmth of heart and kindliness of manner of Mr. Justice Brewer, lately appointed a member of the Supreme Court of the United States, we publish the following letter written by him to his former associates upon the Supreme Bench of the State of Kansas when he resigned as an Associate Justice of the Supreme Court of that State to accept the position of United States Circuit Judge of the Eighth Circuit.

TOPEKA, April 8, 1884.

Hon. A. H. HORTON, Hon. D. M. VALENTINE.

GOOD AND VALUED FRIENDS, — I have to-day returned to the State of Kansas the trust which for many years she has generously confided to my care; and in so doing I sever the official relations which I have sustained to you as Justices of her Supreme Court, sharers with me in the honors, labors, and responsibilities of that high office.

It is not strange that during the last few days my mind has often gone back over the line of our mutual experiences and been filled with pleasant memories. Few men have been so fortunate as I in official relations. The court has, thanks to your faithful and unremitting labors, been enabled to keep even with the constantly increasing volume of its duties. We have met on the first of each month and called every case on the docket; and within a few weeks in each case the opinion has been filed. The "law's delay" has to the litigant in Kansas courts become an obsolete phrase. To-day I leave you with a clean docket. Every case submitted prior to the first of March has been decided, and my successor comes on to an open field.

The officers of the court have been ever prompt, efficient, and courteous, and I part from them with regret. But more than all, in our personal relations there has been that which touches me deeply, and which blossoms to-day as a bright flower in the sunny gardens of memory. It is not merely that negatively there has been no discord, no disagreement, but affirmatively that I have been the recipient at your hands of such constant and uniform kindness and assistance. No one knows so well as I, how much of the joys and success of my life I owe to you. While we have had many difficult cases and questions to consider, have often differed in our views and opinions, and have had animated and prolonged discussions, yet I cannot recall a single instance of an unkind, harsh, or impatient word to me or of me, falling from your lips during all these years. Such an unbroken line of happy experience is a rare felicity, and I thank you with my whole heart for it.

I may not, in the varied relations of my new position, expect such uniformity of felicity; and may realize in its trials, burdens, and embarrassments something of the experience of many who reaching after the higher places in life find that success is only the sad good-by to peace of mind and sweet contentment.

Again thanking you for all you have done to add to the rich experiences of my past years, and wishing you that continued confidence of the good people of Kansas which you have so honorably earned and so justly deserved, I am, with great respect,

Your late associate and constant friend,

DAVID J. BREWER.

WHILE it may be said that there is no statute law of copyright in China, there is, on the other hand, an unwritten law that is equally effective. From a paper on this subject, read some time since at a meeting of the Royal Asiatic Society, we learn that on the titlepage of newly published books in China there is not infrequently a caution against their unauthorized publication; showing at once that literary property is liable to be stolen, and that redress is afforded to authors thus wronged. The Penal Code, however, will be searched in vain for an enactment on the subject of copyright. Chinese law, indeed, has never conceived it necessary to specify that particular form of robbery which consists in despoiling a scholar of the fruit of his toil, any more than to name the products of husbandmen and artisans as under the protection of law; all alike being regarded as property by natural right. Hence, those who infringe the rights of an author are liable to a punishment of one hundred blows, and three years' deportation if they print and sell his works without authority; but if the trespass has gone no further than printing, no copies having been sold, the punishment inflicted is only fifty blows and forfeiture of the book and blocks. The right of exclusive publication, thus protected, is not only vested in the author, but is held in perpetuity by his heirs and assigns. Equal protection is given to inventors and discoverers; the section of the Penal Code that takes cognizance of larcenies of a grave character acting at the same time both as a copyright and a patent law. The productions of artists also come under its operation; and in all these cases the rights of the individual in his property, whether it be literary, artistic, or mechanical, are held to be identical in principle, and are treated as equally inherent and inalienable.

It is often alleged against juries that they are very stupid at times in their "finding," and there is certainly a good deal of truth in the allegation. The fine language sometimes addressed to them by the judge, utterly incomprehensible to men of their condition in life, and the long speeches of counsel, "throwing dust in their eyes" and drawing specious and unwarrantable inferences, are often more than anything else the cause of wrong verdicts. We have a good example as to how this was felt, even in ancient times, recorded in a scarce little work called "A Guide to Jurymen," printed in 1560. "A certain man of the jury, when the case was over so far as the examination of witnesses went, rose and humbly prayed a boon of his lordship. 'Say thy say, man,' quoth the judge. The boon was that now he and his fellows had heard all that could be in fact alleged, they might fall to, and come to their opinion, or ever they were confused by the long and tiresome talk of counsellors. The judge sharply rebuked the silly man for his vanity, and after large discourse did sum up all the same case with many long words, and did afterwards greatly fine the same jury for that they brought in a verdict different from his conceit of the case, whereat all laughed heartily save the honest man who had begged the boon."

Recent Deaths.

Major Nathan Weston, who died at his residence in this city November 11, came from a distinguished Maine family, his father having been Chief-Justice of the Supreme Court of that State for many years. He was a graduate of Bowdoin College, and chose the law as a profession, which he followed with success both in his native State and in this city, until he retired from active practice. During the Mexican War he served as a paymaster in the army, being attached to the forces under General Taylor, and was present at the battle of Monterey and Buena Vista. In early and middle life he filled many responsible positions in the gift of the Democratic party in his native State. He was an uncle of Chief-Justice Fuller of the United States Supreme Court, and was a gentleman of high intellectual attainments and strict integrity.

Lewis C. Cassidy was born in New York City, Oct. 17, 1829, and died suddenly at his home in Philadelphia, Nov. 18, 1889. After graduating at the Philadelphia High School he studied law in the office of Hon. Benjamin Harris Brewster, and was admitted to the bar Nov. 7, 1849.

When barely of age he served one term as a member of the Legislature of Pennsylvania; in 1856 he discharged the duties of District Attorney of Philadelphia for about a year pending the election contest in the courts which resulted in favor of his opponent; and from 1883 to 1887 he was Attorney-General of Pennsylvania.

With these exceptions his life was devoted to his private practice, and he died after a professional career of forty years.

His early practice was in the criminal courts, and for a generation he ranked as the undisputed leader of the Philadelphia Bar in that branch of practice, and as one of the leading criminal lawyers of the country. No man relied less upon inspiration or more upon hard work. His preparation of every case, great or small, was careful, painstaking, and exhaustive.

With a tall and commanding figure, clear, well-modulated, and telling voice, forcible and impressive delivery, powerful with court and jury, having rare skill in cross-examination, and consummate tact in the conduct of a trial, he was a *nisi-prius* lawyer whose equal it would be difficult to find at any bar.

He was recognized in the profession as an authority on medical jurisprudence; and among the many notable cases in which he was engaged to conduct the examination and cross-examination of medical experts was the Malley murder case, tried at New Haven in 1882.

His appointment to the Attorney-Generalship called forth much adverse criticism from those who knew him only as a criminal lawyer. How completely he silenced his critics and met the expectations of his friends, is part of the history of his State. As her representative he conducted with success cases of the greatest magnitude against some of the ablest and best-equipped lawyers of the country. He completely refuted the charge that he was great in criminal cases only, and upon retiring to private life he became leading counsel for some of the largest corporations, and until his death was engaged in the most important civil business. To the highest

capacity and learning as a lawyer, Mr. Cassidy added the reading, taste, and refinement of a cultured and polished gentleman. It was well said of him: "A kindly nature and gentle spirit made him a gentleman, industry a scholar, and ambition a lawyer. He was all three, and made them inseparable when he became the last."

OLIVER L. BARBOUR, the famous compiler of law reports, died at Saratoga, N. Y., on December 17, after a long illness. Mr. Barbour was born in Cambridge, Washington County, N. Y., in June, 1811; was graduated from the Fredonia Academy in 1827, studied law and was admitted to the bar in 1832. From 1847 to 1849 he was reporter of the New York Court of Chancery, and of the State Supreme Court from 1848 to 1876. In 1859 Hamilton College conferred upon him the degree of LL.D. He was the author of a number of legal works and treatises, as well as the reports which have made his name a household word among lawyers, and which were wonderful examples of patience, accuracy, and discrimination.

REVIEWS.

THE AMERICAN LAW REVIEW, November–December, contains a number of interesting and valuable papers. Its contents are "Explaining Alterations," by Austin Abbott; "The Centenary of Modern Government," by Simeon E. Baldwin; "By-Laws of Benefit and Voluntary Societies," by Eugene McQuillen; "The Coupon Legislation of Virginia," by Morris Gray. David Dudley Field's "Annual Address" to the American Bar Association is given in full. Samuel Maxwell contributes a paper on "Relief of the United States Supreme Court;" and Émile Stocquart writes on "Marriage in Private International Law."

In the "Notes" we find the following: "Our neighbor, the 'Green Bag,' is usually very happy in the selected matter which it presents to its readers; but it seems not to have made use of its customary discrimination in the scissoring which is reprinted from an English legal journal called 'Pump Court.'" The article referred to is "An English View of the American Bar," published in our October number. We regret exceedingly our lack of discrimination; but as Brother Thompson of the "Review" finds the article in question worthy of a notice of two full pages in his admirable Journal, we cannot but feel that perhaps, after all, our want of discrimination was not so great as it might have been. The article was published to show the ignorance and misconception displayed by English writers in regard to American institutions; and the comment it has aroused shows that it has been read with interest.

THE HARVARD LAW REVIEW for December contains a valuable paper on "The Police Power and the Right to Compensation," by Everett V. Abbott. Simon G. Croswell contributes an article on "Infringement Cases in Patent Law;" and Prof. F. W. Maitland's interesting "History of the Register of Original Writs" is concluded.

THE DECEMBER CENTURY comes, as usual, replete with interesting matter. The number opens with "Selections from Wellington's Letters," which consist of a series of heretofore unpublished letters, written by the Duke of Wellington in his last years to a young married lady in England. The illustrations accompanying them include pictures of the Duke's residences and three portraits of himself, including the famous full-length picture by Sir Thomas Lawrence. An illustrated article on "The New Croton Aqueduct," by Charles Barnard, gives the reader a full account of that remarkable engineering work. The "Merry Chanter," by Stockton, and several short stories make up an excellent supply of fiction. From the "Autobiography of Joseph Jefferson," which is full of interest, we clip the following story of the actor Burton: —

"I have often thought that Mr. Burton must have had Irish blood in him, for he was continually spreading the tail of his coat for a fight, — I mean an intellectual fight, as physically he was not pugnacious. Quarrelsome persons who do not indulge in pugilistic encounters are fond of lawsuits; it is only another way of having it out, and Burton must have spent a fortune in fees. His humor on the witness-stand was quite equal to that of Sam Weller. On one occasion, while the actor was going through bankruptcy, an eminent lawyer in Philadelphia thought he detected a desire on Burton's part to conceal some facts relative to a large sum of money that he had made during the production of the 'Naiad

Queen.' Rising with great dignity, and glaring fiercely at Burton, he demanded: 'What became of that money, sir?' The comedian looked him straight in the face; then rising in imitation of an attorney, he replied: 'The lawyers got it.'"

WITH the December number, the ATLANTIC MONTHLY closes its sixty-fourth volume. Few magazines can boast a career of such uninterrupted success as this sterling periodical. Its long list of contributors includes the names of almost every writer of prominence for more than a quarter of a century back. The present number contains an interesting account of "The Old Bunch of Grapes Tavern," a famous hostelry of old Boston, by Edwin L. Bynner. "The Tragic Muse," by Henry James, is continued. Henry Van Brunt contributes a valuable paper on "Architecture in the West;" and John Fiske, an article on "Border Warfare of the Revolution." Perhaps the most important article in the contents is that of Prof. N. S. Shaler on "School Vacations," — a subject in which not only teachers and students, but the community at large, are, or should be, deeply interested. The other contents are "December out of Doors," by Bradford Torrey; "The Nieces of Mazarin," by Hope Notnor; "The Begum's Daughter," by E. L. Bynner; "Delphi: The Locality and its Legends," by William Cranston Lawton; "Latin and Saxon America," by Albert G. Browne; and "The Later Years of William Lloyd Garrison."

THE December number of the POLITICAL SCIENCE QUARTERLY opens with an article on the deferred Constitutional Convention of New York State, by the Hon. Seth Low, President of Columbia College. George Gunton attacks the Economic Basis of Socialism, namely, Karl Marx's theory of "Surplus Value." The Rev. Samuel W. Dike reviews the new and important Government Report on Marriage and Divorce. Worthington C. Ford (late of the State Department) criticises and opposes the scheme of substituting silver for legal-tender notes. Prof. F. W. Maitland, of Cambridge, England, completes his valuable survey of the materials of English legal history. Prof. F. J. Goodnow, of Columbia College, begins a description of the recent reorganization of local government in Prussia. Twenty-two recent American, English, German, French, and Italian works are reviewed: among the reviewers, besides the editors, are Professors Hadley of Yale, Giddings of Bryn Mawr, and Ashley of Toronto University; J. B. Moore, Assistant Secretary of State; Sir George Baden-Powell, M. P. The Record of Political Events (previously published in the NEW PRINCETON REVIEW) is continued to November 1.

BOOK NOTICES.

RIGHTS, REMEDIES, AND PRACTICE. At Law, in Equity, and under the Codes. By JOHN D. LAWSON. Vols. I., II. Bancroft-Whitney Co., San Francisco, 1889. $6.00 net a volume.

Mr. Lawson is a writer of such established reputation that anything from his pen is sure to be of great interest and value to the profession. In the present work — which is to be completed in *seven* volumes, one volume to be issued every two months — the author purposes to present a complete view of American Case Law on every species of Right and Remedy, of Action and Defence, both at law and in equity, within the compass of a single work. In other words, his endeavor is to present a substitute for a complete collection of text-books, which will be in itself a working library, containing all that is necessary for the lawyer in his ordinary business. The usefulness of such a work cannot be over-estimated, and an examination of the first two volumes shows that Mr. Lawson has done what he set out to do in a most thorough and satisfactory manner. The work is arranged in four divisions, viz.: I. PERSONS AND PERSONAL RIGHTS. II. PERSONAL RIGHTS AND REMEDIES. III. PROPERTY RIGHTS AND REMEDIES. IV. PUBLIC RIGHTS AND REMEDIES. Each volume contains about nine hundred pages.

The text, divided into sections with bold-faced heads, has references in the foot-notes to the decisions upon which it is founded, as in the most approved of modern treatises. Between the text and these foot-notes — that is, immediately following the text of nearly every section — is a sub-section, headed "Illustrations," printed from smaller type, which consists of a digest of the facts and rulings in a number of cases pertinent to the text.

We fully agree with the publishers in believing that this comprehensive, elaborate, and practical work will prove more useful in every-day practice than any seven volumes extant.

THE GENERAL PRINCIPLES OF THE LAW OF CONTRACTS. By REUBEN M. BENJAMIN. Published by R. M. Benjamin, Bloomington, Ill., 1889. $2.00.

Under the form of rules, Judge Benjamin has prepared for the use of students a most admirable work upon this important subject. Clear and concise, this manual will be of the greatest assistance to those commencing the study of the law, and the practitioner will also find it a work of much value. The author has been peculiarly successful in the statement of his propositions and in his citation of authorities. The wonder is that he has been able to condense so much law into so limited a space and at the same time give so comprehensive a treatment of a subject covering so broad a field. The work should be placed in the hands of every law student in the country.

THE LAW OF HUSBAND AND WIFE. By LELIA J. ROBINSON, LL.B. Lee & Shepard, Publishers, Boston, 1889. $1.00.

In the compilation of this little book Miss Robinson has designed it for popular as well as professional use. A general outline of the laws defining the mutual rights of husband and wife is clearly and succinctly given, and a vast deal of valuable information is condensed into the seventy-two pages composing the text. Abstracts of statutes in all the States concerning the law of husband and wife are added. In addition to its intrinsic merit this work possesses an additional interest from the fact that it is written by the woman through whose efforts the Legislature of Massachusetts first passed a bill giving women the right to practise law in our courts; and she herself was the first woman admitted to the bar in this Commonwealth.

LAWYERS' REPORTS ANNOTATED. Book IV. Lawyers' Co-operative Publishing Co., Rochester, N. Y., 1889. $5.00 net.

The fourth volume of this series is an additional evidence of Mr. Desty's excellent work. His annotation is thorough and exhaustive, and his selection of cases leaves nothing to be desired. The indexing, as heretofore, is a feature of the Reports, and cannot fail to be appreciated by those who are fortunate enough to possess this series.

AMERICAN STATE REPORTS, VOL. IX. Bancroft, Whitney & Co, San Francisco, 1889. $4.00 net.

We can add but little to what we said in our November number concerning this most excellent series of Reports. The high standard of the previous volumes is fully maintained in the present one. The cases are admirably selected, and show that good judgment and discrimination which characterize all of Mr. Freeman's work; and the profession may congratulate itself that it can procure at a comparatively small price such a valuable collection of Reports.

CELEBRATED TRIALS. De Witt Publishing House, New York. $2.00.

Under this title the publishers have bound together in an attractive volume some of the most celebrated American trials. Among them are "The Forrest Divorce Case," "The Trial of Hon. Daniel E. Sickles for shooting Philip Barton Key," "The Trial of Albert W. Hicks, the Pirate," etc. All the evidence and arguments are given in full, and the reports contain much that was suppressed in the newspaper accounts at the time.

A SWISS THOREAU. By CAROLINE C. LEIGHTON. Lee & Shepard, Publishers, Boston, 1889. 50 cents.

This is a brief sketch of Henri-Frédéric Amiel, who was born at Geneva in 1821. He is said to have been the original of "Langham" in Mrs. Humphrey Ward's "Robert Elsmere." In his life and tastes he strongly resembled our own Thoreau; hence the title of this little work. The sketch is exquisitely bound and printed.

THE STUDENT'S SERIES OF ENGLISH CLASSICS: WEBSTER, MACAULAY, COLERIDGE. Leach, Shewell, & Sanborn, Publishers, Boston and New York, 1889.

These first three volumes of a series of English classics designed for students are edited, respectively, by Louise Manning Hodgkins, Veda D. Scudder, and Katherine Lee Bates, all of Wellesley College. In a condensed form the life of each of these distinguished writers is given, to which is appended one or more of his best known works. Not only to students but to the general reader this series will prove of value and interest. The biographical sketches are well written, and the selections accompanying them well chosen.

THE TARTUFFIAN AGE. By PAUL MANTEGAZZA, translated by W. A. Nettleton, assisted by Prof. L. D. Ventura. Lee & Shepard, Publishers, Boston, 1889. $1.35.

This is one of the most amusing and entertaining books that we have read for a long time. The author handles the hypocrisy of mankind without gloves, and lays bare the shams and deceits of so-called fashionable society of the present day in a manner which, while highly entertaining, convinces the reader that there is, alas! altogether too much truth in his assertions. The translation is admirably done, and the book is one that will be widely read.

Raymond Thompson

The Green Bag.

VOL. II. No. 2. BOSTON. FEBRUARY, 1890.

SEYMOUR D. THOMPSON, LL.D.

WE take pleasure in presenting to our readers, in this number, an excellent portrait of Judge Thompson, of St. Louis, who is known to all American lawyers as the author of several useful and practical law books. He is so averse to notoriety that it is with great difficulty we have been able to procure, through friends, the photograph from which this portrait is copied, and the facts upon which to found a brief sketch of his life.

SEYMOUR DWIGHT THOMPSON was born in Will County, Ill., Sept. 18, 1842. His father was a Presbyterian clergyman, a graduate of the Theological Seminary at Auburn, N. Y., who moved West at the close of the Black Hawk War. Losing his voice, however, in consequence of asthma, he was obliged to give up his profession, and take to farming to support a numerous family; migrating, as was the way with the farmers of the West, from place to place, finally locating in Fayette County, Iowa. He had lived here only a short time when he was overtaken, with his youngest son, in a prairie fire and burned to death. The family, thus suddenly bereaved, returned to Illinois.

Young Thompson for the next few years had the common experience of a farmer's son in straitened circumstances, bent on getting a good education. Until he was old enough to teach school, he worked around on farms all summer, wherever he could get employment, in order to get money to pay for schooling in the winter. At sixteen he began to teach school part of the time, using the money so earned to go to the higher grade of schools the rest of each year. He thus worked his way at Rock River Seminary, Mt. Morris (Ill.), for two years, and at Clark Seminary, Aurora, one term.

When the Civil War broke out he was preparing to enter college, but enlisted in an Iowa regiment as a private at the first call for troops, seeing hard service, and serving until the close of the war, when he was mustered out with the rank of captain. While in the army he married, and on leaving the service found himself in Memphis, Tenn., with no profession or trade, and a growing family to support. During the last year of the war he had been detailed on constant duty as Judge Advocate, and so acquired a leaning toward the legal profession. After various attempts to earn a living otherwise, having obtained employment in the office of the Clerk of the Law Court, he utilized all his spare time in reading law, and was admitted to the bar in 1869. It is a noteworthy fact that among the young lawyers from the North who were practising in Memphis at this time, and who afterwards returned North and became celebrated as legal authors, were also Prof. Melville M. Bigelow, now living in Boston, and Prof. M. D. Ewell of Chicago.

Judge Thompson began his literary work by editing, jointly with Thomas M. Steger of Nashville, the Statute Laws of Tennessee. Their compilation, known as "Thompson and Steger's Tennessee Statutes," received

semi-official endorsement through the purchase by the Legislature of a large number of copies for distribution to State officials. While engaged in this work he started the publication of a series of "Unreported Tennessee Cases;" but the first volume, published at a newly organized and imperfectly equipped printing-office, was found to be so full of errors that the editor insisted on its suppression, and the whole edition was destroyed, except a few copies which had strayed into circulation. These now rank among the curiosities of American law literature.

Being thus fairly launched on the resistless flood of printer's ink, the young lawyer next published a collection of cases illustrating the law of self-defence. The idea of the book was suggested, and many of the cases furnished, by the late Judge Horrigan, of Memphis; and although Thompson prepared most of the notes which rendered this work so valuable that it is still selling, his modesty led him to entitle the collection "Horrigan and Thompson's Cases on Self-Defence."

These three works were published in St. Louis, and to facilitate proof-reading the author finally changed his residence to that city. Here he found himself again a stranger, with few acquaintances, and with but a meagre income from his books, struggling to establish a practice at a bar already over-crowded with new-comers.

Just at this time (1874) the Hon. John F. Dillon, then United States Circuit Judge for the Eighth Circuit, conceived the idea of founding a law journal which should fill for the West the same place then well filled in other sections by established periodicals. Although willing to give such a journal the benefit of his guidance and advice, his absorbing labors on the circuit prevented more active work, and he therefore cast about for an editorial assistant of the right capacity. The publishers whom he selected were also the publishers of the "Cases on Self-Defence," and they recommended Mr. Thompson, who was at once placed in charge of the periodical since widely known, and still successfully issued, under the name of "The Central Law Journal." This connection was doubly valuable to the young author, for the success of the publication not only made him favorably known in his own community and through the county as an able editor, but it also gave him the respect and esteem of Judge Dillon, who made him Master in Chancery and referred to him several important cases, thus further advancing his reputation as a sound practical lawyer. In 1880 he accepted the Republican nomination for the position of Judge of the St. Louis Court of Appeals, and was elected in the face of what was then, in that district, a large normal Democratic majority. This judicial position he has since held, as a large number of his decisions, reported in the "Missouri Appeals" series, will attest. In 1882 he received from the University of Missouri the degree of LL.D. Judge Thompson succeeded Judge Dillon as editor-in-chief of the "Central Law Journal" in 1875, and retired from the editorial control in 1878. In 1875 he also became editor of the "Southern Law Review," — then revived and transferred from Nashville to St. Louis, — and continued to edit it until 1877. In 1883, when the "American Law Review" migrated from Boston to St. Louis, and absorbed the "Southern Law Review," Judge Thompson became its associate editor, — a position which he still occupies.

During these years of busy labor as editor, Master in Chancery, and judge, this untiring worker has found time also to lecture in the Law School of the University of Missouri, and to write and publish, successively, treatises on "Homestead and Exemption Laws," "Liability of Stockholders in Corporations," "Cases in the Law of Negligence," "The Law of Carriers of Passengers," "The Law of Officers and Directors of Corporations," and, in connection with Mr. Merriam, a work on "Juries." His last and best known book is the recently published work

on "Trials." These works are too well known to American lawyers to require description or even comment here. Coming as they do from the pen of one whose other work alone would fill the time of most active men, they testify to the author's remarkable industry and to an unusual vigor of body and brain. In this connection it may be said that Judge Thompson's wonderful memory forms a great part of his intellectual capital. Nothing that he reads is ever forgotten. His friends who have heard him repeat accurately from memory — twenty years after reading it — a large portion of "Paradise Lost," are not surprised to find citations and cases always ready at his tongue's end for every point suggested.

Such is a brief sketch of a typical western life, — too brief to do full justice to the subject. If those who have had the privilege of friendly intercourse with Judge Thompson would record the experiences he has confessed, — the details of his hard boyish life; of his struggles for an education; of his experiences in the army, especially of his adventurous scout within the lines of Price's army in 1861; of his persistent study of Latin and German in the leisure intervals of a soldier's life; of his romantic endeavors to conquer a livelihood before he entered the Clerk's office in Memphis, — a biography could be written which would be far more interesting than this bare skeleton of facts.

In person, Judge Thompson is of medium height, of stout, sturdy figure, and square, grave features, slow in movement and deliberate in speech.

BENEFIT OF CLERGY.

MANY of our readers to whom the phrase "benefit of clergy" is perfectly familiar, may not, nevertheless, have acquainted themselves with the origin and importance of these words. It is the purpose of this brief article to point out some of the peculiarities of a practice which is among the most ancient of those recorded in our earliest Christian annals, and mention of which is found in the general history, profane and ecclesiastical, of past times.

Its origin may be traced to the regard which was paid by the various princes of Europe to the Church, and to the endeavors of the Popes to withdraw the clergy altogether from subjection to secular authority. The earlier English kings after the Conquest resisted this ecclesiastical assumption, as an interference with their prerogative, but the result was only partial; one instance being the exemption of places consecrated to religious purposes from arrest for crimes, which led to the institution of sanctuaries, and also the exemption of clergymen in certain cases from criminal punishment by secular judges; from this came the benefit of clergy, the claim of *privilegium clericale.* It was then necessary that the prisoner should appear in his clerical habit and tonsure at trial; but in the course of time this was considered unnecessary, and the only proof required of the offender was his showing to the satisfaction of the court that he could read, — a rare accomplishment except among the clergy previous to the fifteenth century. At length all persons who could read, whether clergymen or lay clerks (as they were called in some ancient statutes), were admitted to the benefit of clergy in all prosecutions for offences to which the privilege extended.

In his "Merchant and Friar," Sir Francis Palgrave gives a vivid picture of the proceedings that took place at these trials. A thief had been apprehended in Chepe, in the very act of cutting a purse from the

girdle of Sir John de Stapleford, Vicar-General of the Bishop of Winchester, and he was condemned to be hung at Tyburn. "Louder and louder became the cries of the miserable culprit as he receded from the judges; and just when the sergeants were dragging him across the threshold, he clung to the pillar which divided the portal, shrieking with a voice of agony, which pierced through the hall: 'I demand of Holy Church the benefit of my clergy!' The thief was replaced at the bar. During the earlier portion of the proceedings the kind-hearted vicar-general had evidently been much grieved and troubled by his enforced participation in the condemnation of the criminal. Stepping forward, he now addressed the court, and entreated permission in the absence of the proper ordinary, to try the validity of the claim. Producing his breviary, he held the page close to the eyes of the kneeling prisoner; he inclined his ear. The bloodless lips of the ghastly caitiff were seen to quiver. 'Legit ut Clericus,' instantly exclaimed the vicar-general; and this declaration at once delivered the felon from death, though not from captivity. 'Take him home to the pit,' said the vicar-general, 'where, shut out from the light of day and the air of heaven, he will be bound in iron, fed with the bread of tribulation, and drinking the water of sorrow, until he shall have sought atonement for his misdeeds and expiated his shame.'"

The manner of administering the test is thus described by Sir Thomas Smith in his "Commonwealth of England" (1565): "The bishop must send one with authority under his seal, to be a judge in that matter at every gaol delivery. If the condemned man demandeth to be admitted to his book, the judge commonly giveth him a Psalter, and turneth to what place he will. The prisoner readeth so well as he can (God knoweth sometime very slenderly); then he, the judge, asketh of the bishop's commissary, 'Legit ut Clericus?' The commissary must say legit, or non legit, for these be words formal, and our men of law be very precise in their words formal. If he say legit, the judge proceedeth no further to sentence of death; if he say non, the judge forthwith proceedeth to judgment."

It appears that the clergy regarded with some jealousy the extension of the privilege to any but of their own order, and a curious instance to this effect is given in the Year Book, 34th Henry VI., c. 49 (1455). A man indicted of felony claimed the "benefit," upon which the Archdeacon of Westminster Abbey was sent for, who showed him a book in which the felon read well and fluently. Upon hearing this, the court ordered him to be delivered to the archdeacon on behalf of the ordinary; but the archdeacon refused to take him, alleging that the prisoner was not a clerk. This raised a serious difficulty, and the question was one of particular importance to the prisoner, as the judge deliberated whether he must not of necessity be hanged. Some delay occurred, and meanwhile a more lenient archdeacon being appointed consented to hear the prisoner read, and thus saved his life. A similar case which is recorded in the 21st Edward IV. (1481) was not so fortunate in the result to the criminal, for the objection to his not being of the Church prevailed, and he was hanged.

As may naturally be supposed, means were taken to defeat justice by cramming an illiterate criminal sufficiently to pass the ordeal. This was, however, an indictable offence. In the 7th Richard II. (1383), the vicar of Round Church in Canterbury was arraigned and tried "for that, by the license of the jailer there, he had instructed in reading one William Gore, an approver, who at the time of his apprehension was unlearned."

For the ordeal of the "benefit," the Fifty-first Psalm was generally selected, and the opening words, "*Miserere mei Deus*," came to be considered what was popularly termed the "neck-verse" *par excellence*. It appears, however, from what we have quoted from

Sir Thomas Smith as the mode of test, that the Scriptures might be opened at any place; and a passage from one of the old English writers seems to imply that a particularly difficult Psalm might be proposed:

> "At holding up of a hand
> Though our chaplain cannot preach,
> Yet he 'll suddenly you teach
> To read of the hardest psalm."

There are several allusions to the "neck-verse" by dramatists and others: thus, in "The Jew of Malta," we have, —

> "Within forty feet of the gallows conning his neck-verse."

And in Massinger's "Guardian" (iv. 1), —

> "Have not your instruments
> To tune when you should strike up, but
> Twang perfectly
> As you would read your neck-verse."

And in the "History of King Lear," —

> "Madame, I hope your grace will stand
> Betweene me and my neck-verse; if I be
> Call'd in question for opening the king's letter."

In "Hudibras" (part iii. chap. i.) there is an allusion to the practice of singing a Psalm at the gallows; the criminal condemned to be hung who was unable to read a verse in the Psalms was to sing, or at least hear a verse sung, under the gallows, before he was turned off. The popular saying among the people was that "if they could not read their neck-verse at the sessions, they must sing it at the gallows."

> "And if they cannot read one verse
> I' th' Psalms, must sing it, and that 's worse."

On account of the many abuses which attended the practice of benefit of clergy, the subject was taken up in the reign of Henry VII. Burnet, in his "History of the Reformation," says: "A law of Henry VII. for burning in the hand clerks convicted of felony, did not prove a sufficient restraint. And when in the fourth year of the following reign, it was enacted that all murderers and robbers should be denied the benefit of clergy, two provisos were added to make the bill pass through the House of Lords: the one for excepting all such as were within the holy orders of bishop, priest, or deacon, and the other that the act should only be in force until the next Parliament. Pursuant to this act, many murderers and felons were denied their clergy, and the law passed on them to the great satisfaction of the nation; but this gave great offence to the clergy, and the Abbot of Winchelcont said, in a sermon at Paul's Cross, that the act was contrary to the law of God, and to the liberties of Holy Church, and that all who had assented to it had, by so doing, incurred the censures of the Church."

Notwithstanding the attempts made to effect some radical changes in the laws of clerical immunities, it is curious that the practice of calling upon a convicted person to read, in order to prove his title to the "benefit," continued until a comparatively late period. A case occurred in 1666, where the bishop's commissary had deceived the court by reporting, contrary to the fact, that a prisoner could read; upon which Chief-Justice Kelynge rebuked him severely, telling him "that he had unpreached more that day than he could preach up again in many days," and fined him five marks. It was enacted in the 5th of Anne (c. 6) that the benefit of clergy should be granted to all those who are entitled to it without requiring them to read; and thus the "idle ceremony of reading," as Mr. Justice Foster justly terms it, was finally abolished.

It is singular that previous to the Statute 3 and 4 William III., which expressly includes women, this privilege of clergy never extended to women, although it is clear that by the canon law nuns were exempted from temporal jurisdiction.

The abolition of benefit of clergy to persons convicted of felony was decreed by a statute passed in the reign of George IV. — *Edinburgh Journal.*

KEMMLER'S CASE AND THE DEATH-PENALTY.

I.

By Jacob Spahn.

IT is the purpose of this paper to take issue with an ancient craft to which the writer himself belongs. He commences by modestly yet firmly premising that no man has the right to take another man's life but in just defence of his own life. And what is true of one man in this plain and commonplace respect is true of all men, even public executioners. That men are gregarious, and so form society, militates against no fundamental truth of ethics in the premises. Such truth stands out, and will eternally abide as much an established fact in the world as any phenomenon of the physical universe.

Legislation, however copious, would not pacify the turbulent course of the Niagara. The surging stream would still mightily hurl its emerald waters over the great chasm in the thundering rhythm of the centuries past. Idle would be an act of Congress to affect the course of the trade-winds. This every person of ordinary intelligence understands. Not so obvious, however, is the futility of legislation seeking to annihilate or modify incontestable ethical facts bearing upon human rights and certain well-established psycho-physiological phenomena with reference to man; whence creep into codes of justice such anomalies as capital punishment and innumerable crimes, only nominally so, arising from human acts neither wrong, nor mischievous, nor involving moral turpitude.

With reference to capital punishment, Blackstone quotes, in justification, the ancient law alleged to have been delivered to Noah by God himself, to wit: "Whoso sheddeth man's blood, by man his blood shall be shed."[1] And the great commentator adds:

> "In other instances they [capital punishments] are inflicted after the example of the Creator in his positive code of laws for the regulation of the Jewish republic, as in the case of the crime against nature. But they are sometimes inflicted without such express warrant or example, at the will and discretion of the human legislature, as for forgery, for theft, and sometimes for offences of a lighter kind."[1]

In Blackstone's semi-benighted time (still quite recent, moreover), some petty crimes, and all the graver ones, were punishable by death, and most of the last "without the benefit of clergy." The death-penalty, too, was inflicted in a great and curious variety of forms.[2]

Yet even then the ghastly business of killing malefactors generally had its efficacy questioned; for the commentator gossipingly relates that Elizabeth of Russia abrogated the death-penalty, and relied almost wholly upon prison restraint and discipline, to preserve the internal peace of her domains, and regulate the public and private morals of her subjects.

Blackstone, therefore, pertinently asks:—

> "For is it found, upon further experience, that capital punishments are more effectual? Was the vast territory of all the Russias worse regulated under the late Empress Elizabeth than under her more sanguinary predecessors? Is it now, under Catherine II., less civilized, less social, less secure? And yet we are assured that neither of these illustrious princesses, throughout their whole administration, inflicted the penalty of death."[3]

Simple, garrulous soul, this Blackstone, in the face of the current law of his day, with the capital penalty inflicted for comparative trifles, sans "the benefit of clergy"!

[1] Commentaries, book iv. p. 9.

[2] Ibid., p. 243.

[3] Ibid.

It is passing remarkable that light upon the ill-understood subject should have reached the hard heart and slow intelligence of civilized England from the Russias of nearly two centuries ago. What the Empresses Catherine and Elizabeth had each come to reason out clearly for herself against the bad precept and worse practice of the rest of Europe, was by processes of mind rather deductive than inductive. It was the result of empiricism in the premises; but the empiricism was lofty, pure-motived, and truly philanthropical, — of a species no longer to be looked for from the half-barbarous and retrogressive realm of the White Czar, which at present is the habitat of the cruelest and most stubborn autocracy on the face of the European continent, after having been once in a fair way of placing itself on the very apex of civilization.

The core of the question with reference to capital punishment essentially rests in the trite truism announced at the very beginning of this short disquisition. As much was half suspected by gossip Blackstone; but his mind, trained to the law (a narrow business), was not formed either to look into or to analyze clearly any consideration involving profound psychological phenomena and the very metaphysics of moral ethics, as the last are related to, and spring from, physiological conditions. Such had no musty black-letter authority, nor, indeed, any owlish hoary-oracular pandect-dicta behind them of the sort useful to lawyers; and Blackstone, even as a commentator, remained simple Blackstone the lawyer, devoting his great literary talents to the task of co-ordinating as best he could the chaotic results of multifarious English case-law into general and sometimes absurd propositions. Wherefore, at the outset, let it be clearly understood that while the law and the lawyer may be quoted herein, this excursion into things pertinent to the subject in hand will in no wise be limited by the peculiar if ancient orthodoxy of the desiccated and incorrigible two. From them and their idols, little, indeed, can be hoped for or expected just now.

The object of capital punishment was, primarily, to furnish a horrible example that would deter repetition of the crime punished.[1]

Whether the act defined to be a crime was in essence vicious, or in fact harmful, did not fundamentally concern the law. It does not concern the law much yet; which circumstance wears about it a grim and ghastly gallows-humor to the philosopher. Thus it came about that Christ was crucified in full view of the Jewish populace; and that the crowd round about the place of execution was not only noisy, but as motley as it was immense.

In Old London, whenever sentence of death by hanging was pronounced (for there were many other death-penalties beside, some most blood-curdlingly dreadful), the place of execution was an open field, Tyburn, where disorderly masses assembled in tens of thousands on hangman's day. Macaulay declares that at the execution of Jonathan Wild the spectators numbered no less than two hundred thousand.[2] It was a *fête* occasion. Labor was suspended as much as on any holiday. Upon the gallows, then more particularly known as the Tyburn tree (a thing of many limbs), the corpses of malefactors were generally kept dangling in a row, exposed for months to the pitiless play of the elements, swaying hither and thither, while daws flocked in great black clouds to peck at every exposed morsel of carrion (men the wretched things had ceased to be, mainly dying "without benefit of clergy"). The garments of the dangling objects, torn to faded shreds, flapped and snapped spectra-diabolically with every gust, while the air around was rank with the penetrating stench of putrefaction. The sight was gruesome, kept thus obtrusive to every eye and disgusting to every nostril, until each poor corpse literally blew to pieces, — solely to terrorize all persons and warn them, in dumb language of the pungentest kind, that the primordial dif-

[1] Blackstone, book iv. p. 11.

[2] Essay on Milton.

ference between *meum* and *tuum* was a most important matter, must bide world without end, and be respected universally accordingly; that persons must neither kill nor steal (over "the value of a shilling"); that there must be total abstinence, too, from much else likewise more or less morally reprehensible or statutorily inhibited throughout the unfortunate England of Shakspeare, if Englishmen loved life.

A perusal of the memoirs of the Sansons, a visit to the Hotel Cluny, an inspection of the torture-chamber of either the Tower of London or the Castle of Nuremberg, are each capable of throwing a flood of light upon the limitless barbarity of the law in even highly civilized times, — times, in fact, still recent.

And here we are, the nineteenth century fast waning before us; yet is the light about these things scarcely better, despite Menlo Park wizards and electricians generally? Power to take life, — awful act, involving the eternally irreparable, — which society arrogated to itself in dark and beclouded times, it still arrogates to itself, only "upon more humane lines." The small-talk pundit might say, "lines hempen no longer," and smirk hugely, were it a joking matter. Alas! it is too funebrious for any fun, — this pseudo-philanthropical business of rendering man-killing humane. There be, indeed, thoughtful and sober persons enough, who refuse to concede the sufficiency of even an alleged divine origin for so fearful a power, to justify it against the obviously fundamental principles of right which underlie the question, — these principles being each founded in a truth of the inexorable, axiomatic kind, notwithstanding legislation or other pretended higher edict and sanction to the contrary. Are we not sought to be befogged? and is not dust in great handfuls thrown into our simple eyes by the law as it stands no less than by the quasi-philanthropical personages who have had this law tinkered, and changed an ancient and duepedigreed mode of lawful killing by the strand into killing by electricity, all for humanity's sweet sake?

These personages (alas that they are each so eminently respectable, and all so indubitably sincere about it!) would wantonly rob society of whatever deterring influence may repose in horror-laden "ocular-spectacular" example whenever the law deems it necessary to administer capital punishment. Yet such influence alone forms the ground that comes nearest to any apparent vindication of the death-penalty, though eternally short of a justification for it. Metaphorically expressing it, they propose in sober earnest to put a candle-snuffer over the condemned, and hide the slaughter of him from public sight, by having the law take its dread course in the silence and secrecy of a secluded enclosure, where mortal life is pinched out like the flicker of a mean tallow-dip, where the press shall be denied admission and hushed, and where the ghastliest of tragedies, when fully finished, can subserve no good or purpose (if it ever did before) to any sorrowing child of Adam. Such a course is simply assassination; it is wholly a Star-Chamber proceeding. The "removal" of Dr. Cronin, of Chicago, was no baser, no more brutal, cowardly, and idle a transgression. Who is able here to apostrophize the humbug, cruelty, and utter fatuousness of the novel proceeding? Who will not execrate the crazy crab-movement in the boasted progress of things? And we, the sovereign people of the foremost republic of any age (or, at least, some considerable few of us), vaunting ourselves, therefore (among other great things), to be the crown of all civilization, crowing on such a bedizened dung-hill!

The Kemmler investigation is at an end. Referee Becker may report as he will on the issues, both of law and of fact. The person or persons who constitute the court of final review may pass such judgment as they deem meet and fair, yet the momentous principles of ethics — the rights fundamentally involved in the matter — will remain unaltered and unaffected. The

poor wretch Kemmler signifies little before these. Here, indeed, the principles are of more importance than the man and his life. No question surrounding the subject in any aspect discussed can or will be settled in manner such as the Kemmlerian or sight-blinkered law juridical and judicial here has pursued. It does not touch the gist and essence of the thing in controversy. Capital punishment still remains murder sanctioned by law. True, if one fairly and sufficiently established doubt be created in the dense muddle of conflicting expert testimony against the mere mechanical efficacy of the killing method by electricity, it should be enough to brand the law's slaughter by that method, and its untried and uncertain if not altogether too horrible instrumentalities, as wholly unavailable for society's uses. Herein, however, reposes no remedy for the great wrong of centuries. The death-penalty should not exist. Founded ages ago in the cruelty of the Hebrew gospel, that gospel has more than ceased to furnish a fair standard for present human affairs. It is harsh and fallible. Nothing in it ever justified a man, or body of men, in killing another, unless the "ipse dixit fiat" of alleged divine origin controls; be the same with or without sufficient proof. Wherefore in these enlightened days it may surely be claimed, as claimed it is in most resonant tone by many voices, that reform which does not abolish man-killing by law is no reform; that dilettanti shall be forevermore estopped from invoking the superannuated doctrine of retaliation to justify them in groping about the four quarters of the American horizon to find a substitute for the noose, — dilettanti who end the brutal quest in chattering, flippant gabble, by recommending an experiment and leaving the people of a great State in a brown study speculating over its efficacy.

What is crime, truly? Is it a disease or a voluntary inclination? Is it an accidental moral phenomenon? Is it ever brought on deliberately by cultivation to develop finally into uncontrollable habit? Is it hereditary and indefinitely transmissible? Does it ever repose latent in any case, to spring forth sheer spontaneously under the spur of given circumstances, all unexpected, unforeseen, and unpreventable? Is it a certain purely physical peculiarity in the functions of some cranial tissue?

These queries can now be answered. Statisticians will aid in the task. The medical fact (or rather medico-psychological fact) is well established, that certain lesions of, or injuries to, the brain will occasion utter moral obliquity and even positive viciousness where the moral sense was originally sound and normal; that these lesions or injuries will, in fact, totally revolutionize functional activity in the operation of drawing sound moral distinctions, to the extent of annihilating the capability of drawing them entirely.

The revelations of statistics disclose that the criminal is a regularly recurring phenomenon. He represents a fixed quantity, constant in all organized communities. So it comes about that a serious question concerning his responsibility for crime has arisen in advanced minds. This question has been frequently discussed, yet heretofore and until quite recently with little hope of any universally satisfactory solution of all the problems involved, because the bellicosely contentious doctrines of free-will and predestination were ever stubbornly entwined about and wofully tangled the discussion, while the results of natural science were ignored. The war of words that has been waged in this desolate metaphysical region in all thinking ages has on occasions even compassed the ludicrous and grotesque; for the mediæval sciolists, with much idle time on their hands, spent days over the query whether it was possible for an angel to sin or commit a crime. The discussion *pro* and *con* here proceeded at white heat, just as did the discussion of how many angels could dance on the point of a needle, and the discussion whether angels possessed

navels. These questions were each deliberately and most exhaustively debated, with what results Heaven best knows, since no unanimous conclusions are recorded on any of the elusive and highly transcendental themes. It was metaphysics in her fine-spun way that defined two conditions of the mind (soul), to wit, — first, free-will, which implied responsible moral agency, and constitutes the doctrine of one still living school of philosophy; and secondly, an incarnated inevitability to certain action, right or wrong, good or vicious, wholly controlled by and dependent on circumstances or conditions, which made will-power in an individual a mere cipher and logically excluded responsible moral agency. This was predestination, and around it rallies another school. A third school gallantly but vainly seeks to reconcile the doctrines of these two. Finally, the materialist interlopes to flout at all metaphysical schools with obstreperous scorn, flavored with not a little reason of his own hard, narrow, and hopeless kind on the much debated subject. Men never were, and are still not wholly, agreed upon what is intrinsically essential to make an act bad or wrong, as against the manifest moral neutrality of many acts statutorily made crimes.

It is most interesting at this point to quote from a standard modern law book which is universally accepted as authoritative wherever the English language is read, concerning the grave crime of perjury. The following is its very curious contribution: —

"Even the religious sanction has been enlisted in the cause of falsehood. Particular forms of religion allow it in certain cases; and the truth has often been sacrificed by religious persons in order to avoid bringing scandal on their creeds."[1]

Quotations might be made from Macchiavelli's "Prince" in an identically similar strain as to the layman's duty to lie, and even lie under oath, as circumstances may make advisable.

[1] Best, Law of Evidence, Introd., p 18, and cases there cited.

The history of the Christian martyrs goes a little farther, and shows that murder can be and has been claimed among the things that are right. The Roman Catholic Church still preserves the anathema maranatha, and recounts acts for which it shall be pronounced against persons, though not all men are agreed in holding these acts to be bad.

All this complicates the settlement of the questions involved with reference to the criminal; and hence his case, from having been comparatively simple when not understood or wholly misunderstood, is at the present day relegated by advanced minds with the case of the insane person, that of the habitual drunkard, the kleptomaniac as well as the monomaniac, *et id omne genus;* and its principal explanation is heredity, — atavism, a psycho-physiological phenomenon clearly and distinctly established. In fact, the scientific method has displaced and almost wholly excludes the *a priori* and very metaphysical method anciently applied in the premises.

If this latter view and classification of the criminal be correct and sound (facts innumerable supporting it from the most authentic sources), then the law which has obtained with reference to the classes of irresponsible unfortunates just mentioned and which has been formulated for their benefit as well as for the benefit of society against them, the law concerning their property and personal rights, has now a most apt, cogent, and wholly new application, namely, to chronic and incurable tendency to crime. That this should be so is an indubitable fact, and well understood by all who have studied the matter, with one notable exception. This exception, strange to say, is that body of men by whom the criminal is most frequently encountered, where his acts would appear to be subjected to the closest scrutiny, and his version of them to the most skilful investigation and cross-examination, and where, therefore, he ought to be thoroughly understood, — to wit, the lawyers. Yet they are sadly in arrears here. Indeed, the eyes of

the average barrister (the very average and not over incorruptible ninth part of a man who usually constitutes a figure in the legislative bodies of our republic) and of the stupid judge (not always product of bribery and caucus-packing, yet always of dense and cloudy view in the matter now under discussion) are not at all educated to discern the true nature of crime and the cause that produces the criminal as a common social phenomenon. Quote to your average lawyer or stupid judge this statement, for instance:

"In everything which concerns crime, the same numbers recur with a constancy that cannot be mistaken, and this is the case even with those crimes which seem quite independent of human foresight, such, for instance, as murder, which are generally committed after quarrels arising from circumstances apparently casual." [1]

Quote to him also this statement:—

"It surely must be admitted that the existence of crime according to a fixed and uniform scheme is a fact more clearly attested than any other in the moral history of man." [2]

Quote to him likewise this statement:—

"The statistician shows that a certain condition of temperature increases the force of a passion,—or, in other words, the temptation to a particular vice; and then proceeds to argue that the whole history of the vice is strictly regulated by atmospheric changes. The vice rises into prominence with the rising temperature, it is sustained during its continuance, it declines with its decline. Year after year, the same figures and the same variations are nearly reproduced. Investigation among the most dissimilar nations only strengthens the proof; and the evidence is so ample that it enables us within certain limits even to predict the future." [3]

Alas! lawyer and judge alike, respectively, "as aforesaid," will impatiently respond that his literature does not recognize a precedent in what you offer, nor authority in the person from whom you quote "as aforesaid," and the same are not controlling to him or his learned ilk for any purpose in the wide world. Each of this sterile and self-sufficient gentry will probably take note, too, that the tome from which you cite is neither bound in modern sheep nor in the earlier and traditional calf, wherefore it has no caste at the bar and shall not influence the bench. So each denies it respect, and refuses it confidence. On this vari- and super-opinionated earth, full of doctrines and noisy doctrinaires, there are probably no more incorrigible sticklers for "wise saws and modern instances," than these two worthy individuals, providing saw and instance savor of the benched bag-wig, or some hoary obsoletism, be it as mummified even as Egyptian Rameses. Do not feudal system and Salic law still essentially hold their own in our modern jurisprudence, though both are, in fact, among the ghosts of dead history and wholly moribund in these quick times? Now, the instant this jurisprudence as well as our codified criminal law are viewed in the clarifying light of the facts set forth in the matter above quoted (not new by any means, since Quetelet's results were given to the world over half a century ago), both become largely ludicrous throughout. A certain feeling of contempt for them steals over one. It is seen at once that the law is all behindhand; that it has in no wise kept up with the forward stride of the times; that its cut and fashion are of a long-departed and wofully misinstructed era. At present it is confronted by a condition of information with reference to the true inwardness of crime and criminals, which it neither knew nor suspected since its origin, which it still leaves unappreciated, for which it was not formulated, which it never contemplated, which will not submit to its ancient tests, and is beyond the scope of any discovery or measurement by its crude, clumsy, superficial, mal-directed, and antediluvian methods. Thus it happens that the law's pretended remedies as to crime

[1] Quetelet, Sur l'Homme, Paris, 1835, vol. i. p. 7.
[2] Henry Thomas Buckle, History of Civilization, vol. i. p. 21.
[3] W. E. H. Lecky, History of Rationalism, vol. i. p. 11.

fall short everywhere of strict ethico-moral justice as contradistinguished from the justice of the law courts, to an extent which makes it practically equal whether the law as it stands (for the most part) is among the things that be, or not of them, so far as the first iota of justice is concerned.

Is it not, has it not always been, a well-known fact that a man's innocence of the criminal charge preferred against him is no guaranty at all for his acquittal of it? When this charge involves a capital crime and the man is tried, convicted, sentenced, and executed, despite his innocence and perhaps upon only coincidences, or the testimony of hired and lying informers, the awful wrong done him is forevermore irremediable. Is not this, too, well known? And is it not just as clear that the imposition of a lesser penalty, one that left the convicted man at least his life, might make possible some degree of amends if it should prove later on that the poor wretch was innocent and had been wrongfully convicted? His liberty could be restored, his damage to body and reputation fairly compensated, and other due reparation had. These are no new considerations. They are not advanced as such. Novel, however, is the point broached here, to wit, that were the man, under the foregoing circumstances, dealt with by law in the light that crime is the inevitable effect of certain clearly definable natural causes and conditions, in which the man does not indubitably figure as a responsible agent, that crime is analogous to disease, — were the accused, we say, dealt with, for instance, as rationally as a lunatic now is, a sure remedy against mistakes in the administration of justice, as well as a sure preventive of miscarriages of justice generally, would exist always ready to hand, and the safety of society would in all cases be maintained as well as assured.

In the case of the lunatic, no incarceration is permitted beyond the time of his recovery. Society has him returned to it the moment he becomes rational again. Nor is he ever lectured or berated, or held up to the scorn of the people while sick with insanity. When cured, his rights and property are restored to him. Why? Because he is again safe to abide within the community. That — namely, safety, "safe to abide with" — is the sole test in his case. But the individual incarcerated for crime is not dealt with thus sensibly. This is particularly true where the delinquent's criminal tendencies are chronic. Notwithstanding the incurable character of his malady, he is liberated as soon as the term of his sentence has expired. No heed whatever is taken whether he be safe to society when again let loose or not. The grave consideration of undertaking or effecting a cure never plays a part in any action or proceeding taken by law with reference to the criminal at any stage of the law's business with him. The law simply punishes, and the court anathematizes. If, now, incarceration and any other penalty inflicted upon and paid by him did not correct the vicious qualities in him so as to make him safe for society, the law has accomplished nothing, and society is sure again to suffer from him. Here one reaches the law's utter inadequacy in the premises. It has operated upon the criminal, against him, and with most imposing and expensive ceremonial about him. It has spent itself and every one of its peculiar forces fully concerning him. His case has been duly adjudicated by the cumbrous and complex machinery of the court, down to the part played by the meanest bum-bailiff who participated in the solemn transaction. He has been ingeniously and thoroughly prosecuted, the jury have found him guilty, the court has frowned awfully upon his crime and scolded him for being convicted of it, and to crown all, the penal code has been consulted for the measure of his punishment. He is duly sentenced. He stands this punishment. In time he gains his liberty again. Yet is the danger to society from this malefactor when liberated as unlimited as that from a lunatic left at large; and likewise is all the solemnity eventually proved a farce.

(To be continued.)

MASTER McKENZIE'S GOODIES.

WHARTON *v.* McKENZIE. (5 Ad. & Ell. 606.)

By Irving Browne.

[*The treats of an infant undergraduate at College are not necessaries.*]

THERE went to Oxford University
A youth of fashion and of high degree;
To pine in precincts he reluctant felt,
And so in lodgings in the town he dwelt.
He had respect from provost and from don;
His "governor" was governor of Ceylon, —
Immortalized in missionary hymn,
Though in geography its place is dim, —
That land where heathen bow to wood and stone,
But in their blindness they are not alone.
He had what made him to all tradesmen dear,
An income of two thousand pounds a year;
And they fell down unto a calf of gold,
As did the Israelites in days of old,
And in subservient superstitious zeal
They made obeisance to the younger veal.
This babe got measles and an inflammation,
Which gave the doctors awful consternation.
His medical advisers ordered quiet,
And very simple, unexciting diet, —
For instance, fruit and ices, marmalade,
Confectionery, — very sore afraid
That grosser victualling might carry off
This nursling patient in consumptive cough.
In worst of doctors' Latin it was writ;
The following was something like to it:

"Fruges terræ quant. suffi.;
Confectiones sacchari;
Marmalad. Cydoniæ;
Etiam glacies, recipe.
Edita sunt ad libitum.
Excitat. prohibitum."

One Wharton did this queer prescription fill,
And thirty-three pounds sterling was his bill;
For the sick lad invited all his mates
To help consume these nauseating cates.
And what a wild debauch those chappies had,
In reckless dissipation rushing mad,
With noise and laughter waking half the town,
And stuffing sweets with naught to wash them down!
But when the bill was borne on spicy breeze
To Ceylon's isle, the prospect did not please
The governor, who in that realm grown hot,
Declared that Wharton might just go to pot.
It angered him that while he pined with heat
He had to pay for cooling things to eat;
He thought of Lazarus and Abraham,
Who would n't spare a drop for Dives' damn;
While he was roasting in the isle of spices,
He had no mind for marmalade and ices,
In which his son and heir luxuriated;
And so he Wharton's bill repudiated.
A grosser wrong was never perpetrated.
Wharton, with indignation agitated,
Haled him into the Queen's dread judgment-hall;
But there his quest was barren, after all.
Though counsel urged that this was medicine,
The judges thought that argument too thin,
For though such boluses for one might pass,
There was no need to physic the whole class;
Though babes with measles might break out in schools,
The court would not break out of settled rules;
The doctor lawfully might treat the lad,
But he no right to treat his playmates had;
Such dose heroic was unnecessary
For any youth *in statu pupillari.*

This case is of the first authority, —
See Brooker *v.* Scott (Meeson & Welsby);
And later, in the Cambridge county court,
Miller *v.* Young — I have n't the report.

CARUTHERS HALL.

THE LAW SCHOOL OF CUMBERLAND UNIVERSITY.

By Chancellor N. Green.

CUMBERLAND UNIVERSITY was established at Lebanon, Tenn., in 1842. It is under the immediate care of a religious denomination known as Cumberland Presbyterians, which is a large and influential branch of the great Presbyterian family. The section of country lying in the vicinity of the Cumberland Mountains and the Cumberland River was called in earlier days the "Cumberland country." It was here this denomination of Christians originated; hence the name. The academic department of the institution was the only one in full operation until 1847, when the Law School was established.

Hon. Robert L. Caruthers was President of the Board of Trustees. His brother, Abraham Caruthers, was a judge of the Circuit Court, and lived in the county of Smith, which adjoins that of Wilson, in which the University is situated. After much persuasion, and after a guaranty by his brother Robert that he should receive an income as Law Professor as large as that he was getting on the bench, Judge Abraham Caruthers resigned, and became the first Professor of Law in Cumberland University. He delivered his Inaugural Address in July, 1847. This address is a remarkable production, which but for its length

might here be given entire. It was printed, by order of the Board of Trustees, in pamphlet form, and afterward copied into the "Legal Journal," published in New York.

After but little advertising the Law School was opened in October of the same year. No room had as yet been prepared for the Law class, and in consequence the first recitation was in the office of Judge Robert L. Caruthers, at that time a practising lawyer. There, on the first day of the term, the new professor was met by seven young men. The number of students increased during that term to thirteen. This was considered encouraging.

At that time the Professor was just getting out of press his first edition of "The History of a Lawsuit." It was a small work of forty pages octavo. Afterward it grew under his own hand to be a large law book of six hundred pages, and has acquired a reputation almost as extensive as that of its author. The work has recently been revised, annotated, and greatly improved by the Hon. Andrew B. Martin, of the present Law Faculty. The first lesson was recited from this book.

The present Chancellor of the University, Nathan Green, Jr., was among the seven youths who composed the nucleus of the first Law class in Cumberland University. Several of them had undertaken to study law at home in the ordinary way; that is, in lawyers' offices. They found great difficulties in this method. Lawyers in full practice have but little time to bestow upon their students, and this at irregular and uncertain periods. The lawyer is not himself trained and devoted to the business of teaching. He may be a great advocate or a profound jurist and at the same time a very poor instructor. Studying in a law office involves many interruptions from various sources: clients, friends, and idlers interfere. Besides, there is absent the powerful stimulus of a class.

Those of the seven students who had tried it, found a vast difference between that method of learning the law and this upon which they were just entering. Here they had an able man, and one of the best lawyers of the country, devoting to them the whole of his time and great talents. He had given up every other pursuit. He had nothing else to think about, and he went into his new business with enthusiasm and zeal.

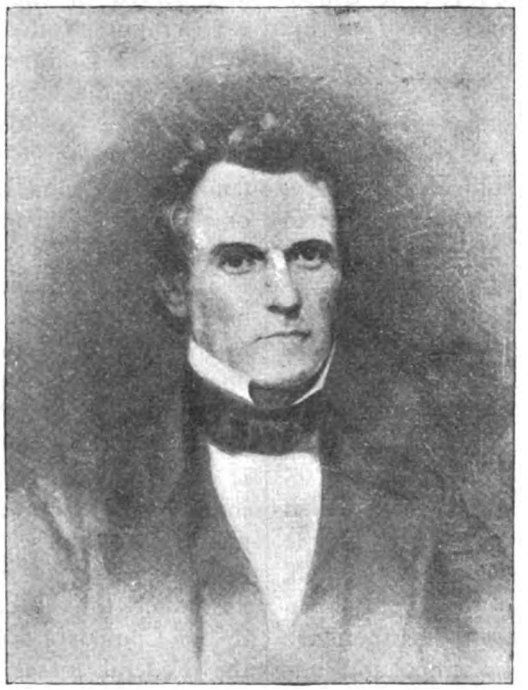
Here also they had in their text-book, in plain language, the manner of beginning and conducting a lawsuit through all its stages. This was explained by their teacher, and then, to make certain that they understood it, they were themselves required to prepare and present the different phases of a lawsuit. They were made practising lawyers on the spot. They had their sheriff, their jurors, and their judge, as well as their fictitious client. It may be well imagined how interesting, how new, and how different to them the study of law now seemed, compared with the old method of reading in an office.

The old system of lectures which had been universally adopted in the professional schools in the United States was utterly discarded. Judge Caruthers reasoned that the science of law should be taught like any other science, — like mathematics, like chemistry. So, instead of adopting a new method, he simply resorted to old paths. He assigned a given portion of the text every day, and upon this he rigidly examined every student; and the student was required to apply his knowledge through the moot courts, from the time of his matriculation till his pupilage was ended. It is not strange that the plan soon became popular.

The first session there were thirteen matriculates, the second term twenty-five, the third term forty; and so the numbers increased from year to year, until the Law School of Cumberland University numbered, in the year before the late war between the States, one hundred and eighty students. The second year of its existence (1848), it became manifest that the experiment would

be successful. There were more students and more classes than one teacher could properly instruct.

The trustees elected Hon. Nathan Green, at that time one of the judges of the Supreme Court of Tennessee, and Hon. Broomfield L. Ridley, one of the Chancellors of the State, additional professors; which positions they accepted. These gentlemen for several years devoted only their court vacations to the work of the Law School. But this was not satisfactory, as it often threw the whole burden upon the resident professor. Judge Green was induced, therefore, to resign his position on the Supreme Bench and give his whole time to the school. This he did in 1852. Judge Ridley's services were then not needed. Judge Green had been on the Supreme Bench for more than twenty years. He had become well known to the profession in Tennessee and to the country in general. He was in the fulness of his intellectual manhood. Thus adding his great reputation and ripe experience to the splendid abilities of the first professor, the two could not have failed to attract the youth of the country. They flocked around them as the youth of Athens used to gather about their great philosophers. The success of the school during their administration was unparalleled. They toiled zealously and faithfully together until 1856, when another professor became necessary.



ABRAHAM CARUTHERS.

Nathan Green, Jr., son of Judge Green, and one of the first graduates of the school, was chosen. He had been since 1849 engaged vigorously in the pursuit of the profession in Lebanon, Tenn. He at once abandoned the practice and gave his whole time to the work. Afterward, in 1859, John C. Carter, son-in-law of Judge Caruthers, was appointed an additional professor, but he continued only one year.

Thus at the breaking out of the war, in 1861, there were three teachers giving their whole time to the school, and there was full employment for them all. Many young gentlemen whose parents were planters and men of large means, attended the school in order to make themselves more accomplished citizens, and without intending to follow the profession as a business.

At the time of the issuance of President Lincoln's proclamation on the 13th of April, 1861, calling for troops to suppress the insurrection, the school was enjoying the highest degree of prosperity. But scarcely a week had elapsed after that notable event, before the school was entirely broken up and the exercises ceased. Most of the young men went to their homes at once. Some enlisted as United States soldiers to fight for the Union; but the great mass, being from the South, became Confederate soldiers. During the war nearly every alumnus of the school was engaged in actual conflict. Many were killed in battle, many died in the army, and many were maimed for life. So great was the upheaval and so

thorough was the change on the face of Southern society as the result of the war, that it has been found impossible to trace the history of most of these young men. It is known that many of them became officers in the army on the one side and the other, some rising to considerable distinction.

During the hostilities Judge Green, the oldest man among the law professors, remained quietly at home. He deplored secession and disunion. He loved the Union, and in his youth had given proof of his devotion by enlisting and serving as a soldier in the War of 1812–1815. In all his speeches and lectures he had argued and spoken for the integrity of the Union of our fathers. Upon the subject of slavery, although himself a slaveholder, he had adopted and expressed the opinion that slavery was an evil morally, socially, and politically, — a sentiment which Mr. Jefferson, Mr. Clay, and many other Southern statesmen had uttered long before. He insisted, however, that it was an evil to the master rather than to the slave, but that in the providence of God it had been a great incidental blessing to both races. He denied with great vehemence the right of the people of the North, by congressional legislation, to interfere with the institution either in the States or Territories. When therefore the issue came, he took distinct and unequivocal ground in favor of resistance on the part of the South. His opinions were well known and freely expressed; still he was not molested, either in person or property, by the United States troops, who occupied the country much of the time. This was due, no doubt, in part to his gray hairs and quiet demeanor, and in part to the influence of certain distinguished men who were Unionists and who were his warm personal friends.

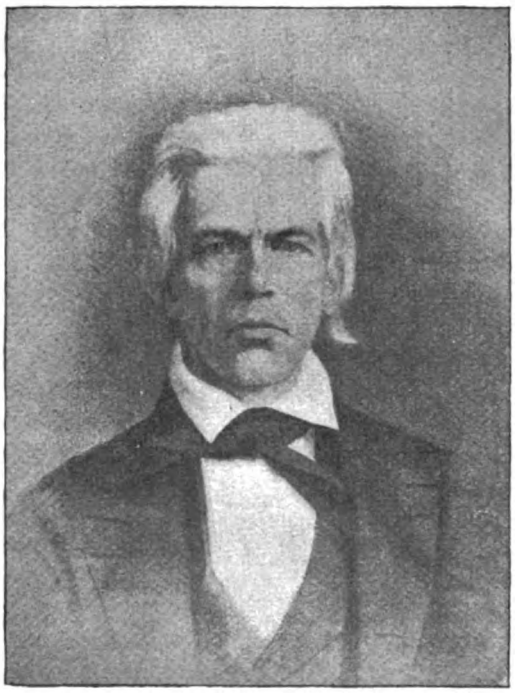
Judge Caruthers was equally a pronounced friend of union and opposer of secession. On several occasions, in addressing the students before the public, he uttered the most eloquent and burning sentiments in favor of an undivided country. But when the proclamation of the President came asking the people to volunteer to fight their brethren of the seceded States, and it became evident that every man must make his choice, he too determined to go with his people, and did not hesitate to advise resistance. He was elected to the Lower House of the Legislature of Tennessee from the county of Wilson in 1861, and served in the body that pronounced a separation of the State from the Union. When the country was occupied by the soldiers of the United States, apprehending an arrest, he left his home and went to the town of Marietta, Ga., where, away from his family and friends, he died among strangers on the fifth day of May, 1862, in the sixtieth year of his age.

Thus departed one of the purest men and one of the greatest lawyers ever produced in this country. Judge Caruthers left but one legal work; that is his far-famed "History of a Lawsuit," which is still a textbook in the school which he founded, and is upon the shelves of the lawyers and judges in every town in Tennessee and in many other States.

John C. Carter, who was a law professor for a short time, became a brigadier-general in the Confederate army. In the attack on the Federal forces at Franklin, Tenn., in December, 1864, he was mortally wounded and died in a very short time afterward. He lost his life not in an effort to perpetuate slavery, not simply from a desire to dismember the union of States, but in a conscientious belief that it was necessary to fight in order to preserve some of the cherished doctrines of the Constitution which were supposed to be threatened. Upon this ground thousands of the best and noblest sons of the South fought, and thousands fell. Not that they loved the Union less, but the principles of the Constitution — as they understood them — more.

Judge Ridley, who before the beginning of the war had resigned his place as law profes-

sor, and who was then one of the oldest and most distinguished Chancellors in the State, was also an ardent supporter of the Southern cause; and although he did not serve in the line or in any office relating to the Confederacy, he gave it his unqualified adhesion. When his section was occupied by Federal troops, he went to Georgia, where he remained until the close of the war, when he returned to Tennessee and settled with his family in Murfreesboro. His capacious and elegant mansion in the vicinity of that town had been destroyed by the Federal soldiers. He therefore began at once the practice of the law for a support, and soon acquired an abundance of business, which he continued to enjoy until his death. This sad event occurred August 10, 1870. Like Judge Caruthers, he died as he had lived, — a Christian. Both had long and faithfully served as ruling elders in the Cumberland Presbyterian Church.



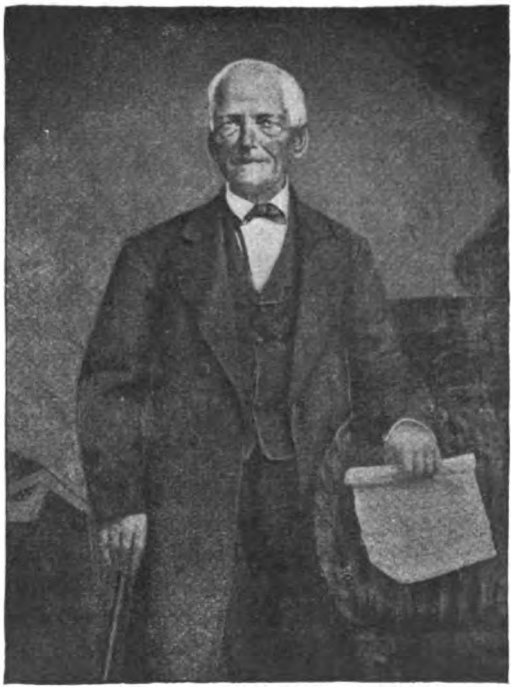
NATHAN GREEN.

During the war the University buildings in which the Law School was taught were destroyed by fire. They had been finished, in respect to some important additions, just before the strife began. It is due to truth to say here, that although the buildings were occupied by United States negro troops, and that part of the country was in their possession, this reckless and unnecessary destruction was not committed by them. Nor, indeed, was it an accident. Several thousand Confederate cavalry were on a raid in the vicinity. A detachment was sent to Lebanon, before whom the negro troops retired to Nashville, which was the nearest strong Federal post. A Confederate Major in command of the detachment, who had been a law student in former years, affected great indignation that his Alma Mater should be made barracks for negro soldiers; so, in his wrath and in his folly, he ordered the buildings to be burned. The loss was a most serious one to all departments of the University. General Wheeler promptly placed the officer under arrest, but that did not restore the buildings. As the news of the catastrophe spread over the country, while the civil conflict was still raging, hundreds of the alumni of the University felt and expressed the deepest indignation and most profound regret.

The war ended in April, 1865. Of the four law teachers, two were dead, and Judge Green, then in his seventy-fourth year, was in very feeble health. He had been attacked in 1863 with a severe pneumonia, from which he never fully recovered. He had, however, sufficient strength to engage in a limited practice of his profession, from which he derived some income. In view of his health and advancing years, he was at first averse to the proposition to reopen the Law School. After some persuasion, however, he consented that his name might be used as one of the professors, not expecting that he would ever do much work.

Accordingly the announcement was made that the Law School would be reopened on

the first Monday in September, 1865. The mails had not been re-established in the South, except between a few of the more important towns. The means of communication, therefore, were limited; still an effort was made to advertise the school, mainly by circulars sent from hand to hand. About twenty young men appeared at the opening of the term. The character of the students who entered the school this year was remarkable. Every member of the class had been a soldier in the late war; several had been officers. One had been a Confederate general, and one a Federal colonel. They were all fresh from the field of strife. It was true here, as elsewhere, that, having laid down their arms in good faith and agreed to keep the peace, they were willing to abide faithfully by the contract. The soldier students were gallant and some of them scarred men, who had fought on different sides, but were now in perfect accord in their social relations.



ROBERT L. CARUTHERS.

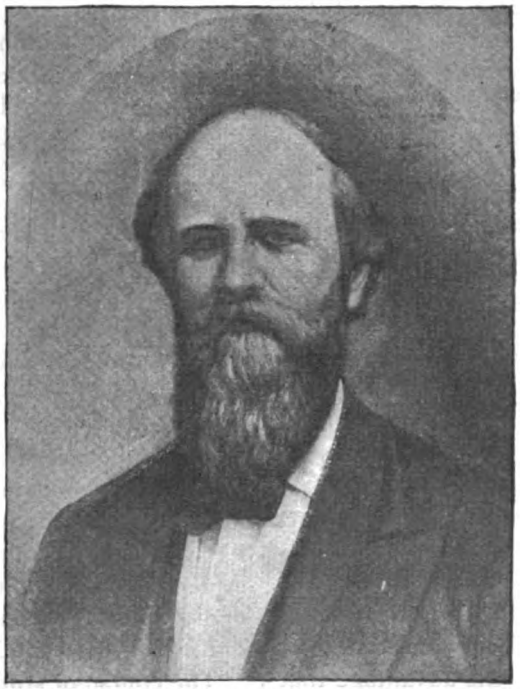
In the spring of 1866 the Law School was subjected to a great calamity. There were now two classes and upward of thirty students. Judge Green undertook to teach the more advanced students, but it was too much for his strength. He taught them a few weeks and gave way. He went to his bed, and after a confinement of one week, passed away. He died on the 30th of March, 1866. The law students gathered around his remains with the affection of children. They were his pall-bearers and among the chief mourners. Some supposed that this event would result in the disbanding of the students, and the breaking up of the school itself. But these magnanimous soldier students decreed otherwise. They entered into a compact to stand by the only surviving professor, until another teacher could be procured. None of them left until the end of the term.

In a few months afterward Hon. Henry Cooper, at that time a judge of the Circuit Court, was elected Professor of Law. He was comparatively a young man, not exceeding forty years of age. He had for several years occupied the bench, and had made for himself quite a reputation for ability as a lawyer and for purity as a man. In addition to this he possessed great urbanity of manner and gentleness, and was therefore well calculated to be an instructor for young men.

The whole number of students during the year 1865–1866 was forty-three. Instead of the number diminishing, as many apprehended, on account of the death of Judge Green, there were during the year following as many as seventy-seven students, — an increase of thirty-four. Great as was the fame of this venerable man whom death had removed, the character of the school was sufficient to sustain the loss.

It is a happy providence that all the wisdom and all the skill in a particular department are not buried with our fathers. However important they may be to any en-

terprise, others are sure to be raised up to fill their places. After teaching in the Law School two years, Judge Cooper resigned, moved to Nashville, and engaged in the practice of the law. He was in a short time elected to the Senate of the United States. At the expiration of his term he became interested in the ownership of a silver-mine in Mexico. On a certain day, when riding through the country in the vicinity of the mine in company with a friend, they were set upon by highway robbers, who fired upon them, killing the judge instantly, while his friend made his escape. Judge Cooper was a popular and efficient law professor. He discharged his duties in the school as he discharged every duty, public and private, faithfully and conscientiously.



HENRY COOPER.

In 1868 Hon. Robert L. Caruthers was elected Professor of Law, and began regular work in the school. He held the position until two years before his death, which occurred October, 1882. He had practised law much of his life, and was one of the most distinguished members of the bar in the country. He held many positions of trust, having been attorney-general in one of the judicial circuits, member of the Legislature of Tennessee, member of Congress of the United States, member of the Confederate Congress, Confederate Governor elect of the State of Tennessee, and for more than ten years one of the judges of the Supreme Court.

In 1878 Andrew B. Martin was elected an additional professor, but did not enter fully upon his duties until 1880. He was a graduate of the Lebanon Law School in the class of 1858. He had represented the county of Wilson in the Tennessee Legislature, in which body he was made chairman of the Judiciary Committee, which position he filled with distinction. He had acquired a large practice in his profession, and was noted for his skill in debate and often for his fervid eloquence. After entering upon the work in the Law School he found it necessary to abandon practice almost wholly. He was made President of the Board of Trustees, which position he still holds. Lincoln University in Illinois bestowed upon him the merited compliment of LL.D. Dr. Martin was selected for the position which he now holds, on account of his remarkable aptness for that work. Laborious, clear-minded, entertaining, and instructive, he cannot fail to interest young men.

Until 1853 the course of study required two years in school. The faculty, however, allowed young men to enter at any stage, giving them credit for what they had read at home. Experience convinced them that it was better to reduce the course so as to enable students to complete it in fifteen months. This reduction was made in 1853. In 1871 the course was still further reduced, so that it might be accomplished in one collegiate year. The reasons for this change are here frankly stated. While the fifteen months' course existed, it was observed that

very few who began with the Junior class continued regularly through the Middle and Senior classes. They would drop out at the end of the first term, read the books of the Middle class at home privately or at a lawyer's office, and come back and enter the Senior class upon examination; or else they would read the Junior course at home, enter the Middle class upon examination, and remain through the Senior term. So they could really be kept in school but two terms of five months each. Our young men, for the most part, are limited in their means, and are not able to remain in school longer than is absolutely necessary; and in many cases it is important that they should go to work for themselves as soon as possible. This they will do whether we graduate them or not.

For these reasons we have shortened the time and lessened the expense, and this we think has been done without omitting from the course of study a single important legal topic. By diligent application on the part of the student and the faithful assistance of his teacher, to which must be added the helpful method of instruction adopted here, a young man may with the least outlay of time and money obtain, not only a knowledge of the law contained in the leading American text-books, which constitute the course of study, but also the advantage that comes of thorough drill in practice.

We may be told that it once required an apprenticeship of seven years, before our English ancestors would allow the attorney to engage in practice. That may have been necessary then, but it is not now. Anciently the law was diffused through many books, most of which were reports. Years of labor and observation in office and in the courts were necessary to give beginners any proper notion of the law itself and the practice; but now Blackstone, Kent, Story, Greenleaf, and others have collected the principles of jurisprudence from the vast number of reports, and have arranged, digested, and reduced them to system, and have brought them within a small compass. They have done for us what the British student had to do for himself.

It is certainly, therefore, not hazarding too much to say that the modern diligent student can accomplish more in one year than the ancient student could in seven, — just as the modern railroad train can travel farther in one day than our forefathers could have gone with their road-wagons in ten days.

Law schools cannot make a lawyer in one year, or even in three years. One must learn by long practice and experience. He is not likely to be trusted at first with more than he can accomplish. He must make mistakes and meet reverses, and these are necessary in order that he may grow, — just as the tree must be shaken by the winds, pinched by the frosts, scorched by the sun, and thundered at from the clouds, before it can reach the stage of stalwart treehood. Why not, then, give him a start in some good law school, grant him a license, and let him take what small cases he might be trusted with? What else would more powerfully stimulate him? On what plan would he be more likely to feel encouraged? Why should we Americans keep our young men in the students' limbo, because our English ancestors did many years ago?

The course of study is as follows: —

JUNIOR CLASS.

Caruthers' History of a Lawsuit; Stephen's Pleading; Kent's Commentaries, 3 vols.; Greenleaf's Evidence, vol. i.; May on Insurance; Field on Corporations.

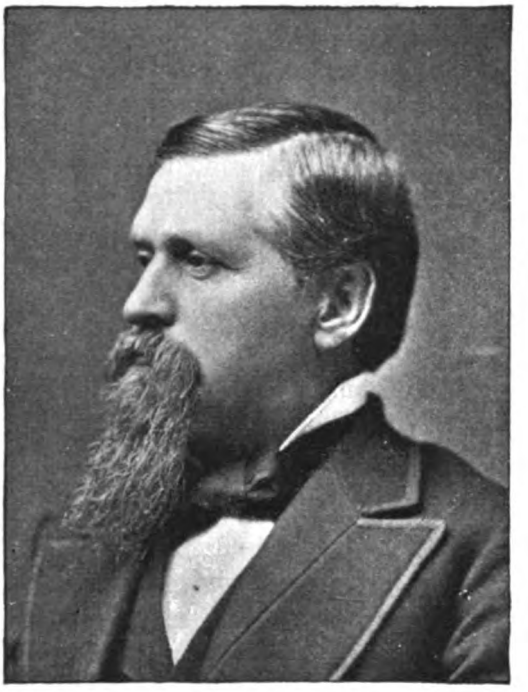
SENIOR CLASS.

Kent's Commentaries, vol. iv.; Barton's Suit in Equity; Story's Equity Jurisprudence; Bishop's Criminal Law; Parsons on Contracts.

Here are seventeen volumes, all standard works, containing nearly 15,000 pages, and covering every subject of the law ordinarily encountered by the practitioner.

THE PLAN OF INSTRUCTION.

The virtue of any plan of instruction must consist of two things: (1) it must cause the student to work, or, in other words, to study diligently; (2) it must so guide and direct his work, that in the best way and in the shortest time he may be qualified to practise law. The plan here is to give the student a lesson every day, and examine him the next day carefully and critically. He must answer questions in the presence of the whole class. This will insure the closest application of which he is capable; for indolence is sure to sink him to a degraded position. This method is far superior to the plan of studying in the lawyer's office, or to the old law-school plan of teaching wholly by lectures. Neither of the latter has anything in it to secure application. The student is brought to no daily examination to test his proficiency. Indeed, all that is calculated to stimulate him to constant, laborious application is wanting.



ANDREW B. MARTIN.

The student ought to have such a course assigned him, and be conducted through it in such a way, that he will understand, at the end of his pupilage, the greatest amount of pure, living American law, and will know best how to apply it in practice. We have made our course American. Important as it is to trace the history of the law from its original sources, through all its mutations, yet this is not the most important or appropriate work in preparing the young man for practice. The useful and the practical, the law of to-day and the mode of its application, are what the young man needs when he enters on his professional career; and these the law school should give him. He will have abundant leisure, and, if his ambition be rightly stimulated, he will enter more largely into the origin and philosophy of the law in after years.

In this Law School the object has been and is to direct the minds of students to what is most important in the text-books, to teach them what is and what is not settled, to correct the errors into which they may fall, to dispel the darkness that hangs upon many passages. This has been found necessary every day and at every step of their progress.

MOOT COURTS.

The art of the profession can only be learned by practice, and is as necessary a preparation as the learning of the science. If the student learns the art at the bar, it is at the expense of his client; if he learns it in school, it is at his own expense. Moot courts have been kept up since the origin of the school, and consist not merely in debating questions of law, but in cases announced in various forms to each student, on which he is to bring a suit and another is appointed to defend it. There is a regular clerk and sheriff, the students performing the duties of the officers. The plaintiff's attorney gives his prosecution bond, issues his writ, makes the proper returns on it in the name of the sheriff, and files his declara-

tion. The defendant's attorney examines the papers, moves to dismiss the suit, or pleads in abatement, or demurs, or pleads to the merits. If he fails to make defence in proper time, the plaintiff takes judgment by default against him. In many of the cases the attorneys are required to present their evidence in the form of depositions, containing original and cross-examinations of the witnesses; and in some cases oral examinations are allowed in the presence of the court and jury. The benefits resulting to the student from such practice are obvious. When the case is ready for trial a jury of students is empanelled, the evidence on each side introduced, the cause argued, and the jury charged by the court. Their verdict is rendered, and judgment and execution follow. Motions for new trial are made and overruled, and appeals taken to the Supreme Court. And so the suit at law is carried through all its phases.

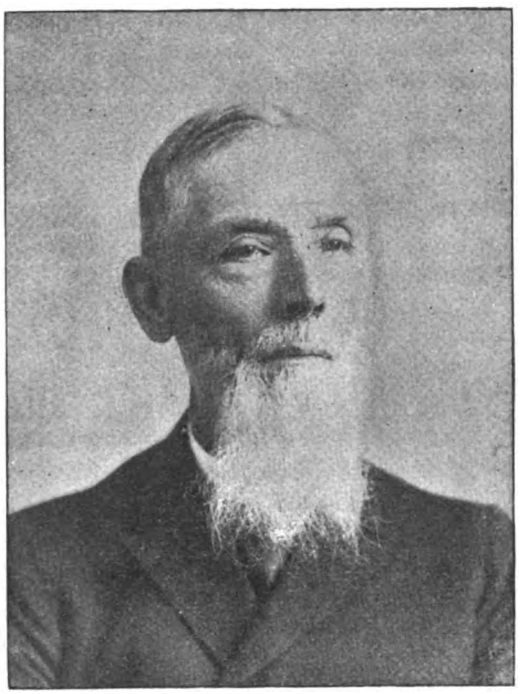
Equity cases are in like manner announced, and suits commenced and carried through all the processes known to the Chancery Court. Cases are so framed as to put the student under the necessity of preparing the various kinds of instruments that are used in the transactions of men. Thus the moot-court system not only indoctrinates the student in the elementary principles of law involved in his cases, but also in the law of remedies. It trains him also to the discussion of facts, and to the exercise of that tact so important in real practice.

In addition to these regular courts over which the professors preside, the students organize themselves into clubs and have courts of their own, electing their own judges and other officers, and preparing their own cases. In this way their spare time is spent pleasantly and profitably.

The professors do not keep marks indicating the standing of the student. It is thought the stimulus afforded by the presence of the class and a careful examination of every student every day are sufficient. As a rule the student who merits high grading does not need the incentive, and he who does not deserve it would do no better by reason of it. At one time it was the practice to have a valedictorian in the graduating class, and he was chosen by a majority vote of his fellows. This, however, did not work well. It frequently happened that the valedictorian was selected because he was a favorite, or on account of his fine declamatory powers, or because he was a member of some influential college fraternity. The matter finally came to be a serious one. Students who desired the honor began to electioneer for it while members of the Junior class, and there were often rival candidates. In the course of the canvass hard feeling was sure to be engendered, and even bloodshed sometimes threatened. These student feuds became a nuisance and a stench. The faculty, intending to remove the cause, took into their own hands the appointment of valedictorian. Nor, indeed, was this satisfactory. It was ascertained in a little while, at the beginning of each term, which of the students were striking for the prize, and all could see that the choice would be confined to one among perhaps a half dozen. The result was that those students who discovered that they were distanced grew jealous of the contestants, and what was worse, relaxed their own efforts to do well. Still another difficulty presented itself. It is well known that the best student is not always the best speaker. The professors, therefore, in awarding the valedictory to the best student, sometimes presented to the audience an awkward, ungainly fellow, who mumbled his piece so as to make the whole affair rather ludicrous. Furthermore, it now and then occurred that two or three of the contestants were so nearly equal as to make it impossible to discriminate justly between them. Indeed, on one occasion the faculty appointed two valedictorians, not being able to decide which was superior to the other. These considerations induced the faculty to abolish the honor entirely.

Something should be said here of the government of this school.

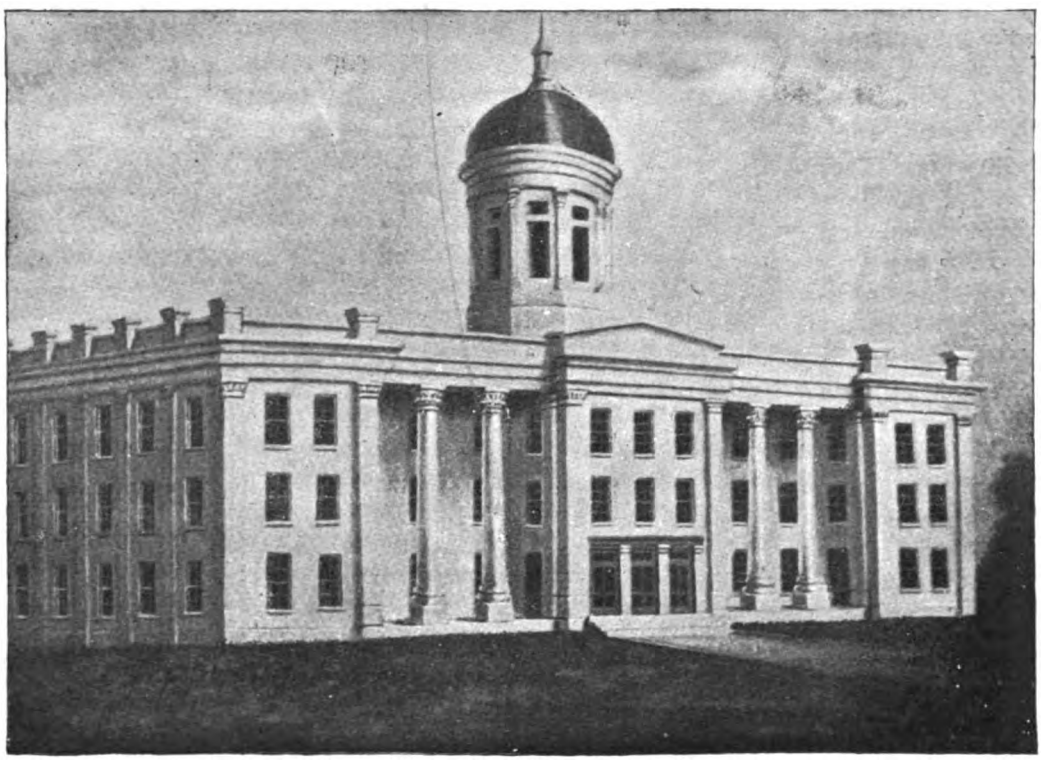
Law students are subjected to the same rules which apply to young men in the other departments of the University. During the early years of the institution there was a regular code of by-laws. The book containing them was not as large as the Code of Tennessee, but it contained mandates, prohibitions, injunctions, and regulations which entered into all the details of student life. They directed how he should study, when, and with whom. They indicated how he should meet and treat the professors; they prescribed his up-risings and his down-sittings. A copy of this was handed to each matriculate. To enforce these laws, monitors were appointed. A system of espionage was established. Once in the week laggards, delinquents, and other violators of the law were arraigned before the faculty. Charges were preferred by the college prosecutor, and the cause tried in public. It is easy to see that such a state of things could not long exist. The whole system was detested by the students and faculty as well. Since the re-organization of the University and Law Department after the close of the Civil War, the old code has been entirely abandoned, and a new one adopted, as remarkable for its brevity as the old one was for its prolixity. As it will require but little space, it is here given entire: "Semper præsens, semper paratus." The student is expected to be present and prepared every day. All who have experience with young men know that those who attend class regularly and recite well when there, are not likely to be insubordinate, troublesome, or dissipated. The better to insure his presence, however, the name of every student is called. Should he be reported ill, the matter is looked into, and if at all serious, he is visited by some member of the faculty. If absent frequently and without excuse, he is admonished or informed, in aggravated cases, that he cannot be graduated. A rule which is rigidly enforced is that every student must be present or examined on all the law in the whole course. Careful attention to these matters secures, in general, good order in and out of school. Furthermore, it is announced, at the beginning, that every student is presumed to be a gentleman. He is so recognized by the faculty upon the streets as well as in the college halls; and knowing what is expected of him, he rarely fails to come up to the standard. Now and then it has occurred that students have been disorderly and dissipated to such an extent as to require notice. In such cases they are quietly called up, and an opportunity given for repentance and reformation, which, if they do not improve, results in their enforced retirement from the school. The reins of government are held so loosely that the governed feel no pressure, but so firmly that they can be tightened in a moment. After more than twenty-five years of experience, it



NATHAN GREEN, JR.

has been demonstrated that this method of government is infinitely superior to the old one. The machinery of the University upon this plan works like a well-lubricated engine, with but little friction.

As to final examinations, there are none. The daily examination of every student enables the professors to know their exact merit. It might happen that a poor student, by cramming or some other device, would come out of the final examination with flying colors; while on the other hand, a student of real merit, owing to a want of self-possession or the presence of his evil genius, might make a failure. It is thought better, therefore, to form an estimate of his worth, based upon the two hundred examinations to which he has been subjected; and herein lies the infinite advantage, both to professor and student, in the plan of daily examinations over the lecture system. The truth is, the law is in the text-books. The professors can no more make law than can the student, and very few of them can state it with more clearness than it has been written already. All that the lecturer can possibly do is accomplished by the questioner, who, when he finds the student's difficulty, can remove it on the spot. In the course of a careful examination it can be ascertained where comment is needed, and it can be given at once. Two hours thus spent — the student being allowed to ask questions himself — cannot fail to interest the class greatly, and to illumine the dark parts of the text; in this manner a student's merits can be best ascertained.



CUMBERLAND UNIVERSITY BUILDING.

(Burned in 1864.)

It may be well to mention here a few of the sons of the Lebanon Law School who

have filled and are filling high places, — James D. Porter, lately Governor of Tennessee, and more recently Assistant Secretary of State; William B. Bate, at present a senator from Tennessee in the United States Congress; James B. McCreary, recently Governor of Kentucky, and now in the United States Congress; Howell E. Jackson, lately United States Senator, and now Judge of the Circuit Court of the United States; H. H. Lurton and W. C. Caldwell, Judges of the Supreme Court of Tennessee; R. R. Gaines, Judge of Supreme Court of Texas; Stirling R. Cockrill, Judge of Supreme Court of Arkansas; F. N. McClelland, Judge of the Supreme Court of Alabama; and scores of judges of lower courts, State and Federal, and members of Congress. There is scarcely a town in the States which have been represented in this Law School that does not contain one or more graduates. In the city of Nashville alone, are nearly fifty lawyers who received their legal education here. Up to the present time there have been thirteen hundred and four graduates; while more than two thousand young men have attended one or more terms.

In closing this article, it may not be inappropriate to state that although no pains have been at any time taken to impress any peculiar religious views upon the minds of young men, yet as a fact every professor, living or dead, has been or is a decided Christian. By their influence and example, as well as by many incidental and unobtrusive conversations, they have invariably taught that Jehovah is the Author of all law, that His great name should be reverenced, and that the "fear of God is the beginning of wisdom."

SIR JONAH BARRINGTON'S "PERSONAL SKETCHES OF HIS OWN TIMES."

By Austin A. Martin.

THIS book, originally published in 1827–1832, and which I am inclined to think is but little read by the present generation of lawyers, contains much to interest and amuse the profession. Its author, Sir Jonah Barrington, born of an excellent Irish family, was called to the bar in 1788, and after practising in Dublin till 1803, was then created Judge of the High Court of Admiralty. This office he held till 1830, when he was removed, and passed the rest of his life abroad. During his career in Ireland he was prominent in politics, law, and society; and his "Sketches," written in a lively and entertaining vein, give a vivid and interesting description of the political, legal, and social life of Ireland during that period. The author's style is agreeable and polished, and pervaded with the thorough *insouciance* and gayety of the true Irishman. His descriptions of Ireland and the country Irish — with their duels, debts, carousals by night and hard riding by day — and of the more polished, but yet "hard-going" inhabitants of Dublin, are inimitable. I have always thought that Thackeray must have frequently had this book in mind when he wrote "Barry Lyndon," — a work which, though somewhat neglected, is, to my mind, perhaps his most powerful production.

Without dwelling further on the other parts of Sir Jonah's book, let us come at once to what more particularly relates to the bench and bar. Our author says of the Irish barrister: "I beg here to observe that the Irish bar were never so decorous and mild at that time as to give up their briefs in desperate cases, as I have seen done in

England, politely to save (as asserted) public time and conciliate their lordships, thus sending their clients out of court because they *thought* they were not *defensible*. On the contrary, as I have said, the worse the cause intrusted to an Irish barrister, the more zealously did he labor and fight for his client. If he thought it indefensible, why take a fee? But his motto was, 'While there is life there is hope.' During the speeches of these resolute advocates, powder and perspiration mingled in cordial streams adown their writhing features; their mouths, ornamented at each corner with generous froth, threw out half a dozen arguments, with tropes and syllogisms to match, while English gentlemen would have been cautiously pronouncing one monosyllable and considering most discreetly what the next should be. In short, they always stuck to their cause to the last gasp; and it may appear fabulous, to a steady, regular, English expounder of the law, that I have repeatedly seen a cause which the bar, the bench, and the jury seemed to think was irrevocably lost, after a few hours' rubbing and puffing (like the exertions of the Humane Society), brought into a state of restored animation; and after another hour or two of cross-examination and perseverance, the judges and jury have changed their impressions, and sent home the cause quite alive in the pockets of the owner and lawful solicitor."

Of the Irish judges our author says: "Before and for some time after I was called to the bar, the bench was in some instances very curiously manned as to judges. The uniform custom had previously been to send over these dignitaries from England, partly with a view to protect the property of absentees, and partly from political considerations; and the individuals thus sent appeared as if generally selected because they were good for nothing else. Such Irishmen also as were in those days constituted puisne judges were of the inferior class of practising barristers." He adds, however, that the Chief-Justices were usually men of ability, and that the bench improved as time went on. Sir Jonah then descants at some length on the absurdity of the supposed infallibility of judges formerly prevalent in Ireland. Of an inferior barrister "whose opinion nobody would ask, or, if obtained, act upon," and who had been raised to the bench, he says: "The great seal and the king's patent were held to saturate his brain in half an hour with all that wisdom and learning which he had in vain been trying to get even a peep at during the former portion of his life; and the mere dicta of the metamorphosed barrister were set down by reporters as the infallible (but therefore inexplicable) law of the land, and, as such, handed round to other judges under the appellation of precedents entitled to all possible weight in judicial decisions." Probably in all this *surgit amari aliquid*, but Sir Jonah proceeds to give some examples which tend to support his statements: —

"Baron Monckton of the Exchequer (an importation from England) was said to understand *black* letter and *red* wine better than any who had preceded him in that situation. At all events, being often *vino deditus*, he on those occasions described the segment of a circle in making his way to the seat of justice."

"Old Judge Henn (a very excellent private character) was dreadfully puzzled on circuit, in 1789, by two pertinacious young barristers arguing a civil bill upon some trifling subject, repeatedly haranguing the court, and each most positively laying down the 'law of the case' in *direct* opposition to his adversary's statement thereupon. The judge listened with great attention until both were tired of stating the law and contradicting each other. 'How, gentlemen,' said Judge Henn, '*can* I settle it between you? You, sir, say the law is *one way*, and you [turning to the opposite party] as unequivocally affirm that it is the *other way*. I wish to God, Billy Harris [to his register, who sat underneath], I knew what the law

really was!' 'My lord,' replied Billy Harris most sententiously, rising at the same moment and casting a despairing glance toward the bench, 'if I possessed that knowledge I protest to God I would tell your lordship with a great deal of pleasure.' 'Then we'll *save the point*, Billy Harris!' exclaimed the judge."

Our author also relates the anecdote of a more modern justice of the Irish King's Bench, who, in giving his *dictum* on a certain will case, said, "he thought it very clear that the *testator* intended to keep a *life-interest* in the estate to *himself*." The bar did not laugh outright, but Curran soon rendered that consequence inevitable by saying, "Very true, my lord! Testators generally do secure life-interests to themselves; but in this case I rather think your lordship takes the *will* for the *deed!*"

Baron Power, who held the office of usher of the Court of Chancery, and whom Sir Jonah describes as "a morose, fat fellow, affecting to be genteel, but very learned, very rich, and very ostentatious," driven to desperation by the continual persecutions of Lord Clare, then Chancellor, committed suicide by drowning. Mark the airy and Sir-Lucius-O'Trigger style of our author in describing the event: "The baron walked quietly down early one fine morning to the South wall, which runs into the sea, about two miles from Dublin. There he very deliberately filled his coat-pockets with pebbles; and having accomplished that business, as deliberately walked into the ocean, which, however, did not retain him long, for his body was thrown ashore with great contempt by the tide. The Lord Chancellor enjoyed the double gratification of destroying a baron and recommending a more submissive officer in his place."

According to Sir Jonah, the precedent was too respectable and inviting not to be followed, as a judge drowning himself gave the thing a sort of dignified legal *éclat;* and shortly afterward one Mr. Morgal, a Dublin attorney, committed suicide in a precisely similar way.

"Mr. Morgal, then an attorney residing in Dublin (of large dimensions, and with shin-bones curved like the segment of a rainbow), had for good and sufficient reasons long appeared rather dissatisfied with himself and other people. But as attorneys were considered much more likely to induce their neighbors to cut their throats than to execute that office upon themselves, nobody ever suspected Morgal of any intention to shorten his days in a voluntary manner." He did, however, as above stated, and as our author playfully remarks, "committed himself in due form into the hands of Father Neptune, who took equal care of him as he had done with the baron; and after having suffocated him so completely as to defy the exertions of the Humane Society, sent his body floating ashore, to the full as bloated and buoyant as Baron Power's had been." Sir Jonah facetiously observes that he does not recollect that any *attorneys* immediately followed the unfortunate Mr. Morgal's example, but that four or five of his *clients* very shortly after started from this world of their own accord, to try, as people then said, if they could in any way overtake Morgal, who had left them no "conveniences" for staying long behind him.

Apropos of attorneys he relates the anecdote of a suitor in the Court of Exchequer who complained in person to the Chief Baron that he was quite "ruinated" and could go no further. His lordship suggested that the matter be decided by reference. To this the suitor agreed, saying, "I am willing, please your lordship, to leave it all either to *one honest* man or *two attorneys*, whichever your lordship pleases." "You had better toss up for that," said the Chief Baron (Lord Yelverton), laughing. *Two attorneys* were however appointed, and in less than a *year* reported that "they could not agree." The parties then agreed upon an honest farmer, who settled the whole matter to their satisfaction within a *week*. Shortly afterward they came into court with the good news, hand in hand, and thanked Lord Yelverton,

who always related the incident with great glee.

Justice Kelly, of the Common Pleas, before his appointment had been a most popular barrister; his opinions were deemed infallible, and he had an immense practice. After he had been on the bench for a while, the public began to find out that his legal knowledge had been overrated; his opinions were overruled, and his advice thought to be scarcely worth having; in short, he lost altogether the character of an infallible lawyer, such as he formerly possessed. He used to say laughingly, "So they find out now that I am not a very stanch lawyer; I am heartily glad they did not find it out thirty years ago."

William Johnson, a barrister, once pressed very fiercely for a decision in his favor, insisting that Judge Kelly had decided the same point the same way twice before. "So, Mr. Johnson," said the judge, looking archly, shifting his seat somewhat, and shrugging his right shoulder, — "so, because I decided *wrong* twice, Mr. Johnson, you 'd have me do so a *third* time? No, no, Mr. Johnson! you must excuse me. I 'll decide the other way this bout." And so he did.

In the early part of Sir Jonah's career the Irish press was notorious for its libels. The law of libel in Ireland was formerly very loose and badly understood, the principal reason being, according to our author, that in those days men who were libelled generally took the law into their own hands, "and eased the King's Bench of much trouble by the substitution of a small sword for a declaration, and a case of pistols for a judgment." Another consideration, says Sir Jonah, was that "scolding matches and disputes among soldiers were never then made matters of legal inquiry. Military officers are now by statute held unfit to remain such if they fight one another, while formerly they were thought unfit to remain in the army if they did not. Another curious anomaly is become obvious. If *lawyers* now refuse to pistol each other, they may be scouted out of society, though duelling is *against the law;* but if military officers take a shot at each other, they may be dismissed from the army. *Cedant arma togæ!* It is curious to conjecture what our next metamorphosis may be." As soon as the Irish judges were in 1782 made independent of the crown, the law of libel was much more strictly construed, and the libellers more severely punished.

Lord Clonmell was in the habit of holding parties to excessive bail in libel cases on his own *fiat*. Mr. Magee, printer of the Dublin "Evening Post" (who was a trifle cracked, but very acute), had been thus treated by his lordship, and took the following whimsical revenge. He purchased a piece of land directly under the windows of Lord Clonmell's country-house. This lot he christened "Fiat Hill," and there entertained the populace of Dublin once a week with various droll exhibitions and sports, such, for instance, as asses dressed up with wigs and scarlet robes, dancing dogs in gowns and wigs as barristers, soaped pigs, etc., — all this to the great annoyance of his lordship, who however could do nothing in the matter, the proceedings not being sufficiently riotous to constitute a public nuisance. Soon afterward, however, Magee having been convicted of libel, his lordship was enabled to administer *justice* to him with a clear conscience.

Theophilus Swift, an eccentric barrister, having libelled the officers and fellows of Dublin University, all of whom were of the clergy, an information for criminal libel was granted against him; and Sir Jonah was retained to defend him. Let us quote our author's words: "The trial at length came on, and there were decidedly more parsons present than I believe ever appeared in any court of justice of the same dimensions. The court set out full gallop against us; we worked on, — twice twelve judges could not have stopped us! I examined the most learned man of the whole University, Dr. Barret, — a little greasy, shabby, croaking, round-faced vice-provost. I worked at him unsuccessfully for more than an hour; not

one decisive sentence could I get him to pronounce. At length he grew quite tired of me, and I thought to conciliate him by telling him that his father had christened me. 'Indeed!' exclaimed he. 'Oh! I did not know you were a Christian.' At this unexpected repartee, the laugh was so strong against me that I found myself muzzled. My colleagues worked as hard as I; but a seventy horse-power could not have moved the court. It was, however, universally admitted that there was but one little point against us out of a hundred which the other side had urged; that point, too, had only three letters in it, yet it upset all our arguments; that talismanic word 'law' was more powerful than two speeches of five hours each." Swift was accordingly convicted, and sentenced to twelve months in Newgate, where, by a singular irony of fate, he was soon joined by the Rev. Dr. Burrows, one of the fellows of the University, who, thinking it a safe proceeding now that poor Swift was in prison, published a libel against him, and was promptly prosecuted and convicted by Sir Jonah in behalf of Swift. This same Theophilus Swift had previously gained notoriety by defending a criminal called the "monster." This brute, a prototype of the recent Whitechapel murderer, had practised the most horrible and mysterious crime of stabbing women indiscriminately in the street, deliberately and without cause. None of the bar would undertake the defence, until Swift, with Quixotic professional ardor, stepped forward to perform that office. Fortunately, however, the "monster" was promptly convicted and executed.

Sir Jonah relates a curious incident where, Lord Clonmell having used violent language to a barrister, the bar, with only one dissentient vote, passed the extraordinary resolution that no barrister should either take a brief, appear in the King's Bench, or sign any pleadings in that court, until his lordship publicly apologized. Strange as it may appear, this was actually done; no case was prepared, no counsel appeared, and their lordships had the court to themselves. The next day Lord Clonmell published an apology by advertisement in the newspapers, making it appear, however, as if written on the evening of the offence, and therefore voluntary.

Our author was an intimate friend of Curran. His description of the latter's personal appearance, however, is far from flattering. He says: "Curran's person was mean and decrepit, very slight, very shapeless, with nothing of the gentleman about it; on the contrary, displaying spindle limbs, a shambling gait, one hand imperfect, and a face yellow, furrowed, rather flat, and thoroughly ordinary." He hastens to add, however, "Yet his features were the very reverse of disagreeable; there was something so indescribably dramatic in his eye and the play of his eyebrow, that his visage seemed the index of his mind, and his humor the slave of his will."

Curran had ordered a new bar wig, and not liking the cut of it, he jestingly said to the peruke-maker, "Mr. Gahan, this wig will not answer me at all." "How so, sir," said Gahan, "it seems to fit." "Ay," replied Curran, "but it is the very worst *speaking* wig I ever had. I can scarce utter one word of common law in it; and as for *equity*, it is totally out of the question." The wig was accordingly sold at a bargain to a less critical barrister.

Sir Jonah thus describes Aaron Burr, whom he met in Ireland: "Colonel Burr was not a man of very prepossessing appearance; rough-featured, and neither dressy nor polished: but a well-informed, sensible man, and though not a particularly agreeable, yet an instructive companion,"—a portrait somewhat at variance with popular notion.

Duelling flourished during Sir Jonah's career, and he himself was a principal in several of these "little affairs," fortunately escaping any damage. After enumerating a long list of duels fought by distinguished lawyers and judges, our author natvely adds:

"The reader of this dignified list will surely see no indecorum in an admiralty judge having now and then exchanged broadsides, more especially as they did not militate against the law of nations." He describes his family duelling-pistols, which were called "pelters." They were made of brass, the barrels being very long, and were what were denominated *point-blankers*. They had been in the family many years, and descended as heirlooms; one being named "Sweet Lips," and the other "The Darling." The family rapier was called "Skiver, the Pullet," having been so christened by Sir Jonah's grand-uncle, Capt. Wheeler Barrington, who had fought with it repeatedly, "and run, through different parts of their persons, several Scots officers who had challenged him all at once for some national reflection." In Sir Jonah's time the number of killed and wounded among the bar was very considerable. Lord Mount Garret (afterward Earl of Kilkenny), finding himself likely to be worsted in a law-suit, conceived the thoroughly Irish plan of challenging the attorney and all the counsel on the other side. He accordingly challenged the attorney, but that worthy got the better of his lordship by wounding him quite severely. His son, however, then took the field, and challenged and wounded one of the opposing counsel. Next his lordship, having recovered from his wound, challenged and wounded another of the counsel. The latter, on being asked by Sir Jonah during his convalescence how he felt when he received the *crack*, replied that he felt "just as if he had been punched by the mainmast of a man-of-war." Sir Jonah remarks: "Certainly a grand simile! but how my friend Byrne was enabled to form the comparison, he never divulged to me." This whimsical course of procedure might have gone on until all the counsel were *hors du combat*, had not his lordship's second son, in taking his turn at it, injudiciously insulted one of the barristers in open court, whereupon he only escaped imprisonment by promising not to meddle further with the learned counsel. This ended the matter, his lordship finding that neither the laws of the land nor those of battle were likely to adjust his affairs to his satisfaction.

These random selections from Sir Jonah's "Sketches" have already exceeded the length of a "Green-Bag" article. The societies of duellists and "point-of-honor men," with their elaborate codes of duelling rules; the Irish gentry, divided into "The half-mounted Gentlemen," "Gentlemen every inch of them," and "Gentlemen to the back-bone," and their debts, duels, horse-races, and carousals; the Irish squires in their tumble-down country-houses and "castles," administering a paternal government over their tenants, and dying, at eighty or ninety, of gout, rum-shrub, and Drogheda usquebaugh; and the politics, society, and stage of the Irish capital; together with the further anecdotes of the bench and bar, and the weightier matters of the law, — all these I must leave to the research of such members of the profession as care to read for themselves the "Sketches" of this most entertaining Irish barrister and judge.

CAUSES CÉLÈBRES.

XIV.

THE QUEEN'S NECKLACE.

[1786.]

IN the first year of the reign of Louis XVI., — that is to say, in 1774, — the court jeweller, Boehmer, succeeded in completing a work which had occupied him for several years. This was an assortment of the most beautiful diamonds which could then be found in the market. With his associate, Bassange, he had made a necklace composed of stones whose price was enormous, — 1,600,000 francs then, and to-day the price would be at least 3,000,000 francs. It was destined evidently for a royal *écrin*.

For several years, however, this famous necklace found no purchaser, and the poor jeweller was at his wit's end. A fortune was tied up in these precious jewels, and it must in some way be released. Boehmer finally decided to apply to Marie Antoinette, in the hope that she might purchase it; and fearing that a direct offer might be rejected, he sought to interest in this negotiation M. de Campan, husband of the first *femme-de-chambre* of Marie Antoinette. M. de Campan refused to propose such an expenditure at a time when at court it was a question only of economy. The ladies of honor and ladies of the bed-chamber equally declined the commission. Boehmer then addressed himself to one of the gentlemen-at-arms in the service of the king, who consented to present the necklace. Louis XVI. admired this unique and incomparable *parure*, and wished to see it on the neck of the young queen. Marie Antoinette was also delighted with this splendid collection of diamonds; but she remembered that she was the queen of a country weighed down by prodigalities of every description. "I should be very sorry," she replied, "that so much money should be spent on such an object. I have already beautiful diamonds, and I do not wear them more than four or five times a year. Send back the necklace. We have now more need of a ship than a jewel."

A year after his first attempt, Boehmer again proposed to the king to buy his necklace; and the king once more mentioned the subject to the queen, who said that if the purchase was not really onerous, the king might buy it, and preserve it for a marriage gift to his children, but that she would never wear it. The king replied that the children were too young to make so expensive a purchase for their account, and he refused Boehmer's proposition.

Thus repulsed, the poor jeweller was in despair, and sought to bring every influence to bear upon the king, but all in vain; no one wished to hear a word about the necklace. The unfortunate Boehmer had locked up in these stones the greater part of his fortune; he felt that he was ruined if he did not succeed in selling them. Finally he determined to ask an audience of the queen. Having obtained it, he threw himself upon his knees before Marie Antoinette.

"Madame," he said, "I am ruined, dishonored, if you do not buy my necklace. I cannot survive such a misfortune. When I leave here, I shall go and throw myself into the river."

"Rise, Boehmer," said the queen, in a severe tone; "I do not like to hear such language, and honest men have no need to supplicate upon their knees. If you were to kill yourself, I should regret it as the act of a foolish person in whom I feel an interest; but I should be in no way responsible for the deed. Not only have I not ordered the object which is the cause of your despair, but every time that you have

shown me the jewels I have told you that I would not purchase them. Take the necklace, divide it, and sell the stones separately. I refuse absolutely to take it."

For a long time after this nothing was heard of the jeweller or his necklace; but a day came when Boehmer was again seen roaming about the palace, seeking an opportunity to speak to the queen. This time he wished, he said, not to entreat her Majesty, but to express to her his heartfelt gratitude.

The occasion seized by Boehmer was the baptism of the Duc d'Angoulême. The king had wished to present Marie Antoinette with a pair of diamond buckles in honor of the event, and had ordered Boehmer to send them to the queen. He presented them personally, and at the same time handed her a letter. In this letter the jeweller said that he was "happy to know that she was the possessor of the most beautiful diamonds in Europe," and begged her "not to forget him."

The queen was unable to comprehend the meaning of these phrases, and saw in them only a proof of insanity on the part of Boehmer. She burned the letter, saying, "That is not worth keeping."

On the 3d of August, uneasy at not receiving any reply to his letter, Boehmer went to see Madame de Campan at her country-house at Crespy, and asked if she had not some message for him. When he learned that the queen had burned his letter, without being able to comprehend his meaning, he cried, —

"Ah, Madame, that cannot be possible. The queen knows that she owes me money."

"Money! M. Boehmer, your account with the queen was settled long ago."

"Madame, you are not then in her confidence," replied the jeweller; "the queen owes me more than 1,500,000 francs."

"Have you lost your mind?" exclaimed Madame de Campan. "For what can the queen owe you such an enormous amount?"

"For my magnificent necklace, Madame."

"What! still the necklace, about which you have tormented the queen for so long a time? Why, you yourself told me that you had sold it to go to Constantinople."

"That was because the queen had ordered me to make this reply to all who should speak to me of it."

"Come, come! M. Boehmer, the queen positively refused your necklace, even as a gift from the king."

"She changed her mind."

"I have never seen this necklace among her diamonds."

"She was to have worn it on Whitsunday, and I was much astonished that she did not do so."

Then this *fatal imbécile*, as Madame de Campan calls him, said that the queen had purchased the necklace through the Cardinal de Rohan. At this name Madame de Campan perceived that some dark intrigue was at the bottom of the affair.

"But do you not know," she said, "that the queen has not even spoken to the cardinal since his return from Vienna? There is not a man in more disfavor with the court."

Madame de Campan then advised Boehmer to go to Versailles, and at once solicit an interview with the Baron de Breteuil. Instead of following her advice, the jeweller hastened to the cardinal.

Marie Antoinette, warned by Madame de Campan of Boehmer's strange assertions, wished to hear from his own lips the confirmation of this astonishing lie. She sent for him, and on his arrival asked him what he meant by his statement.

Boehmer repeated his story, and gave all the details regarding the sale of the necklace. When he happened to speak of mysterious interviews which had taken place between the queen and the cardinal, Marie Antoinette arose indignantly, and sought to impose silence upon the insolent man; but Boehmer, his mind filled with one idea, exclaimed, "Madame, this is no time to feign; confess that you have my necklace, and pay me something on account, or I shall be forced into immediate bankruptcy."

Unable to elicit more from him, the queen dismissed Boehmer. In a state of indescribable agitation she summoned the Abbé de Vermond and the Baron de Breteuil. Both these men hated the cardinal, and they gave the queen the dangerous advice to unmask the intriguing and vicious hypocrite. They did not consider, imprudents that they were, that the name of the queen would inevitably be mixed up in this scandal.

Marie Antoinette, superb in her indignation, paced the chamber, stopping only, from time to time, to exclaim: "These hideous vices must be unmasked. When the Roman purple and the title of prince conceal only a villain and a swindler, it is necessary that France and all Europe should know it."

This step resolved upon, they asked from Boehmer and Bassange a statement of all the particulars concerning the mysterious negotiation which the cardinal had had with them. The two associates gave the desired facts, in substance as follows: —

"On the 24th of January in the present year, M. le Cardinal de Rohan came to our store, and asked us to show him some jewels. We profited by this occasion to show him the necklace. After examining it, he told us that he had heard of it, and that he was commissioned to ask the price. We fixed it at 1,600,000 livres. The prince then said that he was charged with the purchase of it, not for himself, but for a person whom he was sure we would accept as a purchaser, telling us that he did not know as he could name this person; and that in case he was not permitted to, he would make all the necessary arrangements himself. . . . Two days later, the prince again visited us, and enjoining upon us the greatest secrecy, he communicated to us, in his own handwriting, the propositions which he was authorized to make us, a copy of which is hereto annexed. . . . On the 1st of February the prince made known to us the fact that her Majesty the Queen was the purchaser, and showed us the propositions which we had accepted, signed, "Marie Antoinette of France;" and in the margin each of the propositions was approved by her."

It will be observed that in this first statement the jewellers bring but one person into the affair, — the cardinal. He alone conducted and terminated the negotiation.

As soon as this statement had been received, the intrigue was made known to Louis XVI.; they showed him a copy of the pretended authorization given by the queen to the cardinal to negotiate the purchase of the necklace. Boehmer delivered up a letter which M. de Rohan had written him on this subject. The arrest of the cardinal was decided upon.

On the 15th of August the cardinal, clothed in his sacerdotal robes, went to the palace chapel at Versailles. About noon the king sent for him. The queen, the Baron de Breteuil, and a few courtiers were present. Then the king said, —

"You bought some diamonds of Boehmer?"

"Yes, Sire."

"What did you do with them?"

"I believed that they were sent to the queen."

"Who charged you with this commission?"

"A lady called the Comtesse de la Motte-Valois, who presented me a letter from the queen; and I thought that I was doing her Majesty a favor in charging myself with this commission."

Then the queen exclaimed: "What, Monsieur, could you believe — you, to whom I have never addressed a word for eight years — that I should choose you to conduct this negotiation, and through the intervention of such a woman? How could you imagine that I would give the purchasing of my ornaments to a bishop, to the grand almoner of France?"

"I see plainly," replied the cardinal, "that I have been cruelly deceived. I will pay for the necklace. My desire to please your

Majesty blinded my eyes. I saw no deceit, and I am sorry."

And M. de Rohan took from his pocket a letter, the same that this Madame de la Motte had attributed to the queen, and which gave him the commission. The king took the letter, and at a glance of the eye saw that the writing had no resemblance to that of the queen. It was signed "Marie Antoinette of France."

"What, Monsieur!" cried the king, "you, a prince of the house of Rohan, you, a grand almoner of France, — could you believe that the queen would sign herself thus? Every one knows that queens sign only their baptismal names."

"I have been deceived," murmured the cardinal, in great confusion, — "I have been deceived."

Then the king gave him a copy of his letter to Boehmer.

"Did you write such a letter as that?" he asked.

The cardinal glanced at the letter with a frightened air, and stammered, "I do not remember having written it."

"And if the original signed by you were shown you?"

"If the letter is signed by me, I must have written it."

"Explain all this enigma, Monsieur," said the king, more calmly; "I do not wish to find you guilty, I desire your justification. Explain to me what all these transactions with Boehmer mean."

The cardinal grew visibly pale; he was obliged to support himself against a chair.

"Sire, I am too much disturbed to answer your Majesty in a manner — "

"Collect yourself, Monsieur, and pass into my private apartment; you will find pens, ink, and paper there; write what you have to say to me."

The cardinal withdrew, and wrote a sort of confession as confused as his words had been; at the end of a quarter of an hour he returned with the paper. But he had had time to write a note addressed to the Abbé Georgel, his grand-vicar. This note contained these words: "I am about to be arrested; *burn everything*."

While Louis XVI. read the confession of the cardinal, the latter slipped the note into the hands of a valet, who escaped unperceived and hastened to the cardinal's palace; the compromising papers were at once destroyed. A search made in time would have unveiled the whole secret, and laid bare at the same time the foolish credulity and the shameful vices of this prince of the Church. But irresolute Louis XVI. never did anything in time.

The Cardinal de Rohan, however, and Madame de la Motte were at once placed under arrest. That there had been secret relations between the two there was no question; but had this Comtesse de la Motte, as the cardinal had said, played the principal rôle in the negotiation of the necklace? On being interrogated she denied everything. The cardinal being desirous to obtain the addresses of some jewellers, she had, she said, procured them for him. A short time afterward she again saw the cardinal, who was enchanted at having completed the negotiation, and who said to her: "I would tell you, but you do not know how to keep the smallest secret, — it is for the queen!" If the cardinal had made any negotiation, he had made it alone; as for herself, she had never been mixed up in it. Once the cardinal had shown her a box full of diamonds, saying, "I do not know what they are worth." At his request she had sold them for him. He had also given diamonds to her husband to sell. That was all that Madame de la Motte knew. As to these diamonds which she had seen in the cardinal's hands, did they come from the necklace? She was inclined to believe that they did. But the Prince de Rohan had doubtless played in this affair only the rôle of a dupe; he had pulled the chestnuts, or, if one prefers, the diamonds, out of the fire for the profit of the Comte de Cagliostro.

Who was this Comte de Cagliostro, so

abruptly introduced into the revelations of Madame de la Motte? It is almost universally agreed to-day that this celebrated impostor's real name was Joseph Balsamo. Forced to leave Sicily to escape pursuit for certain swindling operations, he travelled over Europe and a part of Africa under different names, and in 1780 he arrived in Strasbourg. Four years later he was in Paris, where he was treated with the greatest consideration. The élite of the nobility and men of letters assembled in his salon. The incredulous and *blasé* society of the eighteenth century rejected the Gospel and the Catholic traditions, but it accepted without difficulty the humbug and mummery of a charlatan who claimed to be a contemporary of Jesus Christ and the possessor of the mysteries of old Egypt. His dupes embraced men and women of all classes, and, according to Madame de la Motte, the Cardinal de Rohan was one of the most prominent. She gave a long account of several séances at which the cardinal had been present, and which had produced a great impression upon him. The conclusion which she drew was that M. de Rohan's mind was affected, and that his belief in the power of Cagliostro was complete; that under his influence the cardinal had been impelled to engage in the transaction of the necklace, and sell, through M. de la Motte, a portion of the diamonds in England. For this M. de la Motte had received two thousand crowns, and had paid over to the cardinal about three hundred and thirty-five thousand livres, the proceeds of the sale.

What had become of the greater part of the necklace, for the money received must have represented only a comparatively small portion? Madame de la Motte could not tell. Doubtless it had gone to the Comte de Cagliostro. Why had the cardinal, who well knew that the necklace no longer existed, advised Boehmer and Bassange to address themselves to the queen? That, again, was doubtless the effect of the *enchantments* of Cagliostro.

Strange as were the denunciations of Madame de la Motte, the authorities hastened to arrest Cagliostro and his wife. The charlatan was brought before the magistrates, who proceeded at once to interrogate him. From his responses it was evident that he had known of the negotiation for the purchase of the necklace.

New developments led to the discovery of new witnesses; and erelong the authorities believed that they had at last the true history of this remarkable conspiracy. In it Madame de la Motte figured as the central figure and instigator of the plot to obtain possession of these precious jewels. The cardinal, if not an active accomplice in the affair, certainly appeared to have been a most willing dupe. Various other persons of more or less prominence were implicated in the transaction.

The trial of the cardinal, which speedily took place before the Court of Parliament, excited the most profound interest. The houses of Rohan and Condé entered the most vehement protestations. The audacity of the Rohans even went so far as to openly accuse the queen of having drawn the cardinal into a trap to gratify her intense hatred for him. The pope (Pius VI.) did all in his power to sustain the cardinal, and declared him still worthy to enjoy all the rights and honors of his high position.

The trial, however, proceeded, and on the 31st of May the judges rendered their decree. Madame de la Motte and her husband were condemned to imprisonment for life; Cagliostro and his wife were discharged; the Cardinal de Rohan was acquitted, — a verdict which seems to have dissatisfied every one except his own immediate friends. We learn from Madame de Campan the effect produced upon the queen by this judgment: —

"She sent for me; I found her greatly moved. 'Congratulate me,' she said, in a forced voice; 'the intriguer who wished to ruin me, who endeavored to procure money by abusing my name and forging my signa-

ture, has been fully acquitted. But,' she added vehemently, 'as a Frenchwoman, receive my condolences. A nation is truly unfortunate to have for a supreme tribunal a body of men who consult only their own passions —'"

"At this moment," adds Madame de Campan, "the king entered, approached the queen and took her hand."

"This affair," he said, "has been outrageously judged; it is easily explained, however. It needs no Alexander to cut this gordian knot. Parliament saw in the cardinal only a prince of the Church, a Prince de Rohan, when it should have seen in him a man unworthy of his high ecclesiastical position, a prince degraded by his shameful vices."

Up to the last moment, it is seen, the king and the queen considered the cardinal guilty, not only of insolence, but of swindling.

It was then as a swindler and a forger, shamefully absolved by a court of the country, that the king and the queen resolved to punish this man who had braved their vengeance. The cardinal, deprived of all his dignities at court, was exiled to the Abbey of Chaise-Dieu.

Madame de la Motte remained in the Conciergerie for a short time, and was then removed to Salpêtriere, whence she escaped in 1787 and fled to England, where she wrote some scandalous "Memoirs," representing herself as the instrument and the victim of Marie Antoinette. The end of this miserable woman was worthy of her life; she was thrown out of a window, in the midst of an orgy, by her debauched companions and killed.

As for M. de la Motte he escaped his punishment by remaining in England until the Revolution opened to him once more the gates of France. It was his fortune to survive all the actors in this shameful plot, and he died in 1832.

In 1848 the affair of the queen's necklace had an epilogue which again recalled these deplorable memories. A citation from the Court of Radstadt, in the Duchy of Baden, convoked the creditors of the house of Rohan, among whom, it was observed, were the heirs of the jewellers Boehmer and Bassange.

THE VERDICT OF PUBLIC OPINION v. THE VERDICT OF THE JURY.

By Raphael Benoni.

THE lessons which experience has taught should not be forgotten when a particular instance arises tending to make us doubt the wisdom of laws, the real purpose of which is the protection of the rights of the people against the constant encroachment of the Government. England learned the lesson that the enforcement of the criminal law is the safest and surest means of destroying a people's freedom. The mass of technicalities which at one time, and in a measure still, surrounds and hampers the administration of her criminal justice, coercing deliberation and care, is the exaggerated outgrowth, the extreme reaction, the over-abundance of caution, against a potential power of injury to the people in the deprivation of life, liberty, and property.

The tyranny which can hide itself under the forms of law, which can use the instruments of justice to do injustice, is by far the worse.

In some of the States a few of these technicalities have been removed, and in others most of them. The men who did the work of abrogation were thoroughly acquainted with the purpose of their enactment, and endeavored, wherever they saw the necessity, to find a substitute. In some instances, while they have cut the strings which bound the trial judge and the State, they have curtailed the judge's power and lessened the scope of his authority. There has been enacted a corrective and balancing system of making the jury judges of the law as applicable to the facts as well as of the facts. In Louisiana, for instance, the slightest allusion by the trial judge to the facts which could possibly affect the jury in reaching a conclusion, results in reversing his judgment and ordering a new trial.

The chances of a criminal's escape are and should be nothing, in comparison to an easy, a ready, and a tempting avenue to tyranny and injustice.

The foundation, the prevalent and permeating principle, of the administration of criminal justice should be not so much, "It would be better that a crime should go unpunished than that the innocent should suffer," but, "It would be better that a criminal should escape than that any man or set of men should for any purpose have the power to make the innocent appear guilty." Criminal justice should not be so administered; it would give the power of persecution, the power of pursuing the forms of law to deprive the citizen of life, liberty, or property.

Criminal justice is a necessity. The delicate task of the legislator, in framing it to attain its end, — the protection of society, — must be carefully performed, if he would avoid its prostitution to purposes which make it a ready instrument in the hands of the governing power to injure society or parties against whom it has enmities. Take away all these technicalities against which a sentimental public opinion hurls its anathemas, and it would not be saying too much to assert that the law would become a means to the accomplishment of an end directly opposite to the object of its enactment, — protection. The same sentiment which entices public opinion to upbraid the administration of criminal justice as inadequate, as so technical that shrewd and learned counsel take advantage of it, would rise in revolution and elect legislators to enact them back again, should they be abolished to-morrow.

There is not, from the requirement that the State in murder cases shall prove not only death, but death by violence, to the service on the accused of a list of the jurors, a single technicality of the criminal law which is not as well founded as these in humanity and justice, or which did not at

some time serve the purpose of protection against the governing power.

But this morbid, sentimental public opinion, issuing its bulls against the administration of criminal justice, in the omnipotence of its self-constituted infallibility, does not rest solely on a superficial view of the result in a single instance and a positive ignorance of the evils intended to be reached and remedied by a given technicality; it rests also on ignorance of the facts in the very case which frees its indignation.

A man is killed, and a local reporter, anxious to excel and pamper to a depraved public taste, with a debauched rhetoric suited to the palate which he serves, heads his report with "MURDER" in large capitals. The man who did the killing, advised by counsel, holds his tongue. The reporter gathers "all" the facts from all parties saving such as are interested in the accused. The public read this imaginative description, filled with old women's conjectures as to incidents, stated with the direct assertion of acknowledged facts, and launches its verdict in strict accord with the alliterative head-lines of the local journal's report of the killing.

The case is tried. The excitement has died out, and the dear public are only interested in the verdict. Public interest in the facts is dead. They know them from the report of the paper at the time of the killing. The local journal itself sometimes apologizes to its readers for lack of full reports of the testimony, because "we gave them at the time of the killing." The meagre statements in the daily press of the testimony of the witnesses during the trial are not read. The verdict of the jury, based on the actual facts, is opposed to the verdict of public opinion, based on the assumed facts or the energetic reporter's conjectures stated as facts. A tirade of abuse is now heaped on law, lawyers, judges, and juries, when not one of the eloquent abusers would have rendered a different verdict had he been in the jury-box.

The public should understand not only the necessity of criminal law, but also its potency in bad hands for evil; they should consider the possibility of a Jeffreys; they should remember that in constructing such a system a free people should guard and have guarded their rights. Better by far to permit all criminals to escape, and each man stand for himself and protect his own life and property against the murderer and thief, than that any man or set of men should have, by pursuing the forms of law, the right and power to steal and kill legally. Let them remember how often tyranny has prostituted the law to its purposes; let them remember the judge who established the precedent that the jury could only find the fact of publication, and that the judge should say whether the matter published was libellous or not; let them remember the outcry of Erskine against this abuse and the amendatory act of Parliament, and they will not be so ready to demand the eradication of the forms and technicalities which they now so much abuse.

It would be a wide and profitable field for some abler pen to track the provisions of our constitutions guaranteeing certain rights, of which we are now so proud, to the causes which gave rise to them as written law. It would be not unlikely that they would be found to be nothing but the reverse principle of some crown-paid and bribed judge acting in the interest of the government and against the people.

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THE GREEN BAG.

OUR "Anonymous" Philadelphia correspondent has favored us with another communication, which our readers will find both instructive and entertaining.

Editor of the "Green Bag": —

Your correspondent, in deprecating in a former communication the fact that so many in the legal profession are of the opinion that to be "a case lawyer" is to be possessed of the highest standard of legal education, had no idea that he was to be confronted through the columns of your "entertaining" magazine with the reports made by your contributor, Mr. Irving Browne, of the decisions made in "the ram case" (Oakes *v.* Spaulding), and in "the cow and maple syrup case" (Bush *v.* Brainard). That these decisions are highly valuable as precedents admits not of a doubt; but couched as they are in the admirable poetic language of Mr. Browne, they cannot fail of being indelibly impressed upon the mind of the reader. Had your correspondent been aware of their having been made, he certainly would have referred to them in his rules for the guidance of "case lawyers" published in the September number of your "Green Bag." As it is never too late to do good, he would here beg leave to add to the former rules the following, namely: If you have a "ram" case, see "Green Bag," August, 1889, p. 328. If you have a "cow" case, — the cow being fond of maple syrup, — see *Ibid.*, November, 1889, p. 470 *et seq.*

Mr. Browne's style of reporting cannot certainly be regarded as useless, but "entertaining" in the highest degree. It is both amusing and instructive; and had he been present at numberless little gatherings of members of the fraternity at which his articles were read, and listened to the shouts of laughter and hearty applause which greeted the points made therein, he would have felt amply repaid for his able efforts. This much can at least be said, — the "case lawyers" have added to their store of knowledge; whilst the other fellows — that is, the old fogies with classical proclivities — clap their hands with glee, and comprehending, take special delight in Mr. Browne's methods of stating a case, giving the decisions made and the points of law established.

Turning from this matter, however, your correspondent now gives place to a few thoughts which have suggested themselves in his daily routine of life. It has been to him a matter of astonishment to find that there are those admitted to the bar who really believe that a lawyer's education is completed when he has obtained a smattering of Blackstone, — has gained a knowledge of a few of the principal rules governing Evidence, — and when he has become posted in the statute laws of his State and in the forms to be used in the issuing of legal process. According to their views, this is all-sufficient; all else that is needed for the purposes of practice is to hunt up decisions upon parallel cases just as business happens to come in and occasion require. This class of practitioners are not limited to one State; they are to be found in nearly every State of the Union, and they are the ones who are loudest in preaching up what they style "Legal Reform." Never having studied the law as a science, never having become impressed with a sense of its inherent value as a medium for developing intellectuality and logical powers the exercise of which is all-powerful in promoting the proper administration of law, justice, and right, they cannot be made to see that the rules and forms to which they are opposed and would have abolished, have ever been the bulwarks of the law, affording the amplest protection to the lives, liberties, and property of the people. Seeing no utility in a study of the common law of England, of course they can see none in studying the origin and history of Equity and Equity Jurisprudence. The nice distinctions between remedies at law and in equity are to them as a sealed book. Unable themselves to discern these, but finding them every now and again turning up as snags in the way in the course of their practice, they would have equitable remedies at once done away with, and a style of practice substituted which they can the more readily understand. To suit the views of such as these, shall the standard of legal education be lowered to their level? or shall it be elevated to that established and recognized in the early past, when the members of the profession were not wage-workers, but men of thorough training and of per-

sonal worth; when the contest between lawyers was as to which had given sound legal advice or the contrary; and when in the trial of causes, the battle was one of intellect, between educated minds, in which the law, its rules, its principles, and their proper application were analyzed and dissected with all the skill and experience of scientific and expert surgeons? In these days when lawyers are remunerated for their services and are entitled thereto, is not the fact an additional reason for making a thorough education in all branches of the science an essential for admission to the profession?

As has been said above, to the so-called "Legal Reformers" the distinctions between remedies at law and in equity are extremely undesirable; and for the very reason that Equity and Equity Jurisprudence, in the first place, occupied but a limited place in their studies. To them light has been withheld, or at least its rays have not been cast in their direction; and hence they cannot see that Equity is one of the most important, and at the same time one of the most attractive branches in the study of the law. In fact, none can be a sound, much less an accomplished lawyer, who has not given it a prominent place in his studies. Equity jurisprudence is recognized in the Federal Constitution, and in many of the States of the Union. What though in some of the States there are no separate courts of Chancery; what though in some of them equity powers are conferred upon the common-law courts; what though in others the distinction between legal and equitable forms of action does not exist, but a general form of civil action is the rule, — in every State judges and legislatures have found it necessary to resort to equitable remedies and to make provision for them from time to time. And why? In the language of Lord Chancellor Ellesmere in the famous Earl of Oxford's case, and reported in White and Tudor's Leading Cases in Equity, p. 643 *et seq.*, because "as a right at law cannot die, *neither can Chancery die.* . . . Equity speaks as the law of God speaks. . . . The cause why there is a Chancery is, for that men's actions are so divers and infinite, that it is *impossible to make any general law which may aptly meet with every particular act and not fail in some circumstances;*" and therefore, it is the office of the chancellor "to correct men's consciences for frauds, breaches of trusts, wrongs and oppressions, of what nature soever they be, and to soften and mollify the extremity of the law, which is called *summum jus.*" In other words, equity steps in where the law, because of its being unable to provide for unforeseen and constantly arising circumstances, has provided no remedy; and hence, as the Lord Chancellor above quoted says: "As a right at law cannot die, neither can Chancery [or Equity] die;" and consequently the study of Equity, Equitable Jurisdiction and Remedies is an essential to a thorough legal education. Are these "Legal Reformers" aware that the practice of the English High Court of Chancery forms the basis of the equity practice of the Courts of the United States? In their haste to "simplify" the forms of action and rules of practice, they are unable to perceive that it is not in the power of man to frame laws to meet every possible emergency or newly arising state of circumstances; and that by doing away with equity or forbidding a resort to its methods, right would be too frequently left unprotected, and justice fail of being administered. Such men have not the same consciousness which every day presses itself upon the mind of the lawyer who having devoted years of careful study to his profession feels that he is yet, even after years of practice and experience, a student who can gain knowledge from his text-books. They claim to be "progressive;" but such progress as they would initiate could only lead to placing the legal profession under the control of the ignorant, and culminating in making pleading in a court of justice a farce and the law anything else than a protector of the rights of the people. What is wanted is a higher standard of education at the American Bar; men of ability, — men especially trained, and whose studies have gone beyond the statutes of their own State, and who have gathered knowledge from standard legal text-books of English authorship as well as those of their own country, well knowing that therein are contained some of the most brilliant of arguments and the most valuable of precedents. In the language of Lord Coke (Co. Litt. 9 *a*): "There is no knowledge, case, or point in law, seeme it of never so little account, but will stand our student in stead at one time or other, and therefore in reading nothing pretermitted."

In our March number we shall publish an admirable full-page portrait of Lord Eldon, and in the April number an excellent picture (full-page) of Mr. A. C. Freeman, the well-known legal writer, and editor of the "American Decisions."

LEGAL ANTIQUITIES.

When the Papal See was transferred to Avignon, in the reign of Philip the Fair, many of the Italian jurists accompanied the court and established themselves there. Being in point of learning and legal dexterity superior to the French lawyers of

that period, the latter were not unwilling to adopt them as guides and authorities for the forms of judicial procedure and practice; and a variety of treatises were written on those subjects which show how entirely the profession of the law was at that time in the hands of the ecclesiastics. Instruction was conveyed under the form of trials, in which the different parties were characters taken from the Bible. The most holy names were introduced as those of plaintiffs and defendants; and Moses, Abraham, Isaac, Jacob, Solomon, Isaiah, Jeremiah, Saint John the Baptist, the Virgin Mary, and many others, figured as advocates, witnesses, and officers of the court. To give an idea of the style and titles of the ancient "text-books," we may mention two that appeared in the fourteenth century; one of which, attributed to the famous Bartolus, was called *Processus Satanae Contra D. Virginem coram judice Jesu;* and the other, *Processus Luciferi Contra Jesum coram judice Salomone*, which was written by Jacques Palladino, better known as Teramo, the name of the town where he was born.

These remind us of Bishop Sherlock's "Trial of the Witnesses," where the credibility of the account of our Saviour's resurrection is submitted to a jury, and the arguments on both sides are presented under the form of speeches of counsel engaged in a trial for perjury. The following is the conclusion of this curious specimen of Episcopal reasoning: —

JUDGE. What say you? Are the Apostles guilty of giving false evidence in the case of the resurrection of Jesus, or not guilty?

FOREMAN. Not guilty.

JUDGE. Very well; and now, gentlemen, I resign my commission, and am your humble servant.

The company then rose up, and were beginning to pay their compliments to the judge and the counsel, but were interrupted by a gentleman, who went up to the judge and offered him a fee.

"What is this?" says the judge.

"A fee, sir," said the gentleman.

"A fee to a judge is a bribe," said the judge.

"True, sir," said the gentleman; "but you have resigned your commission, and will not be the first judge who has come from the bench to the bar without any diminution of honor. Now, Lazarus's case is to come on next, and this fee is to retain you on his side." — HORTENSIUS.

FACETIÆ.

THE TWISTER TWISTED.

A LAWYER, known as a browbeating "swell,"
Essayed to make a backwoods witness tell
Just how a certain Mr. Jones had used
A horse, to show that it had been abused.
"Now," said the lawyer, with a winning smile,
Designed the artless (?) witness to beguile,
"Just tell us plainly, and with no delay,
In riding, what was this Jones's usual way?"
The witness, looking innocent, as though
Suspecting nothing that might lurk below,
Replied at once, as not a muscle stirred,
"Always a-straddle, sir, upon my word."
"But, sir," the lawyer said again, "just wait,
And understand; we want to know what *gait*
He generally rides, — now, that is plain."
"He don't ride any gate, as I have seen;
But this I know," said he, with sober face,
"His boys ride every gate around the place."
The lawyer, seeing that he had on hand
"A Tartar," thought, by being still more bland,
To circumvent and catch him on the sly.
"Now, witness," said he, "between you and I,
Let 's use due gravity, and come to facts,
For what we 're after are the simple acts,
And this evasive manner only bothers;
Just tell us how Jones rides when he 's with others."
"Of course," the witness says, "I 'll do my best:
Well, sir, he tries to keep up with the rest;
But if his horse to that is disinclined,
Why, then he is compelled to fall behind."
"Zounds!" cried the lawyer, losing all control,
"You either are, or take me for, a fool.
One question more, and then with you we 're done;
How did he ride when he, Jones, was alone?"
The witness, with a twinkle in his eye,
Looked at the lawyer as he made reply:
"I give it up; for I can only swear
That when he was *alone, I was n't there.*"
The lawyer, gasping something like "Dead beat,"
At once succumbed, and wilted to his seat.
The case was ended there, and never tried,
And we shall never know how Jones *did* ride.

AN EX-PRACTITIONER.

AT the trial of a Frenchwoman for shooting a man, her defence was that she shot the wrong man. After bringing in a verdict of "Guilty" against her, the jury characterized the defence as foolish, and added: "Had the prisoner shot the right man, we should have acquitted her. We trust she will be much more careful in future."

JUDGE M—— is a very absent-minded man. He was busily engaged in solving some judicial problem, when a servant hastily opened the door of his office and announced a great family event:

"A little stranger has arrived."

"Eh?"

"It's a little boy."

"Little boy! Well, ask him what he wants."

THE story is told of Gen. B. F. Butler's early days, that a Yankee obtained his legal opinion how to recover the value of a ham which a neighbor's dog came along and ate. He was advised to prosecute and recover for damages.

"But the dog was yourn," said the sharp Yankee.

Butler opened his eyes a little, asked him what the ham was worth, was told five dollars, paid the money, and then demanded a ten-dollar fee of the astonished native for legal advice.

JUDGE. Mr. State's Attorney, before you can introduce this witness you must show the loss of the record.

STATE'S ATTORNEY. I presumed your Honor was aware of the fact that the records of Marion County were burned.

JUDGE. As a private citizen I do know the fact, but as the court I do not, and you must put the proof of the fact into your case.

STATE'S ATTORNEY. Well, your Honor, it strikes me a little singular that your Honor knows something off the bench, and don't know anything on it.

WE do not remember having ever seen in print the following anecdote of Judge Tappan, of Ohio, which was related to us by an old friend of the Judge. After he had studied law long enough to consider himself fitted for the bar, he made application for admission, and at an appointed time met the Justices who were to test his knowledge by an oral examination.

"Mr. Tappan," was the first question, "what is *law?*"

The answer came promptly: "An unjust distribution of justice."

Somewhat surprised, the examiner continued: "And what, then, is *equity?*"

"An imposition upon common sense."

The justices held their heads together for a few moments, and unanimously declared that Mr. Tappan was fully qualified to practise. — *Columbia Law Times.*

DURING the trial of a case in Louisville, a German witness persisted in testifying to what his wife told him. This, of course, was ruled out by the judge. But the witness still persisted in repeating, "My vife toldt me."

Presently the judge, unable to contain himself longer, said: "Suppose your wife were to tell you the heavens had fallen, what would you think?"

"Vell, den, I dinks dey vas down."

"WHAT prompted you to rob this man's till?" asked the judge of the prisoner.

"My family physician," was the reply. "He told me it was absolutely necessary that I should have a little change."

NOTES.

JUDGE BREWER is the youngest member of the United States Supreme Court. He is only fifty-two years of age, is the fifty-second person appointed to that bench, and was confirmed by fifty-two votes.

A DECISION has been given by the Supreme Court of New York, in Kemmler's Case, affirming the constitutionality of execution by electricity. Judge Dwight writes the opinion, in the course of which he says: —

"It seems very clear that no provision of the English Bill of Rights was intended to operate as a restriction upon the power of the legislative branch of the English government. The act was chiefly a protest against the acts of tyranny and oppression on the part of the crown. In regard to the similar provision in the Constitution of the United States, it is in the first place to be observed that it has no application to any department of the government of the States, but is a restriction upon the federal government only. There is even some doubt if it is intended as a restriction upon the power of Congress in regard to punishment for crime. With regard to the provision in the Constitution of this State, the case is

different. It must have been intended as a restriction upon the legislative authority. We have no doubt that if the Legislature of this State should undertake to prescribe for any offence against the laws the punishment of burning at the stake, breaking at the wheel, etc., it would be the duty of the courts to pronounce upon such attempt the condemnation of the Constitution. The question is now to be answered whether the legislative act here assailed is subject to the same condemnation. Certainly it is not so on its face; for although the mode of death described is conceded to be unusual, there is no common knowledge or consent that it is cruel. It is a question of fact whether an electrical current, of sufficient intensity and skilfully applied, will produce death without unnecessary suffering. Is this a question open to the investigation of the court when called upon to decide the validity of the law in question? Or must it be presumed to have been determined by the Legislature in favor of the mode of punishment prescribed? For the first time in the history of jurisprudence has a court been called upon to enter upon such investigation."

The Judge suggests that it could safely be presumed that the Legislature had sufficiently investigated the nature of punishment before passing the law, and reviews the work of the committee which investigated methods of capital punishment. After reviewing the experiments made upon animals by electricity and accidental deaths of men through the same instrumentality, the Judge concludes: —

"The light of the scientific evidence in this case is sufficient, as we think, to remove every reasonable doubt that the passage of a current of electricity, of a certain well-determined intensity, through the vital parts of the body, under chosen conditions of contact and resistance, must result in instant death. If the question were of the advisability of the change of the mode of inflicting capital punishment, the discussion might be prolonged. As we are confined to the question of constitutionality, we deem further discussion unnecessary. The order dismissing the writ of *habeas corpus* and remanding the prisoner must be affirmed."

An interesting report on the "solicitor's profession in England" has been read before the Paris Academy of Moral and Political Sciences by M. de Franqueville. The learned Academician described the gradual extinction of what Dr. Johnson called the "fell attorney," who was always supposed to be prowling for prey in the region of Lincoln's Inn and the Strand. Of the solicitors who have replaced the functionaries satirized by the Sage of Fleet Street, M. de Franqueville says that there are about three thousand of them in London and sixteen thousand in the provinces. The French Legist, however, is at a loss to account for the continual increase in the number of solicitors, particularly as the profession is rather difficult of access, and the expense as well as the length of time required to prepare for it ought to preclude many from entering it. M. de Franqueville is of opinion that at a not very distant date a fusion will be effected between the duties of barristers and solicitors. — *Irish Law Times.*

The New York State Bar Association held its thirteenth annual meeting at Albany on January 21 and 22. The Annual Address was delivered by Robert G. Ingersoll, his subject being "Crimes against Criminals."

This Association is in a flourishing condition, and has rooms in the State Capitol building, where are to be found many things of great interest to visitors. Among them may be mentioned the original writing-desk which was placed in the executive chamber of the old Capitol when that building was first opened, at which sat Governor Tompkins from 1807 to 1816. DeWitt Clinton succeeded him, and used that desk from 1816 to Feb. 11, 1828, with the exception of three years, when Joseph C. Yates was the incumbent, from 1822 to 1824 inclusive. Martin Van Buren succeeded Clinton until 1829, when he resigned on being appointed Secretary of State under Jackson. The desk was then used by all the succeeding governors, down to and through Horatio Seymour's first administration, ending Jan. 1, 1854.

There, too, is the finely executed bust of Abraham Van Vechten, a great Albany lawyer, who gave the Albany Bar the prestige of having one of its sons the first who signed the roll and took the oath of office as an attorney of the Supreme Court of the State.

There is also a life-like portrait of Ambrose Spencer, the greatest of New York's judicial officers, a brother-in-law of DeWitt Clinton; the portraits of the great revisers of the New York statutes, John C. Spencer, Benjamin F. Butler, and John Duer; the fine portrait of that distinguished judge and scholar and Chief-Justice of the State, John Savage, and an excellent portrait of Aaron Burr.

There is an interesting collection of old court

archæology, and the story is told in a graphic manner, and illustrated by views which are now published for the first time. "The Autobiography of Joseph Jefferson" increases in interest, and is so entertainingly written that this gifted actor seems fully entitled to as high a position as an author as he has attained upon the stage. "Friend Olivia," by Amelia E. Barr, and "The Merry Chanter," by Frank R. Stockton, are continued. The history of "Abraham Lincoln" reaches the tragic event which terminated that noble life, and the story of the "Fourteenth of April" is told in vivid terms. "The Crucial Test," "Present Day Papers," "Italian Old Masters," "Sancho Mitana," "The Nature and Method of Revelation," are among the many good things which serve to make up this most interesting number.

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VOID EXECUTION, JUDICIAL, AND PROBATE SALES. By A. C. FREEMAN. Third edition. Central Law Journal Company, St. Louis, 1890. Law sheep. $2.50.

This little work has long been recognized as a standard authority upon the subject of which it treats, — namely, Void Judicial Sales. It is prepared in Mr. Freeman's usual thorough and exhaustive manner; and this new edition, revised, enlarged, and brought down to date, will undoubtedly meet with a cordial reception by the profession.

third assistant Secretary of State. In the winter of 1881–1882 he went to South America with Mr. Trescott on a special mission to use the good offices of the United States to bring about a settlement of the troubles between Chili and Peru. He was then chargé d'affaires in Bolivia for several months. Late in the year 1882 he was appointed assistant counsel of the Court of Alabama Claims, which office he held until 1885. He lived in Chicago from 1886 to 1888, returning to Washington, Jan. 1, 1889.

ADDISON C. NILES, ex-judge of the Supreme Court of California, died in San Francisco, January 17. He was a native of Oswego County, N. Y.

FREDERICK CHASE, judge of probate and treasurer of Dartmouth College, died at Hanover, January 19. He was the oldest son of Stephen Chase, a former professor of mathematics at Dartmouth College, and was born Sept. 2, 1840. He graduated at Dartmouth in 1860, taught at Chattanooga, Tenn., for a short time, and then read law with Daniel Blaisdell, treasurer of the college. He became, in 1861, a clerk in the office of the Second Auditor of the United States Treasury at Washington, and in 1864 he was transferred to an important position in the Secretary's office. He attended the Columbia Law School, graduating in 1867, and then practised law several years at Washington. In 1874 he returned to Hanover, and in 1875, at the death of Daniel Blaisdell, he was appointed treasurer of Dartmouth College. He was made judge of probate for Grafton County in 1876.

JUDGE NICHOLAS LONGWORTH, of Cincinnati, died on January 18. He was son of Joseph and grandson of Nicholas Longworth, and was born in Cincinnati in June, 1844, and graduated from Harvard in 1866; for four years from 1876 he was judge of the Court of Common Pleas, and in 1881 he was elected supreme judge. He published, in 1874, a translation of the "Electra" of Sophocles.

ORLOW W. CHAPMAN, Solicitor-General of the Department of Justice, died at Washington, January 19. He was born in Ellington, Conn., in 1832, and educated in the local academy. In 1854 he graduated from Union College, Schenectady, N. Y., and took a position as professor of languages in Fergusonville, Delaware County, N. Y. In 1856 he began the study of law with Robert Parker, and in 1858 began to practise at Binghamton, N. Y. In 1862 he was appointed district attorney at Binghamton, to fill a vacancy, was elected to the same position in the fall of 1862, and re-elected in 1865. He was in the New York State Senate in 1870 and 1871, serving on many important committees.

REVIEWS.

To the CANADIAN LAW TIMES for January, R. S. Cassels contributes an interesting and valuable paper on "Restrictive Covenants; Purchaser's Right to enforce *inter se*."

THE HARVARD LAW REVIEW for January has for its leading article No. V. of Professor Langdell's papers on "A Brief Survey of Equity Jurisprudence." William Schofield discusses the "Theory of Contributory Negligence," the article being drawn out by decision of the court in Davies *v.* Mann.

THE LAW QUARTERLY REVIEW for January is an unusually interesting number. The leading articles are "Private International Law as a Branch of the Law of England," by A. V. Dicey; and "Remainders after Conditional Fees," by Prof. F. W. Maitland. An account of "The French Schools of Law" is given by Malcolm McIlwraith; and Sir A. Lyall contributes an interesting paper on "A Modern Hindu Code." The other contents are "The Rights of Aliens to enter British Territory," by W. F. Craies; "Children of Naturalized British Subjects," by L. L. Shadwell; "The Superiority of Written Evidence," by J. W. Salmond; and "Derry *v.* Peck in the House of Lords," by Sir W. R. Anson.

To the January number of the CENTURY, Amelia B. Edwards, now almost better known as an Egyptologist than as a novelist, contributes a historical study, "Bubastis." The finding of the Great Temple of Bubastis is one of the romances of

archæology, and the story is told in a graphic manner, and illustrated by views which are now published for the first time. "The Autobiography of Joseph Jefferson" increases in interest, and is so entertainingly written that this gifted actor seems fully entitled to as high a position as an author as he has attained upon the stage. "Friend Olivia," by Amelia E. Barr, and "The Merry Chanter," by Frank R. Stockton, are continued. The history of "Abraham Lincoln" reaches the tragic event which terminated that noble life, and the story of the "Fourteenth of April" is told in vivid terms. "The Crucial Test," "Present Day Papers," "Italian Old Masters," "Sancho Mitana," "The Nature and Method of Revelation," are among the many good things which serve to make up this most interesting number.

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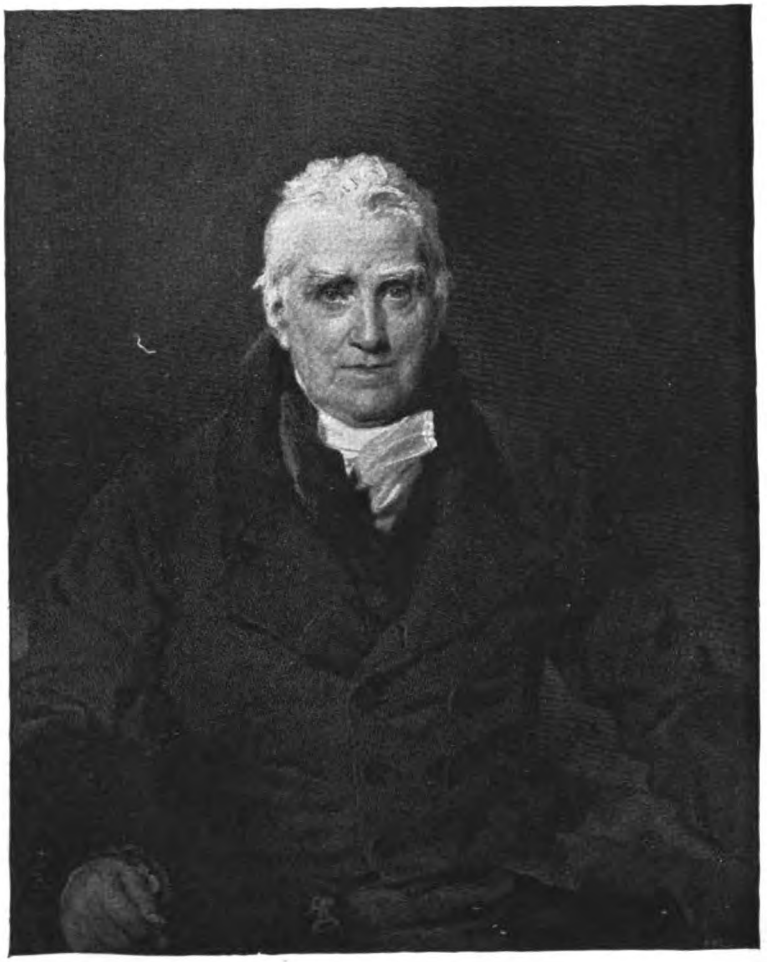
Mr. Townshend is well known as one of the most accomplished lawyers at the New York Bar, and his work is exhaustive, and has long been recognized as a standard treatise on the law of Slander and Libel.

VOID EXECUTION, JUDICIAL, AND PROBATE SALES. By A. C. FREEMAN. Third edition. Central Law Journal Company, St. Louis, 1890. Law sheep. $2.50.

This little work has long been recognized as a standard authority upon the subject of which it treats, — namely, Void Judicial Sales. It is prepared in Mr. Freeman's usual thorough and exhaustive manner; and this new edition, revised, enlarged, and brought down to date, will undoubtedly meet with a cordial reception by the profession.



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LORD ELDON.

The Green Bag.

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LORD ELDON.

BY WILLIAM H. DUNBAR.

ONE of the most striking personalities in English legal history is that of Lord Eldon. Born in 1751, he began life as plain John Scott, son of the Newcastle coal-fitter. With no advantages of birth or fortune, he achieved by the unaided force of his own abilities a position influential alike as courtier, as politician, and as judge, — as courtier, the confidential adviser of two kings; as politician, the maker and destroyer of cabinets; and as judge, pronounced by Lord Kenyon, "the most consummate that ever sat in judgment." Rising through the successive grades of Solicitor-General, Attorney-General, and Chief-Justice of the Common Pleas, the highest place in the legal hierarchy was at length forced upon him, and for nearly a quarter of a century he wielded the enormous powers then attached to the office of Lord High Chancellor, controlling all judicial appointments and determining the fate of nearly all legislation upon legal subjects.

In spite of his long term of office no important changes in the law are attributable to Lord Eldon. There are statutes associated with the name of the brilliant but slothful Lyndhurst; Brougham, speaking nightly in the House of Lords and writing essays dealing with every department of human knowledge, yet found time and energy to engage in extensive plans of reform; even Campbell, a man of comparatively slender abilities and of comparatively small influence, produced several useful and important measures. But Lord Eldon, a greater lawyer than any of these, of more massive legal intellect, and with vastly greater opportunities, wrought no changes. He was content to leave untouched long-standing abuses, which in his eyes seemed even to be invested with a certain sanctity that rendered them inviolable. He openly opposed Romilly, struggling to amend the most barbarous and senseless criminal code that ever disgraced the statute-books of a civilized nation. And he handed down unimproved a system of chancery practice such that men declared it better to endure any wrong rather than seek redress under it.

Not by the absence of statutory changes alone is marked the character of Lord Eldon's legal career. As he discountenanced all such direct measures of alteration or advancement, so as a judge he failed to give it any vigorous development. The same conservatism governed him in respect to judicial as to legislative creation and administration of the law. He loved to follow closely in the footsteps of those who had gone before, and shunned all untrodden paths. It was from no lack of mental vigor, from no disposition to spare himself that Lord Eldon's course is to be attributed. If of less brilliant parts than Lord Lyndhurst and with a narrower range of learning than Lord Brougham, he far surpassed both in the sterling qualities of his legal knowledge and ability. At once acute, accurate, and profound, trained and familiar in nearly every branch of the law, and assisted by the great experience acquired in his long and active life, his mind was eager to grapple with and capable of solving the most difficult problems. Possessed of unrivalled penetration, always fully master

of the cause before him, seizing intuitively upon the decisive facts and recognizing the legal principles applicable to them, appreciating the difficulties, but at the same time recognizing the means of avoiding them, and unerringly, if sometimes hesitatingly, reaching the correct conclusion with a clearness of judgment which, in the words of no favorably inclined critic, amounted to a genius for the law, he had without exception all the intellectual qualities necessary to enable him to use his high position to the best and greatest advantage. And the industry which he brought to the performance of his duties was no less marked; for sitting in his court he toiled with a tireless zeal and persistence that was at once the admiration and the despair of the bar, and rendered him perhaps the most laborious judge that ever sat upon the woolsack.

The key to Lord Eldon's relation to the history of the law is found in the intense conservatism of his nature. The great intellectual strength and supreme legal ability that we recognize in him were not devoted to the improvement of the common law as a code or its development as a science. The influence that he exerted was necessarily great, the greater because throughout it was exerted undeviatingly in the same direction. But that influence was of a character wholly negative and repressive, and to be understood in its full measure and importance only in connection with the history of the period immediately preceding his rise to power.

In the generation before Lord Eldon's chancellorship a force of widely different character had been exerted upon the development of legal science. Lord Mansfield, a man fully imbued with a progressive spirit, had, as Lord Chief-Justice of England, maintained an overpowering ascendency. Three times refusing the proffer of the great seal, he had, without occupying the more exalted office, exercised a sway fully as complete in things legal as that ordinarily accorded to the Lord Chancellor. In his administration of the law, both in the Court of King's Bench and in the House of Lords, he had been almost autocratic. With a mind less subtle perhaps than that of Lord Eldon and with a judgment less intuitively correct, Lord Mansfield was cast in a broader mould. A brilliant scholar, deeply versed in the doctrines of the civil law, and drawing freely from that great source of learning, he was a jurist as well as a judge. He recognized the capacities of the common law, and inspired by its wider aims, sought to lead it on to a higher development, to fill out its proportions, and to harmonize its parts. The versatility that made him in his earlier years a welcome companion when "drinking champagne with the wits," and that led men of letters to lament "how sweet an Ovid was in Murray lost," freed him from the insular prejudices that bound many of his most learned contemporaries. His was not a nature to bow down before the force of purely technical rules or to shrink from following a principle rather than yield to a precedent. Justly reliant on his own powers, he refused to accept as binding authorities decisions which he deemed opposed to the fundamental spirit of the law. He boldly asserted that his court did not "sit here to take our rules of evidence from Siderfin and Keble." And with a rare creative genius he did not hesitate to remodel the old and lay foundations in previously unturned ground for a further and far-reaching growth.

Never before or since has a single judge so strongly set the impress of his individual intellect upon the jurisprudence of his times. Under Lord Mansfield's hand the commercial law of England came into being in much the same form in which it has survived. He won for the decisions of English courts a recognition previously refused them as authorities on questions of international law. The law of evidence "he found of brick and left of marble." Like Lord Eldon he did not resort to legislation, and no acts associated with his name are found upon the statute-book; but through his judgments he

effected a renovation and expansion justifying his boast that the common law was able of its own force to "work itself clear." In Lord Mansfield, for perhaps the first time, the conception of the law as a science capable of growth and adaptation, composed of scientific principles to be extracted from the body of precedents and to be supplemented when necessary from other sources, found an exponent. The mere husk, the artificial forms that had survived their use, he was ready to dispense with, and in that direction was possibly over-radical; but of sound established principles he was a careful conservator.

Upon the tendencies aroused and fostered by a man of this character, enforced by his precepts and by the magic of his name during a long term of judicial power, the hostility of Lord Eldon fell like a blight. The accomplished Buller — a devoted follower and an almost idolatrous worshipper and disciple of Lord Mansfield, plainly designated by him as his intended successor — was passed over in favor of Lord Kenyon. The doctrines that the late Chief-Justice had advanced were derided, and his ability scouted. The work that he had begun was stopped, the spirit that he had excited was stifled, and instead the cramping subservience to form and precedent characteristic of the ultra-conservative mind of the chancellor prevailed. The period that ensued, including and following the ascendancy of Lord Eldon, is plainly marked with his influence. It was a period of comparative stagnation. The law was administered by judges, many of them of masterly ability; but it was advanced and developed only slightly and very slowly. Bayley, Holroyd, Patteson, and their colleagues were men of profound learning in municipal law, and their judgments are of the highest authority; but the law was not to them, as it had been to Lord Mansfield, a science, calling for something of scientific pursuit. It was instead a fixed and inelastic code, and by them it was narrowed rather than broadened.

If Lord Mansfield was urged by the eager impetus of his spirit to much that seems like judicial legislation, if he allowed his ideas of abstract right to lead him at times unduly to disregard the maxim of "stare decisis," yet he produced a legitimate effect of great and lasting value. He raised the law from the chaotic condition in which he found it, and placed it in a position from which it was never wholly dislodged. And he left as the result of his thirty years of labor something more valuable than a body of decisions, — a principle that has survived to the present day. On the other hand, Lord Eldon, guided by his reactionary sentiments, rejected the opportunity offered him. Conscientiously opposing the tendencies he found at work, he became an obstructionist in the march of juridical progress. His great abilities and tremendous power were directed to impeding and for the time stunting the growth that he could not prevent. The effect of his judgments has indeed been great and of permanent value in firmly establishing and crystallizing sound doctrines of law; but the more important and deeper effect that he might have wrought as the result of his personal influence, he failed to accomplish, for great as that influence was at the time, it was doomed to be overpowered and eventually to succumb to those forces to which it was so strenuously opposed.

But though Lord Eldon's influence may not in all respects have been salutary, though he repressed much that was a healthy growth and opposed desirable tendencies, yet his character and his career were not such as to warrant a contemptuous judgment of him as a lawyer, far less a slighting opinion of him as a man. His conduct was the result of the deep-rooted convictions of his nature, a nature imbued with an extreme conservatism. In law, as in politics, he was one who "never ratted." As a man, right or wrong, he was loyal to his principles and faithful to his conception of duty, and he deserved something better than the virulent invectives of the

Edinburgh reviewers. As a lawyer, despite the bitter criticism and depreciation of contemporaries sharpened by personal and political hostility, he stands in the first rank. The patient research and careful study that marked his consideration of every cause, despite the delays, prejudicial to suitors and exasperating to counsel, traditionally associated with his name, rendered him an excellent administrator of justice. Though making no provision for future advances, he defined with accuracy and precision the boundaries of established legal doctrines. And if he is estimated by the worth of his judicial work, by the force of intellect and depth of learning brought to his task, by the clearness of judgment that nothing could overcloud, he must be reckoned as without a superior, — a man to be classed with the most famous of his predecessors.

ENIGMAS OF JUSTICE.

IV.

By George Makepeace Towle.

SOONER or later many, if not most, judicial enigmas are solved; if not by judicial scrutiny, at least by the developing processes of time. The memory of Eliza Fennig was cleared after being under a terrible cloud for half a century; and numerous similar instances might be cited. Now and then, on the other hand, we come upon long ago mysteries in judicial annals, which remain mysteries still, and the key of which the lapse of time has at last rendered it hopeless to find.

Of such a character was the once famous but now wellnigh forgotten case of Spencer Cowper, the grandfather of the gentle poet who wrote "John Gilpin" and "The Task." In all the history of crime no more strange or thrilling romance could be found than that which has forever stained the name of that young patrician; and it is worth while to recall it both as a story full of sombre interest and as one more illustration of the imperfections of judicial scrutiny. Spencer Cowper was a young man of brilliant talents and high social position, a very rising barrister on the Eastern Circuit, and a member of the House of Commons. Handsome, graceful, eloquent, popular, it seemed that he might without presumption look forward to the time when he should preside over the House of Peers as Lord High Chancellor, or at least sit in the King's Bench as Lord Chief-Justice of England. The younger son of a baronet, still more patrician blood ran in his veins, for the alliances of the Cowper family had included the daughters of nobles; and his elder brother was a king's counsel and also a member of Parliament.

All Spencer Cowper's fair prospects, however, seemed on the point of vanishing forever when, on a midsummer's day in the last year of the seventeenth century, he stood in the dock of the court of assizes at Hertford, charged with the crime of murder. It was a strange accusation, directed against such a man, in the very town which he represented in the House of Commons; but as the trial developed, the indictment seemed but too well justified.

The crime of which he was accused appeared all the more atrocious since its victim was not only a woman, but one young, fair, and gentle, who was known to have given her uttermost of love and devotion to her alleged assassin.

It is true that Spencer Cowper was mar-

ried, but it is not less certain that, whether by arts and wiles of his own or without such villanous encouragement, he had unhappily so infatuated young Sarah Stout that she was unable to conceal her passion from the world. Sarah Stout was the daughter of a rather humble but quite respectable Quaker tradesman who dwelt in Hertford. It appears that Cowper had long been on somewhat familiar terms with the family. When he went down to Hertford to meet and address his constituents, or to attend circuit as a barrister, it was his habit to put up at the Stouts. Thus, often meeting the young Quakeress, there was ample opportunity for the growth of a passion which, however she died, was certainly the cause of her death. There is evidence that Cowper behaved in the most outrageous manner in reference to the girl. He not only exchanged secret letters with her, but his chums and cronies were shown her ardent epistles, which formed a subject of banter and merriment among them.

It was in the spring of the year in which the tragedy to be related occurred, that the young barrister and member of Parliament rode into Hertford on horseback to attend the assizes. It was a busy time, and Spencer Cowper had political as well as legal concerns afoot. Riding directly to Mrs. Stout's (the father was dead), he told the family that he must go about town on his errands, but would return and dine with them. This he did. After dinner he went away again, promising to come back and spend the evening. At nine o'clock he once more made his appearance, sat down and dashed off a letter to his wife, and then supped with Mrs. and Sarah Stout.

Mrs. Stout then went to bed, leaving the young couple alone together. After a while Sarah called the maid and ordered her to put a warming-pan into Mr. Cowper's bed. This was a little after ten at night. At about quarter before eleven the maid heard the front-door close, and said to herself that the gentleman had gone. Fifteen minutes later she went downstairs to do her last duties before going to bed, and to her surprise found the sitting-room empty. Sarah had disappeared as well as Mr. Cowper, and the servant surmised that they must have left the house together. At least she had heard the front-door close but once.

The anxiety of the mother may well be fancied; but her suspense was brief, and was resolved in a heart-rending manner.

The search which took place the next morning resulted in the finding of poor Sarah Stout's body in a mill-dam, about three-quarters of a mile from her home. Inquiry being made for Spencer Cowper, he was discovered at some lodgings in another part of the town. The statement of the people who kept these lodgings was that he had reached the house just about eleven o'clock, and had gone quietly to bed.

Spencer Cowper was arraigned for the murder of Sarah Stout; but at the very outset the question as to the manner of the girl's death became a great difficulty in the way of the prosecution. Had she been enticed from the house and to the mill-dam, and there been thrown in by Cowper? Or had she, after parting with him, wandered away, and in her despair committed suicide? The only witness as to the direct events of the evening was the serving-maid of the Stouts; her testimony went to show that the door had apparently been opened and shut but once. The inference was that the pair went out together. Cowper, who not only conducted his defence with brilliant effect, but made a statement, not under oath, to the Court, did not say whether this was so or not, nor did he give any account of the events of the evening. He could not be cross-examined, and hence the tragedy remained veiled in mystery. A great deal of evidence was given on both sides as to whether a body thrown into the water after death will sink or float, and as to whether Sarah Stout's body sank or floated; but there was so much contradictory testimony on these points that neither side could be

held to have proved its case. It was proved that as soon as the news of her death got abroad in the town, Spencer Cowper sent in haste for his horse, which was at Mrs. Stout's, lest it should be claimed as forfeited if the verdict of suicide were rendered by the coroner's jury. His conduct, to say the least, was indifferent and heartless throughout. The jury, after consulting half an hour, acquitted him, and the very next day he went on with his business before the court of assizes as if nothing had happened. After all, this sad tragedy did not work that ruin to Spencer Cowper's life which might seem probable. As years passed on, the fate of the young Quakeress was forgotten. Some people still believed in Cowper's guilt; but when he was raised to the bench as a judge of the Common Pleas, his worldly triumph over the accusation was complete.

In the elements of evidence weighed by the courts, none is more grave and conclusive than that of the death-bed accusation of a victim of foul play. One naturally supposes that such a person, with the near prospect of eternity before him, will not fasten the crime upon an innocent man; and his deposition is accorded a weight which is rarely given to credible eyewitnesses of a crime. Especially strong does this sort of evidence become when the accused is brought face to face with his supposed victim at the bedside, and is then and there sworn to as the real criminal. Yet judicial annals abound with instances in which persons have been thus accused, and have suffered the dread results of such accusation, who have afterward been proved clearly guiltless. It need scarcely be remarked that innocent persons often confess to having committed crimes sometimes for the sake of notoriety, sometimes to mitigate the punishment which they think certain to be inflicted upon them. As to deathbed accusations, the case of Sarah Green, in London, is to the point. One night this girl was attacked by three men, who had the appearance of being brewers' apprentices. She was taken to the hospital, and while she was lying there she was confronted by a man named Coleman, a brewer's assistant, whom a stranger, in a quarrel at an ale-house, had charged with being concerned in the assault. She at first declined to swear that he was one of her assailants, though she expressed a decided opinion that he was. Being brought to her a second time, however, she swore positively that Coleman was one of her assassins. Coleman was, however, set free on bail; whereupon he hastened to conceal himself. Soon after the girl's death he was found. He was indicted, convicted, and executed. Two years after it was discovered that he was wholly innocent, the real criminals being apprehended, and confessing that they did not so much as know Coleman by sight.

A similar though yet more tragic instance of condemnation on account of an accusation *in articulo mortis* was that of the Shaws of Keith. William Shaw, laborer, had a daughter who was in love with a young man of whom the father strenuously disapproved. One day loud words were heard in the room where they lived. After a quarrel between father and daughter, Shaw left the house, locking the girl in the room. Not long after, the sound of groans caused the neighbors to break open the door, when the girl was found writhing in agony on the floor, a bloody knife lying at her side. When asked if her father had done the deed, she nodded faintly, and immediately drew her last breath. Shaw just then returned, and seemed overcome at the sight of his dead child. He was arrested; blood was found on his shirtsleeves, which he accounted for as caused by his having bled himself several days before; but circumstances weighed too heavily against him, and he was condemned and executed. Some time after, a letter written by the girl was found in the chimney of the room, stating that she was about to commit suicide, and also containing the words, "My cruel father is the cause of my death." This gave the clew to the fatal ges-

ture she had made at the moment of expiring, and clearly proved her own guilt and her father's innocence.

The judges of a certain old German town were sadly perplexed over a case which it became their duty to solve, and which at first glance seemed simple enough. A rich but ill-tempered and truculent fellow named Ruprecht, a goldsmith, on going one night to a low grog-shop, was assailed at the door, and fell at the foot of the stairs with a loud groan. The cronies of the den hastened down, to find him in great distress from a deep wound on his head. He stammered out, "The villain with the axe! My daughter, my daughter!" This was his only child, who, being married to one Berenger, lived in the suburbs of the town.

Ruprecht was taken to the hospital, and the next day revived sufficiently to answer the questions put to him, though very briefly, and with evident difficulty. He was asked who dealt the blow. He said it was Schmidt. What Schmidt was it? The one who resided in the Most-Strasse. With what weapon? A small axe. How did Ruprecht know him? By his voice. What was the motive of the assault? An old quarrel. What was Schmidt's occupation? A wood-cutter.

The case seemed to the judge marvellously simple. He had only to find a man named Schmidt, who lived in the Most-Strasse, and was a wood-cutter, to accomplish the ends of justice. The difficulty began when, on the Most-Strasse being reached, two Schmidts, brothers, and both wood-cutters, were found dwelling there. Yet a third Schmidt, a wood-cutter, was discovered, but he lived in another street, the Hohen-Pflaster. The brothers Schmidt in Most-Strasse proved to have long known Ruprecht. They were called "Big" and "Little" Schmidt. Big Schmidt had not long before been a witness against Ruprecht in a civil suit.

In the dilemma between these Schmidts, it became important to ply the wounded man with new questions. Fortunately he was still alive and in his senses. But it was impossible for him to utter a word. He was asked whether the assailant was Big or Little Schmidt. He tried in vain to answer. Then he was asked if the Hohen-Pflaster was not the street on which the man lived, when he replied, with a struggle but emphatically, that it was.

The three men of the implicated name were confronted with Ruprecht, but he was now so far gone that he could not open his eyes. The brothers spoke to him, and manifested much feeling. Schmidt of the Hohen-Pflaster, on the other hand, was uneasy and silent.

Suspicion now fastened on the latter. On searching his premises, the handle of his axe was found to be bloody. He was known to be a disreputable character. But on examination, though inconsistent in his statements, he succeeded in establishing an unimpeachable alibi. He, moreover, accounted for the blood on the axe entirely to the satisfaction of the judge; when the brothers were once more brought up, they, too, proved alibis which could not be shaken.

Then it was discovered that there were two other wood-cutters named Schmidt, who lived in the suburbs. One of these was employed by Ruprecht's brother-in-law, Berenger. Here seemed the explanation of Ruprecht's calling out, "My daughter! My daughter!" It now appeared that Berenger and his wife lived unhappily together, that Ruprecht had recently threatened to make a will excluding Berenger from any control over his property, and that Berenger, on hearing of the assault, did not seem in the least surprised or moved. Other things seemed to bear against the son-in-law. But he, too, showed conclusively that he was, at the moment of the murder, in the parlor of an inn some miles away; and the two suburban wood-cutters were equally fortunate in proving alibis on the best possible evidence. Ruprecht soon died without again opening his lips; and the mystery which so severely perplexed the judges as to who killed him is a mystery still.

TRIAL BY BATTEL.

By Marland C. Hobbs.

IN this busy, bustling world of ours, so fraught with activity and progress, an apology seems the most fitting opening for one who delves deep into the Year Books, or pulls down from his shelves the dusty volumes of Glanville and Bracton. At the present day, however, when the jury system is receiving so many hard knocks from lawyer and layman alike, it is interesting to turn back the pages of history and read of a procedure in vogue with our early English ancestors, especially when that procedure has survived to our own nineteenth century. Of the trial by ordeal, wager of law, and trial by battel, — the three modes of trial then in general use, — the last attracts our attention.

Trial by battel — "an unchristian as well as a most uncertain method of trial," as Sir William Blackstone tersely describes it — was introduced into England by the chivalrous, battle-loving Normans. It was used in only three cases, — trials of writs of right, appeals of felony, and in the court of chivalry. In the last two the parties appeared in person; in the first, by champions. For the combat, a level piece of ground was set out, sixty feet square, enclosed with lists. On one side sat the justices of the Court of Common Pleas, attired in their scarlet robes, with the learned sergeants of the law near by, to lend dignity to the scene. When the court sat, which in those early days was at sunrise (Heaven save the mark!), proclamation was first made for the parties and their champions. Then the champions, armed with staves an ell long, and protected with leather armor and leather targets, with red sandals on their feet, and bare legs, arms, and head, were escorted into the lists by two knights. Having sworn to the truth of the cause, and having taken an oath against sorcery and witchcraft, the champions then fell upon each other, bound to fight till the stars came out, or till one or the other was defeated or forced to cry "craven." If the combat turned out a drawn battle, the demandant failed; for the tenant, having maintained his ground, could retain possession of his land.

The excitement which was sometimes caused by these trials is shown by a curious case that took place at Northampton. The plot of ground marked out for the trial was guarded by soldiers. A great crowd surrounded the field of battle, or perhaps one should say, the court of law. The champions appeared, and at the signal rushed at each other, bound to conquer or to die. At length, after a long struggle, both fell at the same moment. The friends of the tenant, who were out in great force, fearing that the issue might be against them, drew their swords, broke through the line of soldiers, and surrounded the two fallen men. The champion of the demandant was unable to rise, the horses were made to trample upon him, and when he was nearly beaten to a jelly he was proclaimed a recreant. The soldiers were unable to cope with the crowd, and the justices left the grounds without any attempt to bring the proceeding to a legal termination. It was of such trials, perhaps, that Glanville, the great lawyer of Henry II., naïvely admits that the "issue was not always in accordance with justice."

This lawlessness, however, was very uncommon. The smoothness with which justice usually took its course is shown by the account of an important trial by battel in the reign of Queen Elizabeth, the last reported trial of this nature in which the stake was the possession of land. At a certain day and place the champions were summoned to appear, "at which day and place," we read, "a list was made in an even and level

piece of ground, set out square, sixty feet on each side due east, west, north, and south, and a place or seat was made for the judges of the bench without and above the lists, and covered with the furniture of the same bench in Westminster Hall. And about the tenth hour of the day three justices of the bench repaired to the place in their robes of scarlet; and there, public proclamation being three times made with an 'Oyes,' the demandants first were solemnly called and did not come. After which the mainpernors of the champion were called to produce the champion of the demandants' first, who came into the place apparelled in red sandals over armor of leather, barelegged from the knee downward, and bareheaded, and bare arms to the elbow, being brought in by the hand of a knight who carried a red baton of an ell long, tipped with horn, and a yeoman carrying a target made of double leather." The two champions were then led around the lists to the place where the justices sat, and all was ready for the fray. The demandants, however, did not appear, and the flow of blood was prevented. The cause went against them by default, and final judgment was given for the tenant. The report concludes: "And then solemn proclamation was made that the champions and all others there present (who were by estimation above four thousand), should depart, every man in the peace of God and of the Queen. And this they did, all crying with one accord, 'Long live the Queen!'" — a conclusion as remarkable in one extreme as the conclusion of the earlier trial had been in the other extreme.

Trials by battel in appeals of felony were very similar to those upon writs of right, except that in the former the oaths taken by the parties were more solemn and the fight more bitter, as defeat to the defendant or appellee meant death by hanging.

A description of the meeting of Henry, Earl of Hereford, and the Duke of Norfolk, in the latter part of the reign of Richard II., shows the ceremonies which attended a trial by battel in the court of chivalry. Hereford, the challenger (so runs the account), "first appeared on a white charger gayly caparisoned, armed at all points, and holding his drawn sword. When he approached the lists the mareschal demanded his name and business, to which he replied, 'I am Henry of Lancaster, Earl of Hereford, come hither according to my duty against Thomas Mowbray, Duke of Norfolk, a false traitor to God and the king, the realm and me.' Then taking the oath that his quarrel was just and true, he desired to enter the lists, which being granted, he sheathed his sword, pulled down his beaver, crossed himself on the forehead, seized his lance, passed the barrier, alighted, and sat down in a chair of green velvet placed at one end of the lists. He had scarce taken his seat when the king came into the field with great pomp, attended by the lords, the Count de St. Pol, who came from France on purpose to see that famous trial, and ten thousand men at arms to prevent tumults and disturbances. His Majesty being seated in his chair of state, the king at arms proclaimed that none but such as were appointed to marshal the field should presume to touch the lists upon pain of death. Then another herald proclaimed aloud, 'Behold here Henry of Lancaster, Earl of Hereford, who has entered the lists to perform his devoir against Thomas Mowbray, Duke of Norfolk, on pain of being counted false and recreant.' Just then the Duke of Norfolk appeared in arms, mounted upon a barbed horse, with a coat of crimson velvet, embroidered with lions of silver and mulberry-trees, and having taken his oath before constable and mareschal, entered the field, exclaiming aloud, 'God defend the right.' Then alighting from his horse, he placed himself in a chair of crimson velvet opposite to his antagonist at the other end of the lists. After which the mareschal, having measured their lances, delivered one to the challenger, and sent a knight with the other to the Duke of Norfolk, and proclamation was made that they prepare for the combat. Accordingly, mounting their horses

and closing their beavers, they fixed their lances in rest, and the trumpeter sounded the charge. The Earl of Hereford began his career with great violence; but before he could join his antagonist, the king threw down his warder, and the heralds interposed, and by the advice and authority of his parliamentary commissioners, he stopped the combat and ordered both the combatants to leave the kingdom." Could Richard have seen that this ill-timed interference was ultimately to result in the loss of his life and crown, he would certainly have urged on the fight to the bitter end, — a result which would probably have rewarded the French count, who came all the way from his native land to see — a farce.

Although the trial seems to have fallen into "innocuous desuetude" early in the seventeenth century, it was never abolished by statute. So, in 1818, in the reign of George III., we find a defendant taking advantage of the existence of the old law. In that case, Ashford *v.* Thornton, 1 B. & Ald. 405, an appeal of felony, the appellee, we read, "pleaded as follows: 'not guilty, and I am ready to defend the same by my body.' And thereupon taking his glove off, he threw it upon the floor of the court." Such a proceeding seems more in accord with the spirit of the middle ages than with the civilization of the nineteenth century. However, the Court of the King's Bench was equal to the emergency. Lord Ellenborough, the Chief-Justice, delivered his opinion as follows: "The general law of the land is in favor of the wager of battel, and it is our duty to pronounce the law as it is and not as we may wish it to be. Whatever prejudices therefore may justly exist against this mode of trial, still, as it is the law of the land, the court must pronounce judgment for it." The counsel for the appellant, after this opinion, stated that he prayed for no further judgment, and the prosecution was stopped.

Here was an excellent opportunity for a revival of the old practice; but Parliament, fearing a rapid extension of the old method of trial by battel, stepped in and by the Act of 59 Geo. III. c. 46, abolished it forever. After a sleep of several hundred years, the old law had been revived in England only to receive its death-blow at the hands of advancing civilization.

It is said that quite recently in Pennsylvania a ruling was given in favor of the plaintiff, sustaining some obsolete technicality. Thereupon the defendant, being a firm believer in consistency, claimed that if mediæval practices were to be enforced at all they should be enforced *in toto*, and accordingly he demanded trial by battel. As the defendant was a diminutive Dutch tailor, the point was not pressed, however, and the Pennsylvania court was relieved from what might have been a painful predicament.

Of other attempts to revive this old procedure, I know not.

KEMMLER'S CASE AND THE DEATH-PENALTY.

II.

By Jacob Spahn.

SURELY a point has now been reached where the fiercest denunciation of our present laws concerning crime and criminal punishments of all sorts, from the death-penalty downward, will be meet and warranted; where it is entirely just to castigate those laws for being infamously puerile, illogical, insufficient, and inefficacious. Their compilers had not the first conception of the real evil they were meant to rectify in man, nor the true function they were meant to subserve in society's behalf. These laws, moreover, are boundlessly stupid, hopelessly absurd, and inexpiably unjust. You trace no reason in them, but too readily trace the "eye for an eye," "tooth for a tooth," and "life for a life" principle of revengeful compensation all through them. They are poor successors of the Roman *lex talionis*, and too clearly of kin with the Corsican vendetta, being just as insensate as both. They make Lynch law and the like arbitrary brute activity on the part of men inevitable. The God — if any God permeate them at all — is not He of Calvary; and Emilio Castelar's burning words rush to the quivering lip, and would thunder out against the whole inhuman scheme and machinery of them. Here might humanity and the humanitarian truly step in, and apply reformatory labors in endless quantity.

The mistake throughout is the perpetuation of laws made when society was stone-blind to much and deliberately ignored more, and when in the course of a system of fuliginous and nubiferous ratiocination, it had succeeded in obfuscating itself into a conviction that it had the right, duly derived from a competent source, always to take the life and the liberty of a person under certain specified circumstances. Does not a plain-featured, dowdy, ill-read old woman, simple-hearted enough in some things, yet of unbending pride and conceit, still subscribe herself in royally rampant, fulminating style, "Victoria, Queen by the grace of God," etc., though she never met the Deity of her "Dei Gratia" in her life, and cannot show any due rescript authorizing her to subscribe herself anywhere as anything more than any other human biped "by the grace of God"? Yet behind her in this shallow folly, and continuing the sanction accorded in ages of superstition, oppression, and ignorance, stand serried millions of liege subjects with submissive purses. This curious phenomenon is the modern illustration of the ancient doctrine that the person of the king is sacred, however commonplace and inferior that person may be. And the bequest of the modern citizen's ancestors' mental confusion of regal and legal majesty and inviolability may explain why this citizen is kept well disciplined under so much bad law.

Little, indeed, has the law as a science (such it ambitiously claims to be) ever essentially understood or indubitably established about man with reference to crime. The harelip is understood; so is spinal curvature; so are six-fingered and six-toed, as well as web-fingered and web-toed persons. So are born cripples, albinos, red hair, color blindness, rudimentary and functionless organs, with much else entirely out of the usual and supposed normal in the structural formation of the human body and its outward appearance. The physical monstrosity among men has even ceased to be the accursed of God. Heredity in all these multifarious abnormalities has come to be understood. So has the ability to raise varying species of the same genus artificially by selection

and cultivation. Has not Darwin laid down the law of atavism and variation, and is not stiffest Orthodoxy become entirely reconciled to it, and its unique Book of Genesis, after fighting the Darwinian theory for forty long years as fiercely as the crusader did the infidel? These things are at length established. They have become commonplace facts of natural science. Even the law partially concedes them, — though not entirely without reluctance and much misconception. Here again its confidence had a slow and painful birth. But the law refuses to take a single step farther, — that step next in order, which concerns a due recognition of the heredity of peculiar moral and mental traits, — the heredity of peculiar operations of cerebration and other physio-psychological phenomena affecting the practical morality of a man's actions. It will stubbornly persist in ignoring the fact that variations in the amount and texture of brain matter have an influence upon the kind and character of human activity in any given direction. Hence it will not admit that obliquity of moral vision, and with this, crime, can trace their origin to a source as entirely physical as a broken bone, a humpback, or an attack of typhoid fever, though the human race has long ago found out that some men are born thieves, and that "like begets like." Kleptomania is an admitted mental disease affecting the practical moral nature of the victim; and no argument is needful to demonstrate that where like begets like, neither prior education nor subsequently applied disciplinary regulation suffices to work any essential abiding change in the elements common to the hereditary uniformity, any more than a course of chemistry would add an inch to the stature of a dwarf or subtract an inch from that of a giant. Now let the mind picture to itself a moral dwarf, as warped against, and as intractable to, all nobility of thought or action as the hyena, — let it picture to itself the untutored and unregenerate savage, and it will at once see that the intangible quality called virtue, while in no wise an inherent principle in either instance, may, by artificial cultivation, possibly be educated in both instances as one would educate a trick-horse or a pet parrot to do certain things; yet both the faculty and the intelligence for the due appreciation of the peculiar quality are entirely wanting, and to find a substitute for either of these highly requisite two in the cases exemplified is extremely difficult if not wholly impossible, — as much so, indeed, as to find a substitute for the wit absent in the vacuous mind of the drivelling idiot. Shall punishment for failure here to make a responsible moral agent be visited upon the moral dwarf, the unregenerate savage, the human hyena incapable of virtue and born thus, or upon the fatuous system of jurisprudence which persists in being blind to psycho-physiological phenomena and not discriminating on account of the same?

Is it not true that virtue is only the perfection of the moral principle, as men can be made to agree upon what is good and what is bad? It is therefore a wofully shifting, artificial affair of pure dialectics and constant dispute. It is not born with man as are his organs and their several functions. He is only susceptible to it by education and cultivation of it, providing his mind, inclinations, and opportunities are constituted to make him receptive and appreciative here. The taste for virtue is acquired esoterically. Noble, indeed, is the law of altruism; yet are there not innumerable intelligent and not wholly egotistical men (persons in unexceptionable social and church standing), who will ask in all good faith, or show by their acts, that they do not see why it is better to pursue some other person's business in the matter of the latter's comfort and welfare, than attend to one's own business? All this is ancient knowledge, and holds its quiet humor airily enough to him who can see.

Where society and its rights are concerned there is but one thing clear and indubitable with reference to crime; namely, that society

has the inalienable right to preserve itself safely and wholesomely intact as an organized aggregation of individuals, — it has the inalienable right to journey its way any whither fairly and in peace. Society and its constituent human units are each entitled to security in all things which each may justly do, in all the enterprises each may justly undertake. Anything that disturbs the serenity of this security or fairly threatens to disturb it, may be abated or forestalled; but such abatement must only go so far as to surround society with the conditions that will neutralize the activity of the disturbing forces. The law quarantines in cases of contagious epidemics not more than in isolated cases of contagious disease. The incarceration of the lunatic till cured is practically putting him in quarantine the while, for the general safety's sake. Thus the habitual drunkard is dealt with. If the lunatic's case is incurable, his incarceration is for life, he is never killed. No one would dream of executing the death-penalty upon him, even should he commit a capital crime. In this solitary instance the law is at once sensible and humane. Nor are the terms of incarceration with reference to the lunatic arbitrarily admeasured. He is invariably confined only until he is cured. Thus the object of this article is reached. It would advocate that the law proceed with the same efficacious good sense and humanity in the case of the criminal, great and small, as in the case of the lunatic. Has not, indeed, the hour come to batter, *vi et armis*, into the callow heads of the law-makers and codifiers this fact (*vulgo* plain as a pike-staff), that to trim and sort punitive and exemplary criminal regulations solely with respect to the crime committed as this is artificially defined by a law code, and not at all with respect to the psycho-physiological condition of the perpetrator (and source of the crime), — to measure out sentences, wholly arbitrary, for the punishment of infractions of seriated penal provisions, instead of administering a course of curative treatment in which the sentence shall figure only as a remedial agent to abate entirely inherent criminal proclivities or reduce the cause of them to a minimum of potentiality, is to recognize and prescribe only for an effect. Treatment of the effect can obviously never influence the cause productive of criminality. The criminal under such a shallow conception of his case must always remain a fruitful source of mischief to society. As the remedy adopted does not touch or know the cause of the ill, the treatment must always be futile and the ill continue to persist. The work here being done wholly in darkness is idle and senseless to an astounding degree. All treatment is punishment. The patient needs medicine, the law decrees him a term of imprisonment or death. The dispensing judges have no other prophylactic. There is no variety in the remedy of the law; it has only one prescription for all, the infliction of pain. Owing to the monopoly which the State has in this matter of moral cure, the proceedings are summary. All the patients are driven like sheep to the shambles, and there compelled to submit to a uniform course of treatment under unrelaxing rules for all varieties as well as intensities of the disease which afflicts them. Terms of incarceration are fixed on a cast-iron scale, or as one graduates a yardstick. The cure must be effected in every case, if its business is to be accomplished, under invariable regulations, within a specific term of days, months, or years, that neither have any relation nor bear any proportion to the time or treatment required. And the State intrusts the administration of this treatment and the application of these regulations to persons of no skill whatever in the premises, indeed, to individuals remarkable as a rule only for very inferior intelligence and unusually hardened sensibilities. It often becomes a question which of the two, the keeper or the kept, is really most in need of treatment. In truth, the entire business is quackery, pure and simple; the quack insisting, as usual, that his medicine is a panacea and his treatment infallible.

The three quotations founded upon the labors of the statistician, which are given in this article, are veritably three established conclusions of fact which demonstrate one thing truly; namely, that the human intellect has still to find out a judico-legal panacea for crime. The complete machinery of the law has been in operation under various forms for ages, and in vindication of its noisy claim to be the great counter-agency of crime, it can neither show that crime no longer persists, nor that its proportion in any given case is or has been gradually lessening among civilized communities. The moment statistics are applied to the inquiry, it becomes clear that man is still far removed from a true specific against crime. Hence jurisprudence should "pipe very low," and cultivate a studious humility. It has never been over-modest, but ever wielded in its costly, cumbrous, clumsy, tardy, and stupid way the most powerful weapons of correction known to the ingenuity of man. Its victims exceed by far the numbers slaughtered in all the wars that have been waged since the gates of Eden closed to the human race. Much of its subtlety has always been expended in drawing finical distinctions, in ignoring the essence for the form, or confusing the essence with the form, and finally in devising strange and most arbitrary punitive measures which, in the comparatively recent time of the great Bacon, were still hellish and all diabolical. Here and there medicine, operating in a more difficult field and against agencies as occult, can boast of the discovery of a sure specific in certain diseases; though medicine is still empiric to an almost barbarous degree. But all intelligent latter-day revelations prove the law to have been the worse bungler in every age; and the question which of the two, law or medicine, has made the less victims, is one not at all unlikely to be decided in favor of the latter. Rarely, indeed, is the lawyer found to be either a general reader or a broad thinker. Progressive science as applied to moral phenomena is a *terra incognita* to him. Nor will he turn from his narrow kind for light on any subject, but rather, when poked on the head with the results of investigation secured outside of his musty calf-and-sheep-skin-covered scope, he, tortoise-like, draws this head beneath the thickest possible kind of a shell with a lightning celerity altogether unusual among his slow kind and craft. There he keeps it hid until the danger of obtaining a new idea is entirely passed. Then he cunningly chuckles over having eluded an enemy and the risk of some expenditure of brain tissue, without the hope of a fee in reward. All the alleged intellect and acumen of Coke and Littleton could not (nor did it undertake to) influence the jurisprudence of their day and country, which provided that poisoning should be deemed treason, and that any person convicted of the crime should be boiled to death. The highest ideal claim the law can make, is that the punishment shall equal the crime. Its practical working in but too many cases is hopelessly ridiculous to this very hour. A short time ago, one city in New York State could boast of a bank-wrecking president who converted half a million dollars of trust funds to his own use, thereby ruining hundreds of families. He was sentenced upon conviction to a term of just one year in a county penitentiary. About the same time a man was convicted in the same city for having been a spectator at a cock-fight. He received the same sentence. The average murderer never injures society to the extent this bank president did. The spectator at the cock-fight certainly did no damage at all to anybody. The worst malefactor in this respect among the three was surely the bank-wrecker; yet he escapes with punishment that is altogether trifling compared with the extent to which he has made society suffer.

Finally, what force is there in the universal and sound, if commonplace, concession of mankind that two wrongs will not

make a right, if it shall be regarded fair for society to kill a second man because the first man has been killed by murder? It is here not material to the issue in controversy that the second man did the killing in the first place. He had no right to kill. Does the absence of this right in the murderer end by juggling forth the presence of a right to kill in society?

The law defines two kinds of killing against which its provisions militate. One of these is killing premeditated; the other is killing unpremeditated. The distinction is simple enough. The second kind of killing figures in codes generally under the delusive name of manslaughter, and is never punished by death to the perpetrator of it. The distinction is thought to have been wisely and profoundly drawn. Is it so in truth? Suppose some one arose and scornfully charged that the distinction was finically and superficially drawn, what then? Is there a sound answer possible in the premises? In both cases the law regards the killing as culpable, that is, as having been culpably done by some overt act or omission (not unfrequently in the case of unpremeditated killing by criminal negligence) on the part of the accused. Yet in either case the injury done to the victim and to society is the same and irreparable. Why should the guilty actor in one case escape with life and in the other lose it, unless crime is not evenly punished according to the gravity of the injury inflicted? Upon what theory, then, does the criminal law proceed in these particulars? What does it intend to reach here, — the crime itself, or the criminal? The elements involved are threefold, to wit: the crime, the criminal, and the injury wrought to society by the crime. Now, what particular thing or things does the law, as pronounced by society, recognize itself authorized to effect and accomplish by the penalty in any given case? This plain question brings the discussion within reach of first principles, which again compel the query to be propounded, What has the law to offer, either in justification or vindication, for its uneven procedure, in the various kinds of man-killing, against the man-killer? Is the procedure based upon society's arrogation to itself of the power to enact and direct that a man shall forfeit his inalienable rights to life and liberty under certain specified circumstances (a dangerous and too doubtful power, which is still and has ever been arbitrarily exercised in all climes) or upon simple justice founded in both a right and a duty, unquestionable, of society to preserve its own peace and security intact? The evident answer to this question solves the whole problem, and substantially constitutes all there is of difficulty connected with crime juridically and judicially. It abundantly demonstrates that the lawyer-craft commenced to remedy the evil at the wrong end. It also throws interesting light on the origin of the whole mistake about our criminal jurisprudence, and shows that this arose when society, without the knowledge of just what is the intangible thing which makes a responsible moral agent of man, nor any suspicion of the psycho-physiological nature of crime, took the strange and curious power of forfeiture (a cloudy creature of the mind) into its myriad hands, — the heads guiding these hands the while not a little actuated by the most sordid motives of self-interest. Ever since that early day the results have been wrong, — utterly, ceaselessly, outrageously, and even absurdly wrong. The books, alas! are full of telling as well as most horrible instances of it.

To ask why could not treatment to an intelligent, curative, and just end, instead of an exclusively afflictive and punitive end, have been selected and applied to the criminal, is idle, though interesting enough. Society is a growth most marvellous, on a bottom that is always shifting, yet not always sound. Men may not stand idly passive, but must ever be educated away from as much as they need to be educated

toward. This is the common experience of all times. Not unfrequently the race has moved in a circle, as witness lost arts rediscovered. Of the efficacy of the capital sentence as a punitive law for any good purpose, let it only be asked, Is such punishment or law more efficacious than the law which makes imprisonment for life civil death? Of what use or benefit is life without liberty, and who can prove that the capital penalty punishes more? The writer will leave this article here in all safety for his views. He advocates a radical change in criminal jurisprudence. But facing him with stubborn perversity will, for many long years to come, be conservatism in the premises, — conservatism with the best of thin practical considerations for the retention of the present system of the law of crime. All intelligent penetration into the root and truth of the phenomena to be remedied will be left for other than the legal profession to accomplish, as it always has been heretofore, — a fact made the more clear at this moment, when four new States are in the throes of birth, the principal obstetricians supervising the unusual parturition and its agonies, being each that usual babbling, frothy ninth part of a man who cuts a leading figure in our average State legislatures. The work this shallow bungler accomplishes is, as it always has been and ever will be "world without end," but transcription of musty obsoletisms and servile deference to a dead past and its dead letters, that should be left entombed till the veritable constitution-Zeus will be found, recognized, and importuned to thunder forth the truth of the thing at last. Sad enough is it to contemplate all this sorry public business in the nineteenth century, — to note the fog and darkness in the light!

Yet, as the writer reflects over Torquemada's awful code, whose blood-curdling provisions De Voughlans with unconscious blasphemy solemnly declared to be derived from the law of God; as the writer recalls that the learned Bacon and even Aristotle favored torture to elicit evidence from a witness or from an accused person; recalls also that in enlightened Scotland torture was still administered as a punishment for crime in the eighteenth century, though the proud crown of royal England had generations before submissively bowed to the bill of rights and its declaration that "cruel and unusual punishment shall not be inflicted" (a provision copied word for word thus in our national and State constitutions), — the writer recognizes that much which was in the past and should never have been at all among men, is wholly undone now, though time was when it stood done fast and firmly enough, fashioned and finished under sanction of some all-deluded and deluding authority then controlling untrammelled, — authority recognized as sufficient, bedizened with crown and tinsel and bowed to in all servility, with the pomp, power, and circumstance of state hedging it round about, though wrong, utterly, essentially, and ofttimes malevolently wrong throughout. Perhaps, therefore, the writer's strictures against the existing jurisprudence of crime should have been couched in mild, persuasive diction. And true it is that fault-finding can be pressed dispassionately and with considerate meekness. Then the discussion of the theme in hand might have purled along in inoffensive sing-song like a summer stream; for the slow world *does* move forward notwithstanding the omnipresent conservative and his indomitable obstruction in every wholesome effort at reform. And railing may not hasten things. But, reader, mark well this fact, that not till the genius of a Dickens — did but the writer have that or such! — not till the genius of a Dickens had lashed, satirized, ridiculed, and impaled the infamous abuses, of the British Chancery Court, — not till language lurid with denunciation had aroused a whole people's indignation against those abuses, — not till all the talents of a Reade had illuminated the dark places in English prison management, and disclosed the horror and brutality of its discipline in language that shook the

English conscience and ate down into it like an acid, — was there a movement begun to better court and prison, to make these institutions fit and fair to exist in this day of Christian enlightenment. And both are still susceptible of improvement before any such thing as perfection about them is approximated.

Great reforms are always long and very fiercely clamored for ere they are realized. They are too often conditioned, it would seem, only upon bloody upheavals and national convulsions. Salutary, despite all its horrors, was the French Revolution. Then, again, accident too comes strangely into play at times, where the matter of a great reform is concerned. Does not the reader remember upon what slender thread hung the abolition of slavery on the North American continent, when the brightest, fiercest, and to all appearances most uncompromising agitator against traffic in man and human bondage generally, Horace Greeley, after the first Bull Run disaster, cried out for peace at any price be this even the autonomy of the rebellious South, which meant endless perpetuation of the awful wrong, — cried out thus in tearful missive to Abraham Lincoln? And Abraham Lincoln? Saintly man and lofty patriot alike! He was a Republican abolitionist, elected to the presidency of the United States on an abolition platform; yet, when first urged by the lights of his party to issue the emancipation proclamation, with humanity's inarticulate cry against the wrong of slavery piercing his ears and heart alike, he hesitated long, — good and true lover of his whole country, — hoping to preserve the Union and avert a protracted fratricidal struggle by inaction here. His strange hesitation he explained with the declaration that he was willing to welcome the Southern States back into he fold of the Union "with or without slavery," if they would but consent to return, — mark, reader! — "with or without slavery."

In this land where Jefferson erst promulgated the lofty doctrine that all men are created free, had not the fiat gone forth from the bench of the Supreme Court by the lips of its great Chief-Justice, John Marshall, and been solemnly concurred in by each of Marshall's begowned associate justices long before Taney's Dred Scott decision, — the fiat, we repeat, that "slavery, which has received the assent of all, must be the law of all; . . . the world has agreed that it [slavery] is a legitimate result of force; the state of things which is then produced by general consent cannot be pronounced unlawful"?[1]

Yet have we not outgrown that barbarous law, and was not the fiat exploded amid cannon-thunder into the minutest and most contemptible shreds?

Ay, on slender threads, indeed, hang oft-times great reforms. Shall then vehemence of language in behalf of them, — shall impatience ask grace, or bend the knee for pardon when indulged? And may not the Kemmler case, with its burning questions and its solemn folly, evolve some lucky accident to benefit the human race, and reform the current legal conception of crime as well as the current criminal procedure of the courts in the matter of penalties and sentences?

At any rate, one may smile sadly as one ponders over the anomalous philanthropy which expects to succeed in rendering such a tragic and horrible thing as man-killing humane by any mechanical device, to say nothing about electricity. What humane-ity have we here truly! Were it not verily progress herein to view the criminal in the same dispassionate and unprejudiced light with the cripple or the leper, and to view crime, not as the individual's culpable fault, but as a misfortune possibly primordial, from which society is likely to suffer always, and which it can no more hope to evade or escape than disease, though the means to ameliorate it will improve as the centuries round up their results, as the human heart and mind broaden and the light of all things clears, — as charity truly becomes the greatest of all virtues?

[1] 10 Wheaton, U. S. Reports, 120

THE DEADLY YEW.

CROWHURST *v.* AMERSHAM BURIAL BOARD. (4 Exch. Div. 5.)

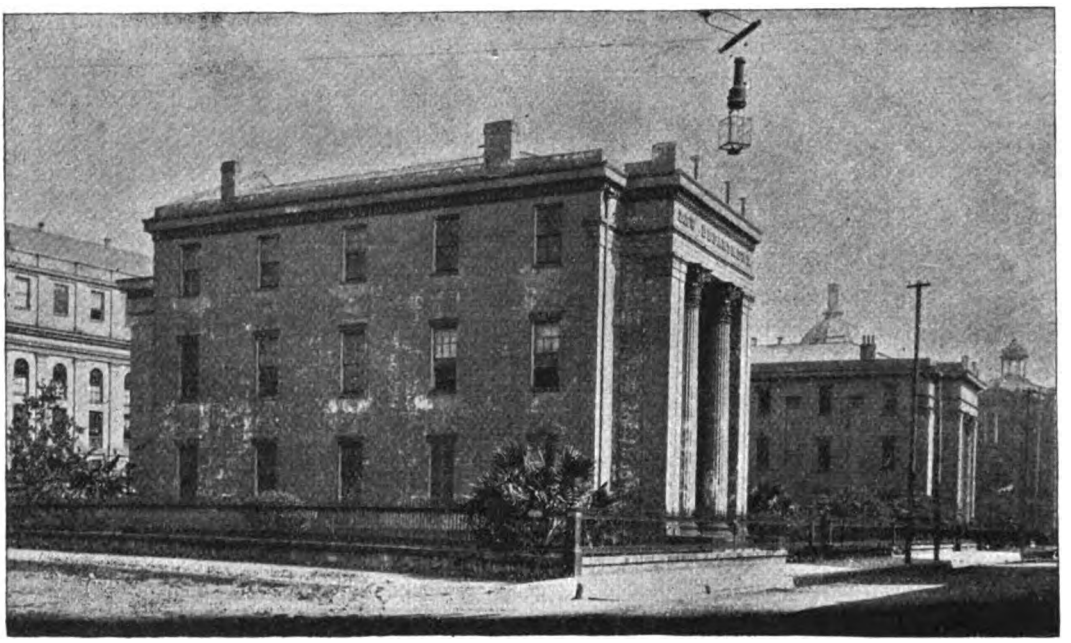
By Irving Browne.

[*A Cemetery Association planted yew-trees, knowing them to be noxious to horses, on its own land, so near that of a neighbor that the branches projected over his ground. The neighbor's horse at large in the field cropped the yew leaves, and died therefrom. Held, That the Association was liable.*]

THE legal wind is tempered to the beast,
Which, like its epicurean owner, man,
Knows not discretion at a tempting feast,
But ever since with apples he began,
Has been inclined to stuff himself with food
More than was needful for his highest good.
A cow may masticate a fence of wire,[1]
Or swallow brine in city street exposed,[2]
On copper clasps concealed in meal expire,[3]
Or paint in hay on customer imposed;[4]
Such negligences of the stupid brute
Law to proprietors doth not impute.
Also a horse on corn galore may dine,[5]
Or dog may trespass for strong-smelling meat;[6]
But lawyers somewhere ought to draw a line,
Lest leniency should common right defeat;
So at rat-poison in a druggist's shop,[7]
And maple-syrup in the woods we stop.[8]
Having of late discoursed upon a ram,
I now must tell about a deadly yew
Which grew in burial-ground of Amersham,
And nourished there by constant rain and dew,
Shot o'er a neighbor's fence four feet away
From where its stock projected from the clay.
Now shooting was the yew's time-honored use,
For of its wood the ancient bows were made,
Which when the English peasantry did choose
Caused even mailèd knights to be afraid;
Deadly to horse its arrows were, and sure
On fields of Crecy and of Agincourt.

[1] Firth *v.* Bowling Iron Works Co., 3 C. P. Div. 254; s. c. 30 Moak Eng. 146, 18 Alb. L. Jour. 16.
[2] Henry *v.* Dennis, 93 Ind. 452; s. c. 47 Am. Rep. 378.
[3] Lukens *v.* Freiund, 27 Kans. 664; s. c. 41 Am. Rep. 429.
[4] French *v.* Vining, 102 Mass. 132; s. c. 3 Am. Rep. 440.
[5] Dennis *v.* Hyck, 48 Mich. 620; s. c. 42 Am. Rep. 479.
[6] Townsend *v.* Watthen, 9 East, 277.
[7] Stanfeld *v.* Bolling, 22 L. T. Rep. (N. S.) 709. [8] Bush *v.* Brainard, 1 Cow. 78; *ante*, 470.

Whether they set the yew in burial-ground
  Because 't was fatal on the battle-plain,
Or fashioned it in bows because 't was found
  In cemeteries, I 've inquired in vain;
But Britons ne'er would willingly be laid
To final rest save in the yew-tree's shade.
The plaintiff Crowhurst leased the adjoining land
  For pasture of his horse, which, there released
From hard restraint of his task-master's hand,
  Could wander at his own sweet will, and feast
Upon the juicy grass, and kick and roll
In verdant hollow or on swelling knoll.
What sort of horse he was I do not know, —
  Whether for coach or omnibus or van,
Or doomed sedate to walk in Rotten Row,
  And groan beneath the weight of maid or man;
But certainly a "cob" he was not born,
To be thus cruelly deprived of corn.
Some speak of common wisdom as "horse-sense,"
  And others say, "as ignorant as a horse;"
But on this point this case is evidence
  Of equine ignorance, of striking force;
For when this horse did these yew-limbs perceive,
He cropped, stretched out his limbs, and took his leave.
The cemetery people knew the yew
  Was planted very near the boundary wall,
But as to how its trunk and branches grew
  The pasture-hirer did not know at all,
Nor was he bound to go about to see
If 't was a wholesome or a dangerous tree.
He might have clipped it, the defendant said,
  Or kept his horse safe tethered to a stake;
But grave Chief-Baron Kelly shook his head,
  And said the plaintiff was not bound to make
Himself defendant's gardener, nor to be
Assured his horse was hitched to whiffletree.
So peace to all poor hungry horses' manes!
  Cases like this are found how very few-oh!
And so I 've taken quite unusual pains
  To point the principle *sick-yew-tree-chew-oh!*
(Pray do not think I made this last sad pun;
It 's worse than any I have ever done.)



LAW DEPARTMENT BUILDING.

THE LAW SCHOOL OF THE TULANE UNIVERSITY OF LOUISIANA.

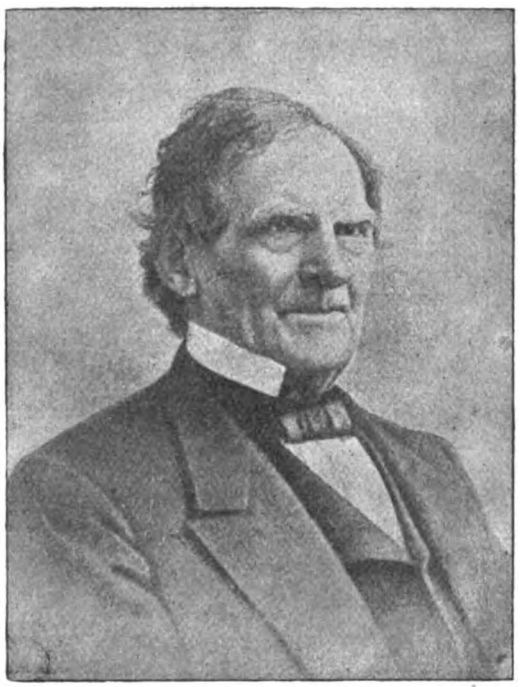
By Lamar C. Quintero.

THE Law Department of Tulane University of Louisiana was organized in 1847, and has been in successful operation ever since. The University itself, founded upon an endowment of the late Paul Tulane, was established by law by Act No. 43 of the Session of 1884, which was ratified by a constitutional amendment April 17, 1888. By virtue of this legislation, the Administrators of the Tulane Educational Fund became administrators in perpetuity of the University of Louisiana, agreeing to devote their attention and income to its development and to establish thereon the Tulane University of Louisiana.

The Medical College of Louisiana, the parent of the University of Louisiana, was established in 1834. Governor Roman granted a convenient lecture-room in the State House for the use of the professors; and George Eustis, Secretary of State, afterwards Chief-Justice, in a liberal and statesmanlike official report addressed to the Legislature, warmly recommended the College to the fostering care of the State. The act incorporating the Faculty of the College, approved April 2, 1835, is evidence of the wisdom of the legislators of that time.[1] The success and fame of the College induced the Convention of 1845, when it established the University in New Orleans, to constitute the Medical College the Medical Department of the University. The Constitution of 1852 re-ordained and maintained the University as already

[1] The introductory address on the establishment of the College was delivered by Dr. Thomas Hunt, Professor of Anatomy, Dean of the Faculty, the earliest and most active of the founders. The first degrees in science and learning ever conferred in Louisiana were conferred in March, 1836, by the unendowed Medical College.

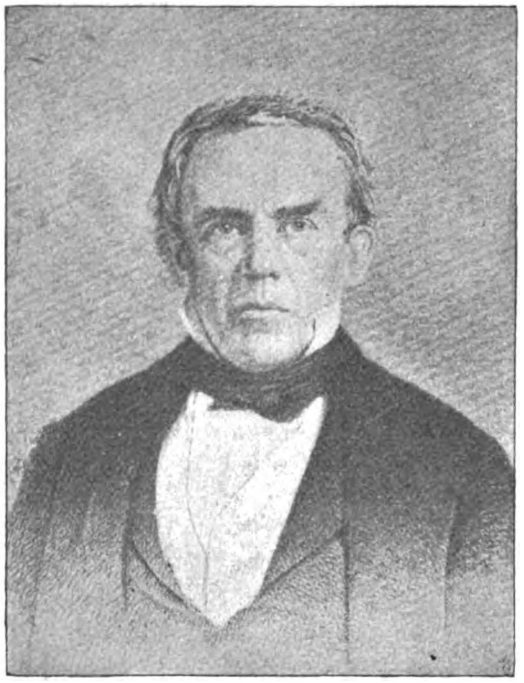
established, and the Constitutions of 1864 and 1868 contained similar provisions in its behalf. Article 141 of the Constitution of 1868 provides "that one half of the funds derived from the poll tax therein provided for shall be appropriated exclusively to the support of the free public schools throughout the State and to the University of New Orleans." Article 142 provides: "A University shall be established and maintained in the city of New Orleans. It shall be composed of a Law, a Medical, and a Collegiate Department."



PAUL TULANE.

Encouraged by the success of the Medical College, the Law Department of the University was organized in May, 1847. The late Judge Isaac T. Preston, as chairman of the Committee of Administrators, reported a plan of organization; and the first Law Faculty consisted of the following jurists: Judge Henry A. Bullard, Richard Henry Wilde, Judge Theodore W. McCaleb, and Randell Hunt. With the exception of an interruption occasioned by the war, lectures have been annually delivered by the four professors and their successors, during the several terms, down to the present time. Their courses of instruction have embraced the civil, common-law, equity, admiralty, commercial, international, and constitutional law, and the jurisprudence of the United States. Six hundred and seventy-three students have received the degree of Bachelor of Laws, and the graduates constitute a considerable proportion of the most prominent and distinguished members of the bar in the State. Several have reached high public honors, and filled the offices of District Attorney, Attorney-General, Judges of District Courts, Justices of the Supreme Court of Louisiana, Members of Congress. Two are Senators from Louisiana in the present Congress of the United States. The vigor and energy imparted to the pursuit of legal science by the Law School, and the influences connected with it have been remarkable. It has dispensed sound instruction on American constitutional law in a period prolific of constitutional heresies. Beginning at least twenty years before the reform in the law of evidence in the United States, which admits the parties to suits to be witnesses, the necessity for this reform and the wisdom of it were constantly inculcated by that learned jurist, Prof. Randell Hunt, LL.D., in his lectures on the subject of evidence, until the Legislature actually sanctioned the change, and enacted the required law. The creditable distinction of having kept up for a long series of years — alone of all schools of law in our country — a full course of scientific instruction on the subject of the Roman civil law, the principles of which prevail under our jurisprudence "upon the banks of the Mississippi" as they once did upon the "banks of the Tiber," belongs to the Department of Law in the University. The early civilians who codified and consolidated the jurisprudence of Louisiana were men of pro-

found learning and vast ability. In the civil law, through the laborious efforts of Christian Roselius and other professors of civil law, its advantages were recognized and transmitted with signal ability. The resulting benefits in the administration of justice are too numerous to need specification. Suffice it to say, that the movement everywhere observable in favor of codification and the use of symmetry and scientific accuracy of the civil law, simplicity in the execution of testaments, the spread from this State over other American States of the doctrine of partnership in commendam, and the rising liberality in the general law of partnership, are all traceable to the study of the civil law and the branches of learning with which it is allied.



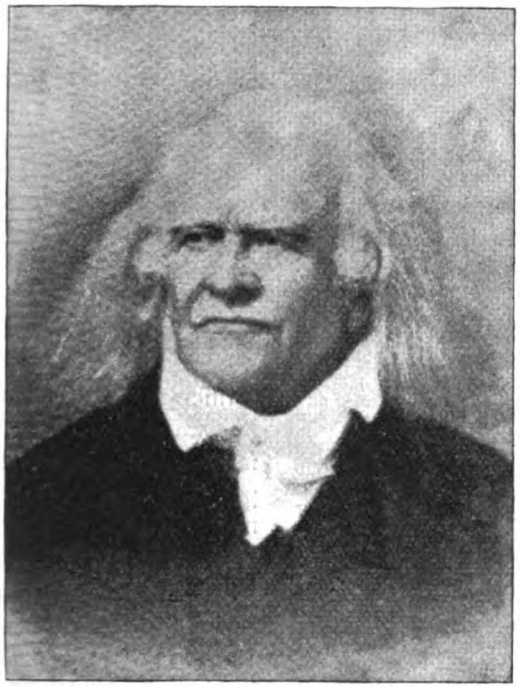
CHRISTIAN ROSELIUS.

The standard of professional acquirements for admission to the bar has been steadily and constantly elevated by the College of Law. The degree of Bachelor of Laws has come to be considered an honor worthy of the best efforts of the student, and he goes forth from the University well prepared to defend and protect the lives, property, and rights of his fellow-citizens, and to maintain and support the constitutional rights and privileges of his State within the just limitation of the supreme law of the land. The school has stimulated an honorable ambition in the youth of the State, and inspired them with fresh devotion to the proper study of the law. The written examinations which are in force in the College at the present time, after the improved method of modern professional education, are searching, accurate, and extended, and will, it is believed, challenge comparison with similar tests in the most celebrated institutions elsewhere.

From the date of its foundation the Law Department has dispensed unfailing benefits by educating gratuitously all meritorious students in indigent circumstances, who have ever applied for the benefits of instruction. Unendowed and struggling against many adverse circumstances, the labor of the College went on, until it made itself felt in every direction in the current history of Louisiana and for its good.

The affection of Paul Tulane, the great philanthropist, for the city of New Orleans was always strong and unwavering, and took definite shape in an act of donation for the city of New Orleans, on May 2, 1882, by which he conveyed his real estate in New Orleans to a board of seventeen administrators for the higher education of the white youth of Louisiana. This and subsequent donations aggregated about $1,100,000, and he avowed his purpose of dedicating a large part of the residue of his estate, amounting to about $1,000,000 more, to the same purpose; but as he died intestate, it fell to legal heirs.

The fund thus created was used in founding the Tulane University of Louisiana, which absorbed the Law Department. The present prosperity of the school is due to the intelli-



ALFRED HENNEN.

gent and self-sacrificing labors of its professors, and those who were associated with them.

The professors of the Law Department, from its organization in 1847 to the present time, have been the following: —

Professor of Constitutional Law, Commercial Law, and the Law of Evidence. — 1847, Randell Hunt, LL.D., Emeritus Rector.

Professors of Civil Law. — 1847, Henry Adams Bullard; 1850, Christian Roselius, LL.D.; 1873, Thomas Jenkins Semmes; 1879, Carleton Hunt, LL.D.; 1883, James B. Eustis; 1884, Henry Denis.

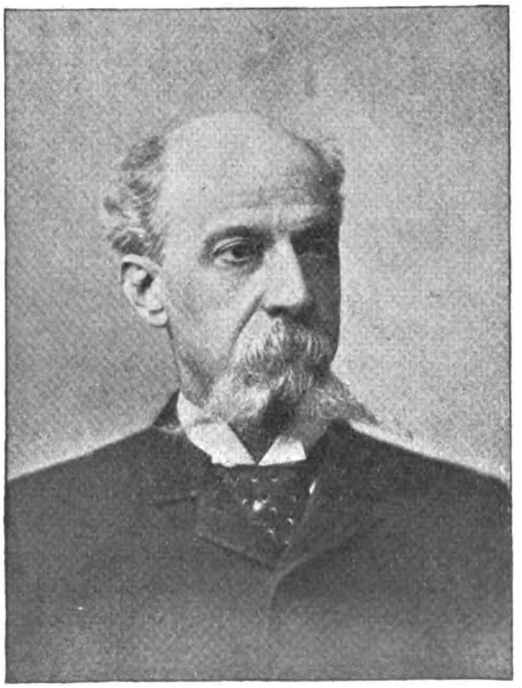
Professors of Common Law and Equity Jurisprudence. — 1847, Richard Henry Wilde; 1847, Thomas Bell Monroe; 1852, Sydney L. Johnson; 1855, Alfred Hennen; 1870, Thomas Allen Clarke, LL.D.; 1878, William Francis Mellen, LL.D., Dean.

Lecture on Common Law and Equity Jurisprudence. — 1851, Daniel Mayes.

Professors of Admiralty and International Law. — 1847, Theodore Howard McCaleb, LL.D.; 1865, Alfred Philips, LL.B; 1869, Carleton Hunt, LL.B.; 1879, Charles E. Schmidt; 1882, Henry Carleton Miller.

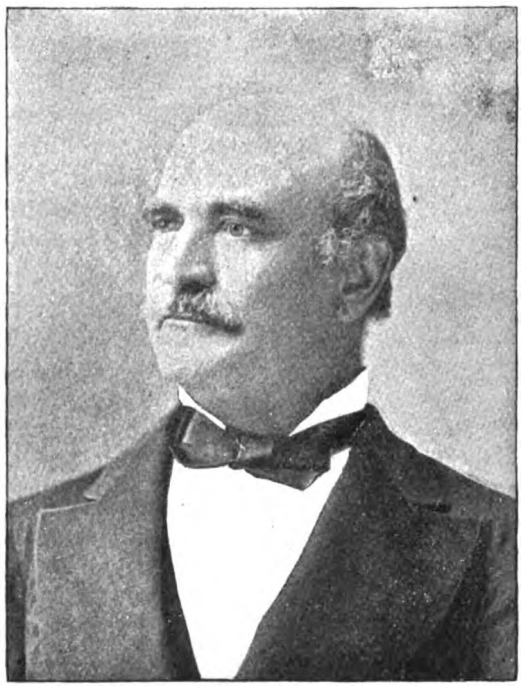
The State of Louisiana has had many great lawyers. Moreau, Derbigny, Seghers, Moreau Lislet, Grymes, Livingston, Mazureau, Preston, Hennen, Soule, Benjamin, Davezac, Eustis, Slidell, Roselius, Hunt, Bradford, and McCaleb were the most notable of those who contributed to earn for the bar of this city a reputation which was not excelled, if equalled, by that of any other city. Their achievements in the profession deserve to be recalled to the recollection and knowledge of younger members of the bar.

Christian Roselius was engaged during thirty-five consecutive years immediately preceding his death, in 1873, in the uninterrupted and active pursuit of the profession of the law, and for the half of that long period, at the same time, in the duties of a professor of law in the University. Bereft of



CARLETON HUNT.

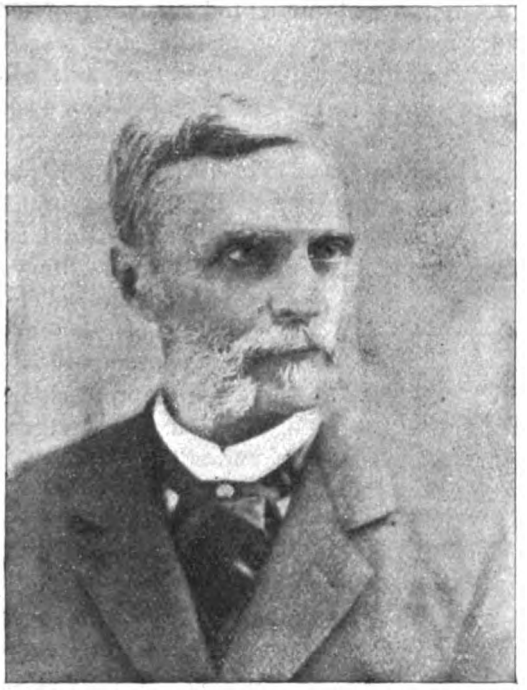
all advantageous circumstances, of humble parentage, he rose from poverty and obscurity to an eminent position. His legal studies were pursued in company with Alexander Dimitry. He was admitted to practice by the Supreme Court in 1838. His love for the civil law became a passion, and soon placed him in the front rank and eventually at the head of the Louisiana Bar. In 1841 he became Attorney-General, and declined a place on the Supreme Bench. As a professor he was most excellent; in this calling he delighted. As a lecturer he was very lucid, cogent, and animated; by his emphatic style he commanded the attention of his hearers. He prepared some written lectures on the Civil Code for his own use, — they are not very extended; but the definitions and classification of the various subjects are strikingly clear and methodical, — intending it as a compendium, to show the actual state of Civil Law in Louisiana. He practised before judges whom he had instructed, and whose tastes he had formed. His name stands inseparably connected with the Law School. He became prominent in public affairs, yet he never yielded to the allurements of political life, but remained active in the profession he adored. The names of Roselius and Martin will not be soon forgotten, — the one as an eminent civilian and jurist and the other as a high type of the Louisiana Bar, — both honored sons of their adopted State. From the position of journeymen printers, one rose to the Chief Magistracy of the State, the other to Attorney-Generalship.



THOMAS J. SEMMES.

Alfred Hennen, another distinguished professor, prosecuted the study of the law at New Haven under the direction of Judge Chauncey. To the noble profession he adopted, he was always passionately devoted. It would be invidious to compare him with other great civil lawyers with whom the New Orleans Bar has been graced from time immemorial. Suffice it to say, that he was among the most successful of its practitioners and the most prominent of its expounders. To great legal lore he added taste for literature, which served to elevate the tone of his profession. He had no mean acquaintance with the Oriental tongues, especially the Hebrew. To great dignity of manners he added a grace and affability that were truly attractive, and to very decided views a spirit of conciliation that secured respect and prompted affection. Few individuals who have adorned the municipal, ecclesiastical, and legal annals of the Crescent City have passed off the stage with a nobler and more stainless record than the late venerable Alfred Hennen.

Hon. Randell Hunt, for forty-two years Dean of the Law Faculty, resigned in the winter of 1888 on account of ill health. He was a native of Charleston, S. C., and a great constitutional lawyer. The efforts of his genius combined with majestic declamation, the deepest pathos, the most lively imagination, and the closest reasoning.



HENRY DENIS.

During his long career at the Law School as professor of Constitutional Law, Commercial Law, and the Law of Evidence, his lectures were most successful. He possessed a great depth of voice, spoke fluently, and displayed a confidence both of assertion and tone which seldom failed to take his hearers' judgment captive.

Henry Adams Bullard, Richard Henry Wilde, Thomas Benton Monroe, Sydney L. Johnson, Theodore Howard McCaleb, Thomas Allen Clarke, Daniel and Alfred Phillips were all prominent lawyers, and as professors made great reputations.

Hon. Carleton Hunt is now to be named. He was for a number of years Dean of the Law School, and is an acknowledged leader of the New Orleans Bar, unsurpassed in learning, in vigorous argumentation, and in fearless maintenance of justice and equity. He is the son of Dr. Thomas Hunt, a most distinguished physician, who was in the early days the President of the University of Louisiana. Dr. Hunt filled an important chair in the Medical Department with profound knowledge and much eloquence, and was in a great measure the father of the institution.[1] Mr. Carleton Hunt has represented the First Congressional District of Louisiana in the National Legislature, and is at present the City Attorney of New Orleans. Never were great learning and familiarity with the classics wielded with greater power than by this eminent professor of Civil Law. He combines a knowledge of human nature with philosophy and logical acumen, and makes them subservient to the inculcation of solid truths of reason, law, and equity. Mr. Hunt has labored constantly and arduously in the interest of the Law School, and his work is now bearing good fruit.

FRANK A. MONROE.

[1] It was mainly by the exertions of Dr. Hunt, by his devotion to science and learning, and through the influence of his character, as a scholar and an orator, that the University of Louisiana was preserved through long and trying vicissitudes, to meet the recent benefactions of Paul Tulane.

Among the professors of later times none occupies a more exalted position in the eyes of the people and bar of New Orleans than Hon. Thomas J. Semmes. He first became a professor in 1873. A graduate of Georgetown College, he read law in the office of Clement Coxe, of that city, and entered the Law School of Harvard University, where Judge Story and Simon Greenleaf were professors. His penetrative intellect possesses a perspicuity as quick as it is vivid, and his conclusions do not wait upon labored induction. He seizes at once upon the core of his subject, beginning where most reasoners end. In the settled intricacies of the law he is adroit as a practised general in the field. When warmed with his subject he utters words of fire that carry the listener captive along with him. Mr. Semmes is renowned for his ability to sway courts by a logic almost irresistible and juries by a fascinating eloquence. He is a man of positive character, of pure reputation, and of untiring energies.

HARRY H. HALL.

The present Faculty consists of —

HENRY CARLETON MILLER, Professor of Admiralty and International Law, and the Dean of the Faculty; THOMAS JENKINS SEMMES, Professor of Constitutional Law, Common Law, and Equity; HENRY DENIS, Professor of Civil Law and Lecturer on the Land Laws of the United States; FRANCIS ADAIR MONROE, Professor of Commercial Law and the Law of Corporations; HENRY HINCKLEY HALL, Professor of Criminal Law, Law of Evidence, and of Practice under the Code of Practice of Louisiana.

Distinguished merit and brilliant service and success in any profession are greatly commended to public admiration and applause by a knowledge of the obstacles overcome by the achiever. Among our bar there is no brighter example of this victory of human energy than is presented in the case of Henry C. Miller, the present dean of the Law School. He shared none of the advantages of thorough college training of his eminent contemporaries, yet his professional endowments and acquirements are of the highest order. As an advocate he is very effective and impressive, addressing courts and juries in a style of earnest and lucid rhetoric not surpassed by any other member of the bar, and with a full and familiar knowledge of the issues of laws and fact, and a solidity of judgment and lucidity of style which rarely fail to secure him success.

Hon. Henry Denis, Professor of Civil Law, has been for many years one of the leading practitioners at the bar of his State. As a member of the law-firm of Johnson & Denis until the retirement of Mr. Johnson, and singly since then, he has had an extensive and varied practice covering the entire field of Civil and Commercial Law. His lectures on Civil Law are remarkable for their clearness and for the logical exposition and forcible illustration of the principles of that great body of jurisprudence of which he has been a life-long student. The precision of his mind, added to his powers of sustained study and to his thorough mastery of the

French language, qualifies him in an eminent degree for the performance of his labor as teacher of that branch of the law from which the Louisiana Code has been bodily taken. As a practitioner, he impresses one with the idea of exhaustive preparation and thorough acquaintance with the law bearing on his case. He is a perspicuous reasoner, and traces up a precedent to its parent principle with unfailing logic. His argumentation is terse, direct, and carries conviction with it by its evident application to the matter in hand and by the naturalness of its deductions. Mr. Denis is the official reporter of the decisions of the Supreme Court of the State, having been chosen by the Justices in 1880.

HENRY C. MILLER.

Judge Frank Adair Monroe, Professor of Commercial Law and the Law of Corporations, was a year ago prevailed upon to become one of the Faculty. Judge Monroe is a native of Maryland, and a descendant of the family of which President Monroe was a member. After distinguishing himself on the battle-field in the cause of Southern rights, the judge was admitted to the bar. In 1872 he was elected judge of the Third District Court, and held the position until 1880, when under the new constitution he was appointed one of the judges of the Civil District Court for the parish of Orleans, which position he now occupies with credit to himself and honor to the State. As a judge he is careful, industrious, patient, and clear-headed. His decisions are marked by perspicuity of statement, erudition, and ability. Always a close and earnest student, the fruits of his application are seen in the compact and learned opinions which he hands down from the bench. The same qualities which have made of him so able a judge will certainly endow him with the attributes necessary for a successful professor.

Hon. Harry H. Hall is also a recent acquisition to the school. His merits, ability, and high personal qualities secured for him a foremost position at the bar. He studied law under Hon. Charles E. Fenner, now Associate-Justice of the Supreme Court of Louisiana, and quickly adapted himself to the requirements of the profession. He is still quite young, and has a bright present and a brighter future before him. No lawyer at the bar, of his age, experience, and practice, stands higher than he.

The degree of Bachelor of Laws granted by the University entitles the person on whom it is conferred to admission to the bar of this State. The graduates of the school constitute a large number of the most respectable practitioners of law in Louisiana. Some of them occupy high judicial positions.

The great fountain of the jurisprudence of Louisiana is the Roman Civil Law. While it is necessary to study here, as in other States of the Union, the Laws of Nature and Nations; Admiralty and Maritime Law, the Common Law, Equity and Constitutional Law, it becomes absolutely requisite to add to

these the study of the Civil Law, from which the provisions of the Code of Louisiana are mainly borrowed.

The lectures and course of studies are comprehensive. The Faculty aim to prepare the student for admission to the bar, not only in this State, but also in any of the Common-Law States of the Union. The school is not designed or limited to educate one for the practice of the law in Louisiana only. It invites to its lectures all who wish to fit themselves for the practice of the law, no matter where they now reside or in what State they may intend to follow this noble calling. The study of the two great systems of law, side by side, is to the student of any intellectual grasp a long step in the science of Comparative Jurisprudence.

The jurisprudence arising from the conflict of the laws of different States and nations, in their actual application to modern commerce and intercourse, is here practically taught by cases daily arising in the business of private persons.

The Library of the State has been suitably arranged over the lecture-room in the University building devoted to the Department of Law, corner of Tulane Avenue and University Place. This library consists of nearly thirty thousand volumes, and includes a highly valuable collection of foreign and American legal works and of Law Reports.

THE LIBRARY.

SOME CURIOUS PLEAS.

A MAN was once tried in Illinois for horse-stealing, upon evidence sufficiently conclusive to satisfy even his own counsel that conviction was inevitable. Still, that worthy was no way daunted, but, rising for the defence, said he should not attempt to controvert the evidence before the court, but would put in a plea of matrimonial insanity.

"Matrimonial insanity!" exclaimed Judge W——, mated as everybody knew to a most unamiable woman. "That is a novel defence; but let us hear the evidence."

A witness was soon in the box who had known the prisoner for ten years, and deposed that in that time the delinquent had married half a dozen times, and was living with his sixth wife when arrested.

"Well," continued the witness, "if any of them was better than the others, I am not aware of it; they were all a sorry lot. They kept the man constantly in hot water by their peevish, scolding, quarrelsome dispositions."

Other witnesses having confirmed this account of the prisoner's matrimonial mistakes, his counsel addressed the court, dilating upon the cunning way in which women drew men into matrimony, and the wondrous change that came over them when the victim was ensnared; finishing up by contending that his client could not be held a responsible agent after being galled by such Xantippes for ten years. This skilful "touch of nature" was sufficient for the judge, whose charge ended thus:—

"This court has had a certain amount of matrimonial experience with one female, and such experience has not been altogether of a satisfactory character. But here is a man who has been so blind, imbecile, and idiotic as to marry in ten years six horrible scolds and shrews. For so doing, I class him as a natural fool; and even if he possessed any intelligence, the dwelling with these women must have destroyed it. The plea of the counsel for the defence is sound in law and equity, and I charge you to bring in a verdict of acquittal."

The jury did as they were bid.

A tax-collector at Naples ran away with a large sum of public money, was caught, brought back, and put upon his trial. His counsel admitted the facts, but contended that the collector was one of the people, the money was the people's money, and it would be monstrous to convict a man of stealing what was his own; and the jury, being of the same mind, acquitted the thief.

A barrister retained to defend an unhappy man charged with purloining a duck, found himself embarrassed in consequence of the rogue having exercised his invention overfreely, and having volunteered several explanations of the matter. First, he said he did not steal the duck,—he had found it; then he said somebody had given him the duck; then that his dog had picked it up; and lastly, that a malicious policeman had put the duck in his pocket unknown to him. Putting the case to the jury, his counsel left the gentlemen to take their choice, saying: "My unfortunate client has told half a dozen different stories as to how he became possessed of the duck. I don't ask you to believe all these stories, but I will ask you to take any one of them." Which story they took the advocate never knew, *but the man got off.*

One plea, if it is a good one, is quite enough, and in certain cases there is none so good as infancy. The law is very tender of "infants," going great lengths to protect them against themselves. A woman was arrested in Presburg, Hungary, for receiving stolen goods. She was by birth a Jewess; but six months previous to her detection had been baptized into the Roman Catholic Church. When put upon her trial she

pleaded that she was an infant, and could not therefore be held answerable for what she had done, — the date of birth in Hungary running according to the date of baptism, — and after serious cogitation, the tribunal decided the defence a good one; and that she, a woman of forty, was legally but six months old.

A COURT-ROOM REVERY.

By "Amicus Curiæ."

AS unto the fire the back stick,
So the judge is to the trial
When forensic strife is kindled:
Passive; slow to burn; in duty
To the front he keeps the firebrands, —
Keeps the tindery, flaming lawyers.
But, of kindred stuff and nature,
Well aglow and sympathetic,
In their blaze and heat he revels.
Nay, not all their heat avoiding,
Oft he chars and stews and sputters,
Wishing he were in the hottest;
And when poor sticks and when crooked
Fitful burn and smudge and sizzle,
And obscure and clog the burning
With their smoke, to blind the jury
And put out the ends of justice;
And when plaintiff and defendant
Are at length consumed to ashes,
And the jury in the embers
Rakes, and finds which was the straightest, —
Then the back-stick, tough and lasting,
Always glowing, never burning,
Has another set of lawyers
Put before him, sets them going,
And another "case" is opened;
And so burns and shines unceasing,
Human Law, thy fateful altar.

LEGAL INCIDENTS.

III.

SAVED BY A PICTURE.

By J. W. Donovan.

ONE hot day in July, 1860, a herdsman was driving a lot of cattle to a new ranch near Helena, Texas. It was hot, and he drove part way at night. In passing another herd the cattle became mixed. The next day about noon a dozen or so Texas Rangers overtook the herdsman and demanded their cattle, which they said were stolen. They were a rough lot of men, with long hair, slouch hats, and covered all over with belts, pistols, and bowie-knives. The herdsman was alarmed. It was before the day of law and court-houses in that region, and he knew that he had better shoot five men than kill a mule worth $5. He felt the responsibility and offered to explain, but they told him to cut his story short. He offered to turn over the cattle not his own; but they laughed at that, and said they generally took the whole herd and hung the thief, to serve as a warning to others in like cases.

They consulted apart a few moments, and said, "We 've made up our minds to give you ten minutes to explain yourself; so you can begin." The poor fellow was completely overcome. He looked at the men, turned pale, and commenced. "How many of you men have wives?" Four or five nodded. "How many have children?" They nodded again. "Then you will know what I mean, and I 'll talk to you. I never stole any cattle. I came here three years ago. I am from New Hampshire; I failed there in the panic of '57. I have been saving; I have paid part of my debts; here are the receipts [and he unfolded a lot of them]. My friends live East, for I go from place to place and have no home here. I have lived on hard fare; I have slept out on the ground. I am a hard-looking customer, but this is a hard country; these clothes are rough, but I am honest. Days seem like months to me, and months like years. I expect to sell out and go home in November for Thanksgiving. You know, married men, if it was not for those letters from home [here he pulled out his wife's letters], I should give up; but I must get out of debt and live some way, men. I can't say no more, but if you must kill me for what I 'm innocent of, send these home. Here are the receipts, my wife's letters; here 's my testament that my mother gave; here 's my little girl's picture, — God bless her! [and he kissed it tenderly]. Now, men, send these home — and can't you send half what the cattle come to? My family will need it so much more when I 'm gone."

"Hold on now! *Stop right thar!*" said a rough ranger. "Not another word! I say, fellers, such men don't steal! You can go free. Give us your hand, old boy! *That picture* and *them letters* did the *bisness*. But you 're lucky, mind ye."

"I 'll do better un that," said a rough ranger with a big bowie-knife in his hand. "I say, boys, let 's *buy* his cattle and let him go home now!"

They did; and when the money was counted the herdsman was too weak to stand. The sudden change unnerved him completely. An hour later he left on horseback for a near stage-route; and when he left the rangers shook hands with him, cheered, and looked the happiest lot of men ever seen.

CAUSES CÉLÈBRES.

XV.

LESNIER.

[1848–1855.]

LISTEN to a story very simple and very commonplace at its commencement,—the story of a crime inspired by cupidity. The guilty one is convicted upon indisputable evidence, and punished; nothing unusual in all this, and if that were all, it would hardly be worth the recital. But suddenly the scene changes; the drama increases in interest, and transforms itself into a poem of indescribable sufferings, enlisting the sympathies of all humanity. Reason and conscience stand aghast at this astonishing *coup de théâtre;* and the last words of this impressive drama resound solemn and terrible, as a warning to all those who are called upon to judge their fellowman.

. . . . . .

On the night of the 15th of November, 1847, as M. Drauhaut, tradesman of the bourg of Fieu, in the department of Gironde, was about to retire to his bed, he saw a bright light on the horizon. Every one in the house, except himself, was asleep. Drauhaut at once cried, "Fire!" and hastily dressed himself. In a few moments the other members of the household were aroused, and, half dressed, all ran in the direction of the blaze.

"It is at Petit-Massé," said young Drauhaut, the tradesman's son; "there is nothing there but the cottage of Father Gay. It is certainly old Gay's house that is on fire."

The party presently arrived at the pine-woods surrounding the humble dwelling, that stood upon a little plateau. The house itself, built of rough pine-logs, although covered with firebrands, was not yet burning; but a small outbuilding was all in flames, and threatened momentary destruction to the dwelling.

Pélerin, a young mason who had accompanied the Drauhauts, rapped loudly upon the wall of the house at a point corresponding to the position of old Gay's bed, in order to awaken the aged man if by chance he was still asleep. At the same time the others went around the building, and discovered that the door and the windows were wide open. Young Drauhaut rushed into the house, and as he entered, he stumbled over some obstacle which barred his passage. Drawing back, he looked in through the window, and saw the body of old Gay lying upon the floor, his feet extended toward the door. Various dishes were scattered on the floor about him, and it was evident that the old man had fallen just as he was beginning his supper. He must have struck his head heavily in falling, for on examination they found a large wound behind the ears, and a handkerchief upon which the head rested was covered with blood.

Raising the body tenderly, they bore it from the building, and laid it on the grass beneath the trees. All their efforts to restore life were fruitless. The old man was dead. The house was now on fire, but the party succeeded in extinguishing the flames.

Old Gay was not a native of that part of the country. A poor farmer, he had come some years before from Haute-Loire. He was seventy-two years old; he lived alone, sick and infirm, subsisting upon the products of his little patch of land.

On the morning of the 16th, M. Viault, the juge de paix of Coutras, was summoned to investigate the cause of this death. The magistrate and a physician, Dr. Soulé, who accompanied him, at once saw that a crime had been committed.

An examination of the wound and an in-

spection of the handkerchief lying upon the floor of the cottage satisfied them that the blood upon the latter did not correspond with the form of the wound. The old man then, it was evident, did not have this handkerchief upon his head when he was struck. There was no blood upon the victim's hands, but on the woodwork of the bed they found the imprint of a bloody hand; it could not have been made by the old man himself. Besides this, the juge de paix found a small hoe, a pruning-knife, and a chair, upon all of which were red spots which appeared to be human blood.

There was no fire upon the hearth, and no evidence that there had been any light in the chamber. There were no signs of any struggle having taken place, and there were no traces of blood at the spot where the body was found. It was not there, then, that he had been struck down.

M. Viault at first thought that the wound had been made by some sharp instrument; but on making an autopsy the next day, in the presence of the juge d'instruction of Libourne and the procureur du roi, the doctors discovered that the weapon used must probably have been a hammer, and they reported that death had been caused by a powerful blow with a blunt instrument. They also added that the crime had been committed in some place other than where the body was found. The probabilities therefore were that after the commission of the deed the victim had been carried by the murderer to the entrance of the house, and there placed in such a manner as to give the impression that the old man had died from an attack of apoplexy.

On raking over the burned debris several hoops and staves were found, which had apparently belonged to a small cask. The ground in this place also smelled strongly of wine. The neighbors stated that they knew that old Gay possessed three or four casks of wine. A robbery had perhaps been the motive for the murder and the firing of the building.

Here then was a clew, — a very feeble and uncertain one, it is true, but still something to work upon. The interest for committing a crime which ordinarily directs the suspicions of Justice to some person or persons, it was difficult to find in this case. Gay possessed nothing but this miserable patch of land, and a little wine. He had no relatives, no friends, and no enemies.

Public rumor, however, fixed upon a man in the vicinity to whom this death might prove of some slight advantage. The old man had recently sold his small property to a schoolmaster in the place, for an annuity of six francs and seventy-five centimes a month during his life, he to retain possession of the premises until his death. The deed of sale had been signed on the 1st of the preceding September. Slight as was this interest, the attention of Justice was naturally directed toward the schoolmaster.

This man was named Jean-François Dieudonné Lesnier. He was born at Charnadelle, in the canton of Coutras. His father had been the possessor of a considerable fortune, which he afterward lost through an unfortunate lawsuit. Finding himself without money, young Lesnier, who had received an excellent education, devoted himself to teaching, and on the 3d of November, 1843, went to Fieu, where he took charge of a small school. In four years he had more than doubled the number of his pupils.

In the month of July, 1847, Lesnier, who was unmarried and who lived with his father, his mother, and a sister, wishing to identify himself still more closely with the village, and with a thought for the future, bought the little estate of old Gay, for which he was to pay an annuity, as already stated.

Such was the man singled out for the suspicions of Justice, as having an interest — a small one it is true — in the death of Gay. No other person, so far as known, could have received any benefit from his death.

The conduct of Lesnier on the night of the fire did not appear suspicious. He, with others, had run to the scene of the confla-

gration. He had assisted in removing the furniture, and in a kneading-trough had found the small sum of nine francs and eighty centimes, which he had turned over to the juge de paix. It was he who first suggested the idea that a robbery might have been committed; and he informed one of the gendarmes that at the time of his death the old man possessed four casks and two half-casks of wine.

While the authorities were endeavoring to account for the disappearance of the wine and the casks, they discovered in the woods, a short distance from the house, tracks made by the wheels of a cart. Upon repairing to the place indicated, the juge d'instruction, M. David, found that these tracks were old ones, and could not have been made by a vehicle used to carry away the goods after the murder.

The private life of Lesnier, as is usual in such cases, was carefully investigated. They found nothing in it absolutely criminal; but it was ascertained that his relations with the wife of an innkeeper of Fieu, a man named Lespagne, had been of so intimate a nature that her husband had driven her from his house. The mayor of Fieu, on being questioned as to the character of the schoolmaster, represented him as being heavily in debt; he owed two hundred francs to one man and one hundred francs to another.

At the same time the magistrates learned of some singular expressions which had fallen from the lips of Lesnier, and which indicated that he had entertained the idea that he should not be troubled with paying the annuity for a much longer period. But, after all, this idea was easily to be accounted for, taking into consideration the advanced age of Gay. It was, undoubtedly, an indiscreet utterance on the part of Lesnier, but from such an expression to the commission of a crime was a long step.

A statement wholly voluntary and carrying great weight from the character of the witness, was that of M. Joseph Delmas, curé of the parish of Fieu; and it was this statement which first drew the suspicions of the authorities upon Lesnier.

This witness testified that Gay had complained bitterly to him of Lesnier's conduct toward him, and that upon speaking to Lesnier of his treatment of the old man, the latter had received the suggestions of the curé with a very bad grace. He also stated that since the tragedy Lesnier had appeared very uneasy, and had acted in a suspicious manner. The force of this evidence of the curé was, however, weakened by the admission on his part that he had had trouble with Lesnier concerning some money matters.

This statement, as we have said, contributed greatly to fixing suspicions upon Lesnier. Justice, however, refused to act upon mere suspicions which had apparently so little foundation, when a new occurrence swept away all uncertainty.

On Sunday, the 21st of November, six days after the commission of the crime, about half-past six o'clock in the evening, a man, frightened, trembling in every limb, and unable to speak, his garments in great disorder, rushed into the house of the Teurlays, who lived in a place called Casse-Galoche. On entering, the man (Daignaud by name) sank into a chair. When he finally sufficiently recovered himself to be able to speak, he said that he had been stopped in the woods by two men who attempted to rob him. He had, with the greatest difficulty, escaped from their hands, after striking one of them with an umbrella.

The next day Daignaud made a similar declaration to the mayor; he swore that one of his assailants wore a blue vest and pantaloons, and a hat without a visor. The other, who was concealed behind a hedge, and who did not approach him, was a tall man and wore a red vest. Daignaud would not swear that he recognized these two men; but he had his suspicions, and thought that he could identify them if they were presented to him. He told the same story to the brigadier of gendarmes, but this time he added that he had recognized the men as the Lesniers,

father and son; he had not only recognized them, but he had spoken to them. As to the father, he could not swear positively, but he was sure as to the son.

Such a revelation, falling like a thunderbolt upon the heads of two men already objects of suspicion, left no room for hesitation or doubt. Daignaud, a poor devil, a simple peasant, who could have no possible interest in accusing these men, accused them in a most positive manner. If they had attempted this crime, was it not more than probable that they were the authors of the other? Justice did not hesitate, and father and son were at once arrested.

On the 6th of December a search was made by the authorities in the Lesniers' house. There they discovered a waistcoat and a cotton shirt, both of which had suspicious-looking spots upon them which closely resembled human blood. In the cellar were found four casks of wine, but a cooper who had repaired the casks belonging to old Gay only a short time before, declared that these casks had never passed through his hands.

Although the Lesniers had been arrested, there was still really nothing tangible as yet discovered to connect them with the murder of old Gay, and the magistrates were greatly relieved in their minds when the probabilities at last resolved themselves into absolute certainty. A demonstration of the guilt of these two men was offered to the perplexed officials. A woman furnished it; and this woman was no other than the wife of Lespagne, Marie Cessac, with whom, as we have already stated, Lesnier had been on very intimate terms.

On the 28th of December the mayor of Fieu called on the juge de paix of Coutras, and informed him that Marie Cessac had made the following confession to him: —

"About a year since I unfortunately made the acquaintance of young M. Lesnier. I say unfortunately, for it was he who by his suggestions, his counsels, and his threats, finally occasioned a separation between my husband and myself, — a separation which I bitterly regret. M. Lesnier, always advising me treacherously, ordered me to preserve an absolute silence regarding himself. If I did not, he said that I should repent it. As he always carried a pistol, I was in great fear. . . . From that time, by his menaces, he kept me completely under his power."

Coming to the matter of the murder of old Gay, Marie Cessac stated: "After the fire M. Lesnier met me in the street and joined me. He made me a present of a piece of cloth, telling me that if I was summoned as a witness to be sure not to mention his name." She said, further, that on the night of the fire she had seen Lesnier go out from his house, cross a field, and take a little path which led to Petit-Massé. He was walking very rapidly.

What was most remarkable in this explicit statement was, first, that it was entirely voluntary; then, that although Marie Cessac had been questioned before with the other witnesses by the juge d'instruction of Libourne, she had then stated nothing worthy of attention. In regard to this last singularity she said: "I forgot all these different facts when I was at Libourne, but when they came to my mind I thought it best to make them known."

On the 4th of January, 1848, Marie Cessac again appeared voluntarily before the juge de paix of Coutras. She wished to add to her former statement. She said that three days after the fire Lesnier approached her during recess; he appeared disturbed. "What is the matter with you?" she asked. "Oh, I have passed several bad nights," he replied, "but last night was better. I have been much worried because I feared that they might make a search for old Gay's wine, but I think they have now given it up, and I begin to be less uneasy."

Four or five days before the fire, she stated, Lesnier said to her, "You shall come and stay with my father and his family at Petit-Massé, I am going to rebuild the house." "And old Gay, where

will he go?" "Oh! Gay will not be alive in a week."

The day after the death of old Gay she saw Lesnier wearing shoes stained with blood. On the 22d of November, the day that Daignaud claimed to have been stopped in the woods, Lesnier complained to her that he had received a blow on his side from which he suffered severely.

There was in this last statement a perfect agreement with the story of Daignaud, who said that in defending himself he struck one of his assailants with an umbrella.

Acting upon these statements which supported the declarations of so many of the witnesses as to the criminal hopes and the violent character of Lesnier, the authorities accumulated a mass of overwhelming probabilities against him.

By a decree dated the 24th of May, 1848, the accused were sent before the Court of Assizes of the Gironde; and the 30th of June the father and son appeared before that tribunal, accused of robbery, arson, and murder. The principal witnesses for the prosecution were, of course, Daignaud and Marie Cessac. The former repeated the story he had previously told, and positively identified the son as one of his assailants, but could not swear as to the father. Marie Cessac appeared extremely nervous and ill at ease, and gave her testimony in an incoherent and disconnected manner. It was necessary to read to her the statements previously made by her, and she then reiterated and persisted in these declarations. Lesnier, the son, carefully followed every statement, and closely watched every movement made by her. She carefully avoided meeting his eyes.

After a short deliberation, the jury brought in a verdict acquitting the father and finding the son guilty of arson and murder, with extenuating circumstances. In conformity to this verdict the father was discharged, and young Lesnier was condemned to hard labor for life.

On hearing this sentence pronounced, the father approached his son, who was completely overcome. With tears streaming from his eyes, he grasped his boy's hand and said in a loud, ringing voice, "Go, my son! your father still believes you innocent!"

This is the drama promised to the reader. Who has not seen many a similar one in the Court of Assizes? A vulgar, ignoble crime, inspired by the basest of motives, demonstrated by the strongest evidence; a guilty man justly punished! Ah, no! All this has been only an error and a lie. This condemned man is not guilty; all this denouncing evidence is a horrible imposture; these numerous and overwhelming proofs are illusions of justice, the odious artifices of the real criminal.

When the father heard the terrible sentence pronounced upon his son, his cry, "Your father still believes you innocent!" was not a mere formal expression of consolation. In his heart he took a solemn oath to rescue his son from this unmerited punishment, and to rehabilitate him in the eyes of all; to unmask the true guilty one. We shall see how he kept this oath.

The condemned man remained alone. The first night he slept calmly, but his awakening was terrible. The iniquity of his sentence raised in him transports of rage. He struck the walls of his cell with his clinched fists; he cursed the lying witnesses, he cursed his judges. For several days his life was only a succession of blind ragings and complete prostrations. He felt that he was becoming mad.

One day his father obtained permission to visit him, and this interview did him good. "I promise you," said the old man, solemnly, "that as long as a drop of blood remains in my old veins, I will never rest until I have found the murderers of old Gay."

On the 3d of July, 1848, Lesnier wrote to his father: —

"Do not torment yourself further. My greatest sorrow is on account of your grief; but I implore you, I entreat you, never to blush before men on account of the condemnation of your son. I am

innocent, you know it; my hands have never been steeped in the blood of my fellowman. I am the victim of a conspiracy which has been formed against us, and that wretched woman who testified falsely wished to save the guilty ones. I have no remorse; my conscience does not reproach me. I have committed many sins, but I have never been guilty of a crime. Oh, no, my father! no, a thousand times no! You alone believe in me, you alone know that your son is worthy of your name! Ah! I am content, now that you are free. I rejoice that you are with my mother to console her. . . . We must put our trust in God. Remorse will pursue the guilty ones everywhere; they will finally be obliged to denounce themselves. I shall bear with courage this cross which God has placed upon me."

Lesnier appealed from his sentence. His defender hoped and endeavored to inspire hope in his client; but the appeal was rejected, and on the 26th of January, 1849, Lesnier was taken to the galleys at Rochefort. There, by his modest demeanor and his uncomplaining, patient ways, he soon won the esteem of the officers, who allowed him every possible privilege.

There was at Rochefort, as at all the other galleys, a secret society, whose decrees sometimes stained with blood this hell of expiation. In an obscure corner, far from the eyes of the guards, the prisoners held their sinister meetings, in which, parodying the sacred forms of justice, the most hardened of the convicts in their turn judged the condemned. All the new-comers had to appear before this strange tribunal. Lesnier was obliged to submit to this secret jurisdiction; he had to explain his presence in the galleys, and relate his story. A strange thing happened to him, — one that rarely occurred in this mock court. These veterans in crime believed in his protestations of innocence; they revised the trial of Lesnier in their own manner, and proclaimed him innocent.

Is there in extreme perversity, as in the most absolute purity, a clear and infallible discernment of virtue?

While Lesnier's rehabilitation commenced in the galleys, his father did not for an instant relax his exertions. He was constantly on the move, from Fieu to Libourne, from Libourne to Bordeaux.

In 1852 Lesnier was removed from Rochefort to Brest, the galleys at the former place having been abandoned. In 1854, wishing to terminate his life as a galley slave and to put an end to the useless endeavors of his father, he requested to be sent with the first shipment of convicts to Cayenne. His request was granted, and his departure fixed for the 5th of July.

The father was thinking of quitting France himself, and joining in America the son whom he could not save, when suddenly a ray of hope gladdened his heart.

A new Procureur Impérial had been appointed at Libourne, a magistrate who was free from all local influences. He was a young man, warm-hearted and possessed of great intelligence. His name was Charandeau. The father brought him all the notes of the former trial that he had been able to acquire; and Gergerès, who had defended the son, also went to him to express his firm conviction of the innocence of the young man. It was a serious thing for a magistrate to throw doubt upon a judgment already rendered by making a new investigation. It was easy, however, to see, upon a careful review of the evidence that the pretended attack on Daignaud was a mere invention; the denunciations of the woman Cessac also appeared, to say the least, suspicious; but if Lesnier were not really guilty, how would it be possible to lay their hands upon the true murderer? If by misdirected zeal they failed in this affair, it would be very compromising for the young magistrate. His whole future depended upon the result of this stroke of audacity. He did not shrink, however, from what he believed to be his duty.

It was with the greatest care and most consummate prudence that M. Charandeau began his investigations. It would not do to frighten the guilty ones, nor to awaken the suspicions of those interested in maintain-

ing the error. The commissary of police of Coutras, M. Nadal, was charged with verifying, quietly, the statements made by the older Lesnier. This skilful officer for five months secretly collected evidence, until it seemed to him that any further proceedings would put the guilty to flight. It was then the 16th of August, 1854. M. Charandeau decided to make a sudden and unexpected examination of the entire commune.

For four days and four nights, accompanied by the brigade of Saint-Medard, which at the first moment had isolated and carefully watched the principal witnesses, he interrogated the inhabitants, who were taken by surprise and utterly unprepared for this brusque visitation.

One of the witnesses heard by him, one Milon, proved an *alibi* for old Lesnier at the time of the attack on Daignaud, and showed that this pretended attack was a wicked lie.

This François Milon stated to the magistrate that when Daignaud and he had been called to testify before the Court of Assizes, being together in the witness-room Daignaud said to him: "Is it true that you saw old Lesnier in the evening at the hour I was attacked on the road?" "I saw him, and not only saw him taking supper with his wife, but he invited me to sup with them." "Well," replied Daignaud, "there is no need of your saying anything about it; I will say that I recognized the son, and not the father."

Another witness had heard this conversation, and repeated it in almost the same words.

Louis Gauthier swore that a few days before the judgment, having had occasion to talk to Daignaud concerning the affair, he said to him: "How could the Lesniers have attacked you on the 21st of November at about seven o'clock, when at that hour the father was supping at home and the son was at the house of Catherineau?" Daignaud appeared embarassed at the question, and replied in a pensive tone, "Do you believe it?" After an instant's reflection, he said: "Well! when one has said a thing he must stick to it." Then making a gesture as if counting money, he let escape these words, more significant than the gesture: "That drives me to do it." Perceiving that this statement astonished Gauthier, "Ah!" said he, "do not mention it to any one; this is between ourselves, and if you speak of it I will make you suffer for it."

Daignaud himself was then interrogated. The magistrate called his attention to the contradictory statements he had made since his first account of the affair, — at one time he had said that he did not recognize his assailants; at another time that he recognized both the Lesniers, and again that he recognized the son only. The magistrate confronted him with the witnesses who accused him of lying; Daignaud persisted for two days in saying that he had told the truth. On the third day he began to stammer and hesitate; finally the truth came out, and he confessed that all that he had said at the trial was a lie.

Relieved by this confession, Daignaud stated that a few days after the death of Gay, Pierre Lespagne, to whom he owed fifteen francs for bread, asked him to accuse young Lesnier of having committed the murder. He refused to do so. "At least," said Lespagne to him, "you must pretend that the Lesniers have attempted to rob you. If you do not, I will sue you for what you owe me, and will have your furniture sold."

Frightened by this menace, Daignaud played this infamous part. Having once lied, he was obliged to stick to his story.

Fortified by this discovery, M. Charandeau turned his attention to Marie Cessac, the wife of Lespagne. It was evident that there had been lying on her part, and it was necessary to make her confess and state who had instigated her.

To her also the magistrate first pointed out strange differences in her several statements.

Marie Cessac was at first as obstinate as Daignaud; then, like him, she confessed. She was confronted by various witnesses to her infamy, hunted up by the courageous

persistency of Lesnier, the father, who assisted the magistrate with his whole soul.

One Lavaud stated that three or four days after the death of Gay, the wife of Lespagne had said, in speaking of young Lesnier: "Oh, mon Dieu! this poor man will be accused, but it was not he who killed him."

A woman named Sarrazin went still further. Marie Cessac said to her, "It was not Lesnier; it was my husband."

To Étienne Geudre she said, in February, 1854, "We know who killed him, and we know it was not the Lesniers; but we are not sorry to see them out of the way."

What influence had caused Marie to lie? They naturally supposed her husband was the one who forced her to do so; but she never mentioned him. She accused of having suggested her statement to her a former priest of the parish of Fieu, who had a deep hatred for young Lesnier. He had obliged her to yield by threats and menaces, and had given her money. This priest had been dead for some time.

This story appeared highly improbable. The instigator of this lie, the suborner of Daignaud, and the assassin of old Gay must, in the opinion of the magistrate, have been one and the same person.

A new witness, one Coculet, declared to the magistrate that one day he had accidentally overheard a dispute between Lespagne and his wife. Pierre said to Marie, "You will do with him as you did with Lesnier; you will send him to the galleys." "Villain," replied the wife, "which one of us is it who is the cause of Lesnier's being in the galleys?"

The guilt of Lespagne was not slow in being demonstrated by numerous proofs and trustworthy witnesses.

The mother of Malefille, a godson of Lespagne who had died some months before, stated that some days after the murder, seeing her son sad and distracted, she questioned him. "Oh," said he, "I am very unhappy; I know something, but I cannot speak of it; I promised to say nothing." When Lesnier was condemned this torturing secret escaped Malefille; he told his mother that it was a great misfortune; that Lesnier was innocent; that Lespagne and Beaumaine, his brother-in-law, did the deed; that when Lespagne went to take away some wine, the old man tried to prevent him, and Lespagne, who had a hammer in his hand, struck him a blow which felled him to the ground.

The two brothers of Malefille confirmed this statement. Their brother had told them more than once that the hammer with which the old man had been killed was still in the house of Cessac, brother-in-law of Lespagne. A search was made at this house, and five hammers were found. Each one of these instruments was successively presented to Lespagne. To four of them he said: "That is not the one." At the sight of the fifth his features contracted, and with a quick movement he turned aside his head. He hesitated an instant, and then suddenly cried: "*It was not with a hammer that I killed him!*"

This involuntary confession settled the matter. From that moment Lespagne was recognized as the murderer of Gay; but he pretended to have been only an innocent cause of this death. He went, he said, to the house of Gay on the 15th of November, about six o'clock in the evening,—a singular hour to choose at that time of year to visit such a place! He loaded some wine upon his wagon; but just as he was about to depart he got into a dispute with the old man. He *pushed* Gay, who fell. Not dreaming that any serious result could follow this fall, he departed, leaving a torch burning before the house. He supposed Gay would come and take in the torch. He returned to his home, and did not learn until the next day of the events of the night.

This investigation vindicated the Procureur Impérial; the innocence of Lesnier was apparent; the false witnesses, the true author of the crime, were in their turn placed in the hands of justice. But all was not yet ended. It was necessary by a first

process to raise the question of the innocence of Lesnier and the error of his judges; a second process must then settle this question. If Lespagne, Marie Cessac, and Daignaud were found guilty, Lesnier would be obliged to appear with them before a new jury who would choose from among these condemned all recognized by the law as guilty of the same crime, — necessary formalities, but very trying to an innocent man.

Lesnier, however, was resigned to quitting France. He did not share the hopes of his father. The order for his departure arrived the 1st of July, 1854; but his father had asked for and obtained a delay. Many letters came from Fieu, which showed him the gradual transformation of hope into certainty, and the 23d of August his father arrived at the galleys at Brest. "They are arrested, they have confessed!" These were his first words to his son. Young Lesnier staggered and fell back pale as death. "Ah! now I shall die happy," he cried. He wept; he saw nothing, he could think of nothing, but repeated mechanically, "I shall die happy."

The 25th a despatch arrived from Paris; the shackles of Lesnier were broken. Excess of joy produced upon him the same effect as despair; a fierce fever seized him, and he presently became delirious. A single idea occupied his troubled brain, and his lips murmured unceasingly, "Oh, what happiness! Think of it! But I have suffered much!"

On the 27th he was able to depart. The journey was a painful one to him. He was under an escort of gendarmes, and an innocent man as he was now acknowledged to be, he was forced to sleep in twenty-five prisons before reaching his destination. He arrived at Libourne on the 25th of September.

A night passed at Libourne refreshed him, and he was able to collect his scattered ideas. He wrote to M. Charandeau a grateful, touching letter.

His sojourn in the prison where he was obliged to remain until the formalities of the law could be complied with, was sweetened by the visits of his father and his former friends, and by long interviews with M. Gergerès.

On the 25th of March, 1855, the trial of the Lespagnes and Daignaud commenced before the Court of Assizes of the Gironde. The trial was quickly disposed of, and the jury rendered a verdict finding Lespagne guilty of murder, and Marie Cessac and Daignaud guilty of perjury, with extenuating circumstances in favor of all three. The court then sentenced each of the accused to twenty years at hard labor.

The next day, the almoner of prisons, the Abbé Parenteau, called upon Lesnier and congratulated him upon the verdict which proved his innocence, and added some remarks upon the sentence of the accused. "Mon Dieu!" replied Lesnier, "I assure you, Monsieur, if they had been sentenced to but six months' imprisonment, I should be content. It is enough for me that I am recognized as innocent."

On the 25th of June, 1855, before the Court of Assizes of Haute-Garonne, the second trial necessary for the complete rehabilitation of Lesnier took place. Lesnier was there acquitted by the jury, and once again restored to the liberty of which he had been so long unjustly deprived. Pierre Lespagne was sentenced by this tribunal to hard labor for life.

After his liberation Lesnier received one or two appointments under the government, but his long confinement and terrible sufferings had broken him down physically as well as mentally. He died at Carcassonne on the 22d of December, 1858, at the age of thirty-five. The worthy magistrate who from the wreck of this life had saved at least its honor, was with him in his dying moments, and when all was over, tenderly closed his eyes.

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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.

THE GREEN BAG.

A CORRESPONDENT favors us with the following communication: —

Editor of the "Green Bag":

Having just attained the dignity of a subscriber to the "Green Bag," I have been attempting to remedy the defects of my education by reading the back numbers. I have just read an anecdote on page 455 of Vol. I. about choses in action. The joke lies in the legal gentleman's definition of that species of property, to the effect that you might have several rights of action, and might *choose* which action you would take!

This is very good, if true. I have a story about choses in action, which I will vouch for the truth of.

Somewhere in the seventies I was one of the examiners of students for admission to the bar of the New York Supreme Court. I asked a student if he could tell me what a chose in action was. He hesitated, and evidently was embarrassed to find fitting words to express himself. By way of aiding him, I suggested that if he could not frame a definition he could name an example. He smiled, and said of course he could, — that there were many things which could be so described; the most prominent then in his mind was a horse.

While this was quite satisfactory to me, I regret to say that my associates conceived a prejudice against the young man which resulted in his failure. He was afterwards admitted, however, and I actually heard him at Circuit trying a case about a chose in action, — to wit, an action for damages for being knocked down by a runaway horse. I winked at him, and suggested that the particular chose in question had been too much in action.

At the same examination the deputy clerk of the court was examined for admission. His examination fell to me. "Mr. Edmunds," said I, "what is a civil action?"

He looked blank dismay; but he adopted a confidential air, and said quietly, "I am not good at definition, but if you will permit me, I will give you an example of what I consider a civil action."

"Do so, sir," I said sternly.

He answered promptly, "If, after the Board adjourns, you should ask the examiners to supper, and invite the deputy clerk to make one of the party, I should consider that a very civil action."

FROM Chicago comes the following letter, which treats of a subject of no little interest to the profession: —

To the Editor of the "Green Bag":

A good classification of a nation's law is valuable, as it not only helps a student to acquire a knowledge of the law, but aids judges and counsel to keep the law in mind and to apply it intelligently, much as meridians of longitude and parallels of latitude give one a mastery of geography which is impossible without them. Until some years after Austin's time this truth was not perceived by many American and English lawyers, and text-writers are not yet agreed upon any fundamental classification. Such a classification should evidently cover the whole ground, and should not contain cross-divisions; that is, the divisions should not overlap. I venture to suggest such a classification, which may at least attract attention through your columns to this important subject.

A nation's law may be conveniently grouped under nine great heads, as follows: 1. STRUCTURAL LAW, which relates to the organization or structure of the government; which fixes the number and name of legislative, executive, and judicial offices and boards, and of territorial and other public corporations: which prescribes how such offices, boards, and corporations shall be created and destroyed, filled and vacated, and which prescribes their rights, powers, duties, and liabilities. 2. PUBLIC LAW, which relates to the rights of the State against a person and to the rights of a person against the State. It includes criminal law and criminal procedure under its first branch, and the rights of a citizen to participate in the government by means of the elective franchise under its second branch, but it is not confined to these subjects. 3. GENERAL PRIVATE LAW, which includes all primary rights of one private person against another private person, not included in the subsequent heads, — Property, Contracts, and Status.

It includes a man's rights *in rem* over his own body, life, and reputation. 4. PROPERTY; that is, a person's rights of dominion over land and movables, including fixtures and animals, and also including patent-rights and copyrights and their like, which may be described as rights of dominion over indeterminate objects. All primary property rights are rights *in rem* as distinguished from rights *in personam*. 5. CONTRACTS; that is, the rights of one person against another arising from voluntary agreement. 6. STATUS; that is, the law governing exceptional classes of persons, as infants and lunatics. 7. PROCEDURE; that is, such matters relating to the enforcement of primary rights as cannot be conveniently treated under the preceding heads. 8. RULES OF CONSTRUCTION, DEFINITIONS, and GENERAL PRINCIPLES. 9. THE LAW OF NATIONS; that is, the *quasi* law governing the nation's relations with other nations.

This classification is adapted to our own country. In a country in which property rights in men — that is, slavery, and property rights in public offices — exist, the classification is equally applicable, although the minor divisions would differ in the two countries.

Rights are *primary*, *i. e.* given for their own sake; or *remedial*, given in substitution for a violated primary right or to enforce a primary right or another remedial right. It is assumed that in the exposition of each primary right the remedial rights arising upon its violation will be treated, except where they may be more conveniently stated under the head Procedure. As a duty never exists without a right-holder to enforce it, who is either a private person or the State, it is unnecessary to consider duties apart from rights.

The transfer of property by will and descent falls under the head Property. The family relations fall for the most part under the head Status. The variations of law which are caused by the absence of persons or things from the national territory or by the occurrence of some transaction abroad, that is, the subject sometimes denominated Private International Law, is broken into parts, and is distributed to all the great heads of the foregoing classification.

RUSSELL H. CURTIS.

LEGAL ANTIQUITIES.

ACCORDING to ancient custom, whatever chattel was the immediate occasion of the death of any reasonable creature became forfeited to Holy Church, and was applied, before the Reformation, towards obtaining masses for the soul of the deceased.

These forfeited articles were called Deodands, from *Deo-dandum* (to be given to God); and Britton tells us, in his "Pleas of the Crown," that the intention of the forfeiture was that nothing which was the immediate cause of so awful an event as the death of a reasonable creature should seem to go unpunished; but this assertion of the early lawyer has been much disputed, for the law allowed no deodand upon the death of an infant under years of discretion; thus favoring the idea that the intention of these forfeitures was simply to procure the means of conducting a religious ceremony after the death, and for the benefit of the soul of the deceased; for no mass or other purgation was necessary upon the death of an infant.

The rules relating to deodands are not by any means free from obscurity, either as to their origin or intention. If anything *without motion* was the cause of death, only that part of it immediately connected with the death was forfeited; but if the body was actually *in motion*, the whole of it became a deodand.

Thus, when a man climbing into a cart at rest fell off the wheel and was killed, the wheel only was the king's property; but when in another case the cart was moving at the time of the accident, the whole of it, with its load, was forfeited.

The golden rule about these forfeitures was, "whatever *moves to the death* is a deodand;" and in the quaint old book called "Termes de la Ley," it is thus expressed, —

> "Whatever moved to kill the dead
> Is deodand, and forfeited."

The most curious illustration of this rule is to be found in an ancient case, where a man fell from a mill-wheel into the stream, and was drowned. Every part of the machinery *actually in motion* at the time was declared to be a deodand; that at rest, not.

FACETIÆ.

WHILE cross-examining Dr. Warren, a New York counsel declared that a doctor ought to be able to give an opinion of a disease without making mistakes.

"They make fewer mistakes than the lawyers," responded the physician.

"That 's not so," said the counsellor; "but doc-

tors' mistakes are buried six feet under ground, a lawyer's are not."

"No," replied Warren; "but they are sometimes hung as many feet above ground."

The advantage was with the doctor.

It was on the other side, when, disputing as to the comparative merits of their professions, Sir Henry Holland said to Bobus Smith, ex-Advocate-General, "You must admit that your profession does not make angels of men?" and the lawyer replied, "There you have the best of it; yours certainly does."

Judge. You are a freeholder?

Prospective Juryman. Yes, sir.

Judge. Married or single?

Prospective Juryman. Married three years ago last month.

Judge. Have you formed or expressed any opinion?

Prospective Juryman. Not for three years past. — *New Jersey Law Journal.*

The following droll incident is related as having taken place in one of the municipal courts of Boston, on the trial of a prisoner charged with theft, who pleaded drunkenness in extenuation.

Court (to the policeman who was a witness). What did the man say when you arrested him?

Witness. He said he was drunk.

Court. I want his precise words, just as he uttered them. He did n't use the pronoun *he*, did he? He did n't say "*He* was drunk"?

Witness. Oh, yes, he did. He said he was drunk; he acknowledged the corn.

Court (getting impatient at the witness's stupidity). You don't understand me at all; I want the words as he uttered them. Did n't he say, "I was drunk"?

Witness (deprecatingly). Oh, no, your Honor. He did n't say *you* were drunk; I would n't allow any man to charge that upon you in my presence.

Prosecutor. Pshaw! you don't comprehend at all. His honor means, Did not the prisoner say to you, "I was drunk"?

Witness (reflectively). Well, he might have said *you* was drunk, but I did n't hear him.

Attorney for Prisoner. What the court desires is to have you state the prisoner's own words, preserving the precise form of pronoun that he made use of in reply. Was it the first person, *I*, second person, *thou*, or the third person, *he*, *she*, or *it*? Now, then [with severity], upon your oath did n't my client say, "I was drunk"?

Witness (getting mad). No, he did n't say *you* was drunk, either; but if he had, I reckon he would n't 'a' lied any. Do you s'pose the poor fellow charged this whole court with being drunk?

Lawyers and litigants in the extreme Down Town District in the city of New York will recollect Denis Quinn, who dispensed justice according to his lights (or was it his liver?) during six years in the brown stone building at the corner of Centre and Chambers Streets. He was an ardent Irish patriot; and one of his utterances, which was not born to die, was, "Sor, I view with allarum to our institutions the rapid and tremenjous growth of German immigration to this land of liberty!"

Hon. Denis Quinn was not the author of the saying, "I look with equal disfavor on old jokes and new law;" but he once revolutionized the settled jurisprudence of ages, as follows: In an action for breach of contract of sale, it was meritoriously set up for the defendant that the case fell within the Statute of Frauds. "But there is no fraud in this 'case,'" said the Hon. Denis. "Permit me to quote the statute," replied defendant's counsel; and proceeded to do so. "Yis," exclaimed Denis, "imported, as I have been given to understand into our statute-books from England, and calculated to disturb and shatter all confidence between man and man; as if a man could n't make a lawful bargain if, owing to the poverty of his parents, he had n't learned to write. Sor, I overrule the Statute of Frauds! Niver plead it again in this court, if you expect to be heard!"

The following is a copy of a letter received from England, a few days ago, by the Police Commissioner of New York, —

Dear Sir: I write these few lines to ask you if you have any place for the hangman billet i Say that Elect Scott is no good for Execution I have a good Knot to hang murders on i wisch to noh if you by so kind and let my noh I noh I schall suit you in the billet as a Hangman i will schow you the Knot on the paper so good all I Kann so I have no more to say and I are your obligent servant.

A. Packoeke.

In support of the well-established rule that a justice of the peace always finds for the plaintiff, may be given the following case, which was tried some years ago in Maryland. An action had been brought against a railroad company for the killing of a cow, which was on the company's track. The testimony was all in favor of the company, tending overwhelmingly to show that the cow had "no business" on the track. After the hearing, the justice promptly decided in favor of the plaintiff. The company's attorney was very much surprised, and asked the justice upon what grounds he could arrive at any such decision. He said, in reply, that the company was negligent in not putting up a signboard with "Look out for locomotive" on it. To which the attorney remonstrated, "But the cow could n't read." "That 's very true," said the justice; "but it would have been much worse for the company if a person had been killed, and under all the circumstances the company is getting off easy. Judgment for plaintiff."

NOTES.

The One Hundredth Anniversary of the founding of the Supreme Court of the United States was celebrated in New York City, on February 4. The literary exercises at the Metropolitan Opera House were appropriate and impressive, and were presided over by ex-President Grover Cleveland. The invited guests were seated upon the vast stage, and the house itself was filled with an audience of hardly less distinguished persons. The programme of the exercises was as follows: —

Music — March, "Coronation," Meyerbeer; Overture, "Zampa," Herold; American Fantasie, Victor Herbert.

Introductory address by the chairman, Grover Cleveland.

Invocation by the Rev. Morgan Dix, S.T.D., D.D., rector of Trinity Church.

Address of welcome to the Court, William H. Arnoux, chairman of the Judiciary Centennial Committee of the New York State Bar Association.

Address, "The Origin of the Supreme Court of the United States, and its Place in the Constitution," William Allen Butler.

Music — Selection, "Aïda," Verdi.

Address, "The Supreme Court and the Constitution," Henry Hitchcock of Missouri.

Address, "Personal Characters of the Chief-Justices," Thomas J. Semmes of Louisiana.

Music — Entr'acte, "La Colombe," Gounod.

Address, "The Supreme Court and the Sovereignty of the People," Edward J. Phelps of Vermont.

Address by Chief-Justice Fuller.

Response by the Court, through Mr. Justice Field.

Music — "Lion de Bal," Gillett.

Ave Maria, German Liederkranz Society.

National Hymn, "My Country, 't is of Thee," all present participating.

Doxology.

Benediction, the Rev. Dr. Talbot W. Chambers, of the Collegiate Reformed Church.

Music — Fackeltanz (B minor), Meyerbeer.

Music by Grand Symphony Orchestra and German Liederkranz Society. Conductors, S. Bernstein and Victor Herbert.

Space forbids even a passing comment upon the addresses, all of which were admirable and eminently appropriate to the occasion. They will undoubtedly be published in a commemorative volume, and will prove a most valuable addition to our legal literature.

In the evening the grand banquet was given at the Lenox Lyceum on Madison Avenue, and nearly nine hundred hungry lawyers sat down to a most sumptuous repast. The list of toasts and those responding to them was as follows: —

"The President," "The Supreme Court," Mr. Justice Harlan; "The Congress," William M. Evarts, of New York; "The Judiciary of the States," Chief-Justice Edward M. Paxson, of Pennsylvania; "The Common Law," Walter B. Hill, of Georgia; "The Bar," Joseph H. Choate; "The Clergy," Rev. Dr. William R. Huntington; "The Univers'ty," President Seth Low, of Columbia College; "Our Clients," Chauncey M. Depew.

It is to be regretted that owing to the poor acoustic properties of the "Lyceum," and also to the fact that the banquet had apparently the effect of loosening the tongues of a large number of those assembled at the tables, the undoubtedly admirable responses to these toasts reached the ears of but few of those present. It was impossible to hear a word unless one were directly under the speaker's lips. The noise and confusion which prevailed was discourteous in the extreme, and the speakers would have been fully justified in declining to continue. They, however, bore themselves in a most gentlemanly manner, and said their "little say" with as much earnestness as if they were receiving the attention they deserved.

It was a late hour when the distinguished company separated, and the commemorative exercises were over. Similar exercises, with other participants, will be repeated on February 4, 1990.

SOME of the waiters at the Centennial Celebration Banquet attempted to turn the occasion to their individual profit. Early in the evening cigars became a scarce commodity, and it was discovered that the greater part of those provided had been appropriated by waiters who were retailing them to the guests at twenty-five cents apiece. One fellow was found to have seventy-five stowed away in his pockets.

A MAN is sometimes allowed to prescribe for a nuisance. Thus it is supposed that there are decisions which will uphold a man in maintaining an offensive business next door to his neighbor's dwelling-house, provided he has kept it up twenty years without molestation. Apparently on this ground, an English magistrate recently dismissed a prosecution against a firm of London publishers for selling copies of Boccaccio's "Decameron." The following evidence, totally irrelevant upon the question whether or not it was an indecent book within the meaning of the governing statute, seems to have governed the decision: That it was a work of high literary merit, and had been recognized as such for five hundred years; that during that time it had never been out of print; and that in the British Museum there were no less than two hundred copies of it. One of our exchanges calls attention to the fact that in another similar case an edition of the "Arabian Nights" was suppressed in London. Perhaps the lovers of ancient literature of the racy sort may find comfort in a decision of the Texas Court of Appeals, that where the composition is a written one it is the province of the judge *to construe it*, and determine whether or not it is obscene. The figure of a Texas judge perusing a good translation of this ancient but unsavory work, for the purpose of "construing" it, would present a picture worthy of the pencil of Hogarth. There is really a sensible line of distinction between ancient and hence prescriptive filth, and modern and hence non-prescriptive filth. There are many passages in Shakspeare that would not be tolerated in modern drama, and yet no one would think of expunging them from an edition of the works of the great dramatist.

A TRIAL involving circumstances of an exceptionally romantic character will come before the Tribunal of Ragusa next month. About twenty years ago a peasant of the neighborhood of Ragusa, being no longer able to support his wife, emigrated to the United States, leaving his better half in charge of the village priest. From the first luck smiled on him, and he was able to send the priest fifty florins a month for his wife. As his position improved he increased the amount of his monthly remittances, but the rascally *reverendo* handed only five florins a month to the woman. This went on for fifteen years, when this worthy clerical gentleman forged a certificate of the husband's death, and placed it in the hands of his wife, whose death he likewise certified in a forged document and sent it to the husband in America. Shortly afterwards he piously betook himself to Corfu, where he hoped to spend the remainder of his days in peace, rejoicing in the remembrance of his good works. Fate had decided otherwise. The unfortunate woman, his victim, was forced to get her living by begging from the passengers of the Lloyd steamers that touched at Ragusa, and her husband sought consolation in re-marriage with a rich American lady, by whom he had two children. After twenty years' absence he resolved to make a tour in Europe with his family. He visited Paris, Vienna, Trieste, and finally Ragusa. On landing at that harbor, a beggarwoman accosted him and asked for alms. They recognized each other simultaneously. The beggarwoman was his wife, whom he believed to have been dead several years! The priest has been arrested, and in all probability the second marriage will be annulled. — *Irish Law Times.*

A VERY curious lawsuit will be heard in a few days, in one of the law courts of Warsaw, which might be made the basis of an interesting novel. It is all about a swallow-tail coat, which Mr. L——, an inhabitant of the ancient capital of Poland, ordered of a well-known tailor, and which for a covenanted sum was to be delivered punctually by a certain day. The tailor, however, like most Russian tailors and tradesmen, failed to keep his word, and delivered the garment the day after the term fixed, when it proved, as Russians say, as seasonable as mustard after supper. Mr. L—— not only refused to pay the stipulated sum, but commenced proceedings against the tailor for very heavy damages

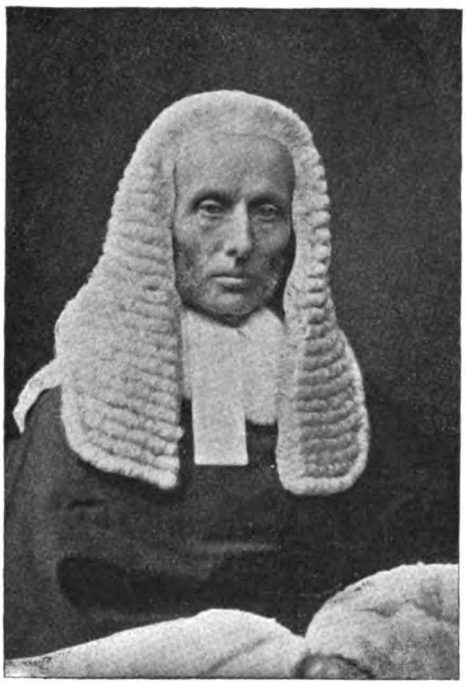
for the momentous and lamentable results of his dilatoriness; and hereby hangs the tale. Mr. L—— alleges in his statement of claim that he required the swallow-tailed coat to qualify him to appear at a large evening party given by the parents of the lady of his heart, whose hand he intended to solicit formally in the course of the evening, during the valse, the quadrille, or the mazurka. Unprovided with the magic evening dress, he was in the sad predicament of the guest in the parable, "which had not on a wedding garment;" but wiser than that person, he did not put in an appearance. Meanwhile "the other fellow," taking a mean advantage of him, went, and saw, and conquered, — proposed, was accepted, and is now the cherished bridegroom of the beautiful Helen. The court is now called on to estimate in rubles and copecks the extent of the loss inflicted on the confiding Mr. L—— by his dilatory tailor, and to insist upon a substantial fee from the latter for being taught the truth of the old adage, that "a stitch in time saves nine." — *Irish Law Times.*

THE late Matt. H. Carpenter, in a case which was litigated in the courts of Wisconsin for a great number of years, in the prayer for relief used the following language: —

"And that such other orders, regulations, special proceedings, and unheard of remedies may be from time to time, in this action, invented, ordered, and had, as the nature of the case may require; and that this plaintiff may from time to time, and always (for he never expects to see the end of this action) have such other and further, or new and extraordinary relief as the nature of this action may require; and that everybody else may have all the relief they are entitled to in this action, according to law and according to the decisions of the Supreme Court, made or to be made; and that, too, as fully and amply as anybody can hereafter suggest, and as the plaintiff may hereafter have occasion to ask when he sees how this thing works." — *American Law Reporter.*

Recent Deaths.

THE HON. SIR HENRY MANISTY died in London January 31. In the afternoon of Friday, January 24, he was smitten with a stroke of paralysis while trying the action of Mace *v.* Forster in Queen's Bench Court. Mr. Justice Manisty was the second son of the Rev. James Manisty, late of Edlingham, Northumberland, and was born Dec. 13, 1808. He was educated at Durham Grammar School, was admitted a solicitor in 1830, practised as junior partner of the firm of Megginson, Pringle & Manisty, of Bedford Row, till 1842, when, on April 20, he was admitted a student of Gray's Inn. He was called to the bar on April 23, 1845, was made Queen's Counsel July 7, 1857, bencher of his inn July 22 in that year, and treasurer 1861, and was appointed a justice of the High Court of Justice, Queen's Bench Division, in November, 1876. He was a judge of more than ordinary ability, and long before his elevation to the bench had won an enviable reputation in the profession.



MR. JUSTICE MANISTY.

MR. BENJAMIN VAUGHAN ABBOTT, a legal writer of wide reputation, died at Brooklyn, N. Y., February 18. His father was Jacob Abbott, well known as the author of the "Rollo Books" and many other popular works. Mr. Abbott was born in Boston in 1830, and was graduated at the New York University in 1850. After spending a year at the Cambridge Law School, he continued his

legal studies in New York, and was admitted to the bar in 1852. He spent some years in active practice, and then devoted himself to legal writing, chiefly reports and digests of State and national laws. Among some of the more prominent of his works are a "Digest of Corporations," "Treatise on United States Courts and their Practice," "Dictionary of Terms in English and American Jurisprudence," "United States Digest," and the "National Digest," the latter in five volumes. Mr. Abbott was appointed secretary of the New York Code Commissioners, and personally drafted the report of a penal code submitted to the Legislature in 1865, which afterward became the basis of the present penal code. In 1869 he was appointed by President Grant one of the commissioners to revise the statutes of the United States, a work which occupied three years.

PROF. JOHNSON T. PLATT, of the Yale Law School, and a member of the law firm of Platt, Tyler & Moran, died January 23. He was born at Newtown, Conn., in 1845, and graduated from the Harvard Law School in 1865. He was appointed professor in the Yale Law School in 1869.

REVIEWS.

THE JURIDICAL REVIEW for January, 1890. This admirable magazine maintains the high standard which has thus far characterized it, and it is certainly one of the most welcome of our transatlantic exchanges. The leading articles in the current number are "The Science of Politics, its Methods and its Use," by Æneas J. G. Mackay; "The New Code for the German Empire," by Prof. Felix Dahn; "Land Reform in Scotland," by R. B. Haldane, M. P.; "Insanity in its relation to the Criminal Law," III., by Charles Scott. A fine portrait of the late Professor Muirhead is used as a frontispiece, and there are sketches of his life and work by Professors Rankine and Carle.

THE AMERICAN LAW REVIEW, January–February, contains an extract from James C. Carter's Address on "The Provinces of the Written and the Unwritten Law," delivered before the Virginia State Bar Association. Charles A. Culbertson contributes an article on "The Supreme Court and Interstate Commerce," and Augustus H. Fenn discusses "Conditional Sales." A timely article on "The Business of the Federal Courts and the Salaries of the Judges," is written by Albert Dickerman; and we sincerely join with the author in the hope that these two things may receive the prompt attention of Congress. The other paper, which completes the contents, is an account of "The Michigan Central Railroad Conspiracy Trial of 1851," by B. S. Ladd. In the "Notes" a kindly word is said for the "Green Bag": —

"The Editor of the 'Green Bag' has succeeded in presenting, in the course of the year, a great deal of 'entertaining' matter; but we cannot agree with his titlepage that it is 'useless.' Entertainment to a tired lawyer is not useless."

THE LAW STUDENT'S MONTHLY for January, 1890, contains two essays, — one upon "The Requisites of a good Law School Text-Book," by Demus R. Gale; and the other upon "International Copyright," by W. P. Holcombe. Both these essays show careful thought and diligent research on the part of the authors, and are valuable additions to legal literature. Messrs. T. & J. W. Johnson, the publishers, have done a most excellent work in reproducing these prize essays, written by the brightest minds in our Law Schools.

JOHNS HOPKINS UNIVERSITY STUDIES. Eighth Series, I.–II. "The Beginnings of American Nationality," by Albion W. Small, Ph. D. In this paper the author exhibits the constitutional relations between the Continental Congress and the Colonies and States from 1774 to 1789. After a brief account of the legal characters of the communities, extracts from the records are arranged to show (1) the character of the bodies that assumed to act for the colonies; (2) the powers which these colonial bodies gave to representatives in the continental body; (3) the character of the continental body so composed; (4) the acts of the continental body; (5) the corresponding acts of the colonial bodies.

THE opening article of the ATLANTIC for March is a paper upon the "Trial, Opinions, and Death of Giordano Bruno," by William R. Thayer;

this is followed by a paper, by Charles Worcester Clark, on "Woman Suffrage, *Pro* and *Con*." George Parsons Lathrop shows us "The Value of the Corner;" and there is an admirable paper called "Loitering through the Paris Exposition," which is full of interesting side-lights on this great fair. Dr. Holmes is particularly amusing in "Over the Teacups," and seems to wish that people would write less poetry. He closes with some odd verses on the rage for scribbling. Mr. James's story and Mr. Bynner's serial are continued, and Mrs. Deland allows her hero, from conscientious scruples, to decline to save a drowning woman, — a novel position for a hero! John Trowbridge discourses on the "Dangers from Electricity," and shows the risks run by ignorant persons who undertake to meddle with this subtle fluid The reviews, clever as usual, bring this well-composed number of the magazine to an end.

THE CENTURY, for February, is notable among other things for the final instalment of the LINCOLN biography, which has run through forty numbers of the magazine. An interesting paper on Emerson's talks with a college boy is accompanied by a full-length picture of Ralph Waldo Emerson. In this number the artist, LaFarge, commences a series of letters from Japan, with illustrations prepared by himself. Joseph Jefferson devotes a large part of the current instalment of his autobiography to his reminiscences of Edwin Forrest, of whom four portraits are given, — two of Forrest off the stage, and two in character. In addition to this, Jefferson describes his own first visit to London and to Paris. In the way of timely discussion, nothing could be more to the point than Professor Thorpe's paper in which he gives his reasons for thinking that Washington and Montana have made a mistake in their Constitutions; and Commissioner Roosevelt's defence of the Merit System *versus* the Patronage System. Mr. Roosevelt clearly defines the two systems, and shows that the Merit System is thoroughly American. He also contradicts certain false statements made with regard to questions which candidates are asked. The fiction of the number consists of Mrs. Barr's "Friend Olivia," Mr. Stockton's "Merry Chanter," Mr. A. A. Hayes's "Laramie Jack," and "How Sal Came Through," by Mr. Edwards, the author of "Two Runaways."

BOOK NOTICES.

AMERICAN STATE REPORTS. Vol. X. Bancroft, Whitney, & Co., San Francisco, 1889. $4.00 *net.*

This volume contains reports of cases selected from the decisions of the courts of Indiana, Kansas, Maine, Missouri, New Hampshire, New York, Pennsylvania, Tennessee, Texas, and Virginia. Mr. Freeman displays his usual good judgment in the selection and annotation of these cases, and the lawyer may turn to these pages in the full confidence that he will find nothing that is not of real value to the profession.

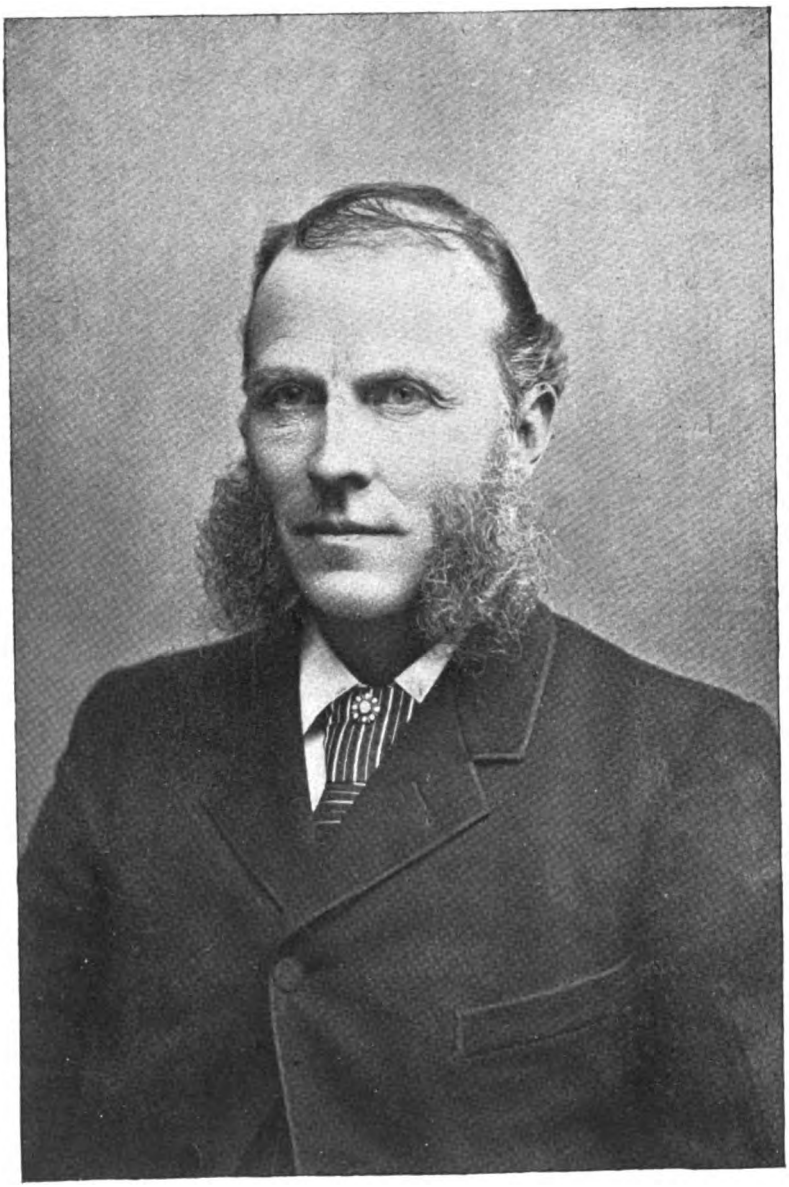
GENERAL DIGEST OF THE DECISIONS OF THE PRINCIPAL COURTS IN THE UNITED STATES. Vol. IV. (for the year ending September, 1889). The Lawyers' Co-operative Publishing Company, Rochester, N. Y., 1889. Law Sheep. $6.00.

These Annual Digests are well known to the profession, and have received the unqualified commendation of all lawyers who have had occasion to refer to them. In certain respects they are vastly superior to any other Digest issued. They give the law of the case, and not a mere narrative of the facts and holdings, and every point covered by the opinion is thoroughly digested. Reference is made to *every* publication, not only official, but unofficial, of report of case; and all English and Canadian cases which are found to apply to American jurisprudence are digested.

The present volume contains over 2200 pages, and the low price at which it is offered by the publishers brings it within the means of every member of the profession.

WITH GAUGE AND SWALLOW. By Albion W. Tourgée. J. B. Lippincott Company, Philadelphia. $1.00.

The famous author of "A Fool's Errand" is so well known to the reading public that anything from his pen is sure to excite unusual interest. In the present volume Judge Tourgée makes use of a series of legal incidents for the foundation of an absorbing and fascinating story. The subordinate of a great law firm relates a number of episodes which, commencing with Professor Cadmus's great case, gradually culminate in the story of his own romance. "The profession," as the author says, "will easily trace the line of probability in all these narratives, and a little investigation will reveal the absolute verity of many of them." The book is one which the reader will be loath to lay down until he has reached the closing words.



Yours Truly,
A. C. Freeman

The Green Bag.

VOL. II. No. 4. BOSTON. APRIL, 1890.

ABRAHAM CLARK FREEMAN.

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In 1861 his father decided to remove to California, and young Freeman accompanied him.

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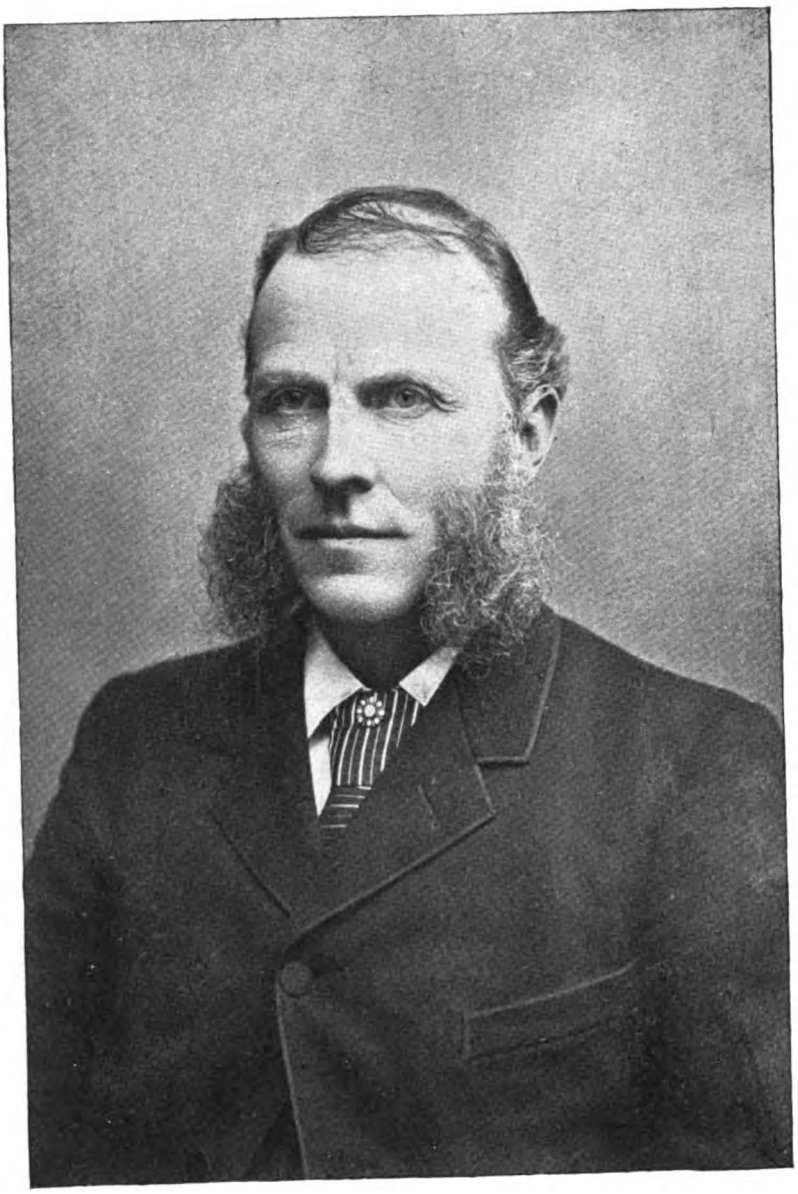

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man began at once to cast about for another unoccupied field, and a year later he had finished for the press his treatise on "Cotenancy and Partition," — the most intricate and perplexing title of the law. This work is, and will remain, his masterpiece. Challenging at the outset the definitions of Littleton, Blackstone, Kent, Preston, and all others, showing in what they were incomplete or incorrect, by careful comparison, revision, elimination, and modification he formulated his own definitions, which are remarkably clear, simple, and complete.

In 1876 his treatise on "Executions" was published, and this was followed in 1877 by a work on "Void Judicial Sales."

In 1879 the death of Mr. Proffatt led to the engagement of Mr. Freeman as editor of the "American Decisions," of which he reported and annotated eighty-nine volumes. Each one of these volumes contains a large number of carefully written notes, some of them reaching the dignity of monographs or treatises upon the subjects discussed. He is now author or editor of one hundred and two volumes of the most approved law books. His works are recognized, cited, and respected as authority by the highest courts in the land.

LAWYERS IN LITERATURE.

By Wilbur Larremore.

Of late there have been some significant signs of the growth of a relation of mutual helpfulness between the professions of Law and Literature. The witty and talented editor of the "Albany Law Journal" has demonstrated most conclusively that a lawyer may become a *littérateur*, and a *littérateur* still remain a lawyer, without losing in either capacity through his gain in the other. The appearance and success of the "Green Bag," devoted as it is to the literary phases of the law, is another strong evidence of developing reciprocity. It should be remembered that in England it has never been the custom to look askance at a barrister because occasionally he wrote an essay on a theme not strictly germane to "shop," or even rent his gown and tore his wig in struggling with refractory rhymes. Barristers are all supposed to be University men; and if the old inspiration of the cloisters steals back upon them at times, the offence is regarded — as all crime is to be considered in Mr. Bellamy's Boston of A. D. 2000 — a piece of unavoidable and pardonable atavism. In America, however, there has been a prejudice against the "literary lawyer." Probably this springs in part from the materialistic tendency in a comparatively new country. "Literary fellers" have been frowned upon also in political life, by statesmen of the hayseed and log-cabin type. But, more potent than this, has been the honest American antipathy to *dilettanteism* in any form. The sentiment has been that the law is enough to absorb any man's attention; and that if he dissipated part of his energy in writing for magazines, he thereby became less reliable in the technical work of his calling. How many who unconsciously reason thus remember that at least eighty per cent of the political work of the country is done by lawyers in regular practice? It is expected that the legal profession shall take the lead in public life, and it is never feared that a lawyer will be unfitted for his professional duties by attending conventions and primaries. As matter of fact, political activity is much more inimical to systematic legal practice than occasional

literary effort. One can choose his opportunities to study and write when other engagements do not press. But he who is influential in political life has no moment to call his own. He must make and keep regular appointments, no matter how much his business is interfered with; and besides this, he commonly spends many valuable hours in private consultations, in countermining and petty diplomacy. The lawyer who takes literature, instead of politics, as his "led horse," has much more command of his time, and unquestionably much less exhaustive drain upon his vital energy. A man of any self-control can not only keep his legal life and his literary life from curtailing each other, but can cause each to stimulate the other, by bringing variety and zest to what might otherwise become a monotonous existence.

There are two principal perils awaiting the legal practitioner who essays to produce anything worthy to be called literature. The first is one of style. The lawyer must learn to dispense with verbiage. It is a rule of literary art to assert a fact or state a thought once, in the most succinct form in which it can be put, and then drop it. The ordinary legal method is much more simple; it consists in emptying a page of synonyms over the sheet, and leaving the reader to pick out the exact meaning as best he can. Too many of our profession take as their model of English composition the granting clause of a deed, or that ancient classic, a General Release. The second danger is one affecting, not manner, but substance. Lawyers are prone not to take literary work seriously. Nearly every man of education has acquired a certain facility in the expression of ideas, and is apt to fancy that he requires but opportunity and determination in order to become a popular writer. This delusion is by no means confined to members of the legal fraternity. The saying has almost become cant, when a professional man retires from active practice, that he intends "to devote himself to literary pursuits," as if here were a field always open to every person not actually illiterate.

Literature is both a profession and an art. Its cultivation is by no means incompatible with success in another profession or another art. But any literary work, to have the slightest value, must be itself professional; that is, it must embody its author's serious and deliberate effort. It must consist of an original, intellectual product, whether of thought proper, or of imagination, fancy, humor, or wit; and be cast in such form as to make it logically effective, or æsthetically pleasing. The composition with which one merely diverts his leisure moments, and into which no part of his mental vitality goes, should be reeled off, page after page, as it flows from the over-facile pen, directly into the study-fire. It will at least impart a cheerful glow to the room; it would not serve even that useful purpose in an editor's waste-basket.

The attempt to speak of literature from the standpoint of the lawyer only serves to demonstrate anew the futility of most general maxims about the literary career. Study of the biographies of great wits never made a new poet or dramatist. Literary geniuses are not the fruit or the creatures of rules; they are usually exceptions to many existing rules, though their success often modifies the rules for the future. Literary production is the flower of whatever is in the man. Culture, observation, training in style, all contribute to the result. But it is the unique personality, the power of assimilating the results of others' work, and of thinking original thoughts, that make the writer. In entering the field of literature a lawyer's professional drill ought in many ways to be a help; there is no excuse for its ever acting as a handicap. But he must remember that if he would produce anything above the grade of amateur journalism, he must go to work as seriously, and with as constant an eye to the critical sense of others, as if he were preparing a brief that he knows his opponent will endeavor to tear to pieces.

ANIMADVERSION OF COUNSEL BY THE COURT.

By Frank W. Hackett.

I WONDER if the young practitioner of the present day is advised to provide himself with a huge "Lawyer's Commonplace Book," wherein to enter notes under the head of "Titles generally used in the Practice and Study of the Law." Such was the fashion when I came to the bar. Ten hundred and fifty pages in a stout binding opened up a magnificent prospect for the collection and orderly arrangement of legal odds and ends at the time I entered the field. And I well remember my going at the task nobly. The bulky volume I confess, however, has stood untouched upon the shelf for many years. To-day I have taken it down, knocked off the accumulated dust, and turned over its leaves, in the hope of finding something wherewith to appease the courteous but inexorable demands of the Editor of the "Green Bag." That remorseless intruder into the quiet and retirement of a lawyer's hour of ease has by some sharp practice (known only to himself) got an order upon me to send a contribution to his unique and remarkable journal. It is a way of circumvention that he has.

As I glance over vast areas of white pages, with only here and there a brief entry, I am about to close the book and lift it back to its wonted post, when my eye falls upon a headline, at page 855, "Counsel, Animadversion upon, by Court." Not having time to prepare an article, it occurs to me that I will copy out certain entries I find under this title, since they may prove interesting to other readers than myself. The entries have the merit, at least, of being genuine excerpts clapped into this repository at a day when the fresh aspirations of youth attended the ceremony. Let me string them along; for all disconnected as they are, they once formed a part of the *res gestæ*:—

How then are the plaintiffs to prove this allegation in their writ, unless by parol evidence? The counsel for Day has not informed us, and we do not know. — Metcalf, J. Root *v.* Fellowes, 6 Cushing, 30.

There really is no question in this case that will bear argument. — Fletcher, J. Central Bridge Corporation *v.* Sleeper, 8 Cush. 327.

There is a point in the case that seems never to have occurred to counsel. — Metcalf, J. Hills *v.* Farrington, 3 Allen, 429.

We are somewhat embarrassed in our consideration of the voluminous bill of exceptions in this case. . . . As the whole trial proceeded upon an unfounded assumption and misapprehension of the law applicable to the issue, it is difficult to determine what rulings were appropriate or material under such circumstances. The whole was a mistrial; and the discussion at the bar seems to be whether it was a mistrial properly and regularly conducted. — Hoar, J. Haywood *v.* Draper, 3 Allen, 552.

It is difficult to determine the rights of parties upon pleadings so inartificial and loose as those in the present case. — Wells, J. Vinal *v.* Richardson, 13 Allen, 525.

We admit the correctness of the concluding paragraph in the defendant's written argument, that law and equity usually draw after them the judgment of the court, but in this case we cannot perceive that either is on the side of the defendant. — Parris, J. Hasty *v.* Wheeler, 3 Fairf. 440.

We are at a loss to understand the grounds on which these exceptions rest. — Bigelow, C. J. Cox *v.* Cook, 14 Allen, 165.

These exceptions are groundless. — Bigelow, J. Morris *v.* Bowman, 12 Gray, 468.

The declaration in this case is drawn with no legal precision or accuracy, and we cannot be certain that we understand exactly what is intended to be alleged. — Hoar, J. Benson *v.* Gas Light Co., 6 Allen, 149.

The bill of exceptions (so called) in this case is a sort of abstract or index to the history of a case tried in the Western District of Pennsylvania.

Protesting against attempts at mystifying the merits of a case by such records, we shall proceed to notice the single error which it is supposed that the court has committed in the charge to the jury. — GRIER, J. Evans *v.* Patterson, 4 Wall. 224.

This case is encumbered by a mass of inartificial pleadings, and it is difficult to ascertain from them what is the question intended to be presented to us.— CHAPMAN, C. J. Taft *v.* Ward, 106 Mass. 523.

It is necessary to dissipate the cloud of pleading in which this case is enveloped, in order to form a distinct idea of the questions intended to be brought to the view of the court below. Unfortunately, as not unfrequently happens in this complex and injudicious mode of conducting a suit with all the clerical skill displayed by counsel in multiplying their counts and pointing their bills of exceptions, the principal questions are really at last not brought to the view of the court. — JOHNSON, J. Dunlop *v.* Monroe, 7 Cranch, 242.

It is probably because this case originated in a State court, that the court below permitted the counsel to turn the case into a written wrangle, instead of requiring them to plead as lawyers in a court of common law. We had occasion already to notice the consequences resulting from the introduction of this hybrid system of pleading (so called) into the administration of justice in Texas. (See Toby *v.* Randon, 11 How. 517, and Bennet *v.* Butterworth, 11 How. 667, with remarks on the same in McFaul *v.* Ramsay, 20 How. 525.) This case adds another to the examples of the utter perplexity and confusion of mind introduced into the administration of justice, by practice under such codes.—GRIER, J. Green *v.* Custard, 23 How. 484.

The whole argument of the counsel for the plaintiff is founded on a fallacy. — BIGELOW, J. Calder *v.* Kurby, 5 Gray, 590.

The pleadings and brief in this case exhibit an astuteness upon minor points hardly to be expected, and certainly not required from a State where a code of practice is in force. The real question presented by the demurrer arises upon the construction of a written contract. The question made upon the form of the pleadings is quite unimportant. — HUNT, J. Evansv. &c. R. R. *v.* Androscoggin Mills, 22 Wall. 594.

[N. B. — Mr. Wallace, the reporter, took the liberty of omitting this paragraph with which the opinion opens. It forms, however, a part of the original opinion, as published at the time, and it is to be found in the Lawyer's Co-operative Co.'s Volume, book xxii. p. 725.]

In the view we take of this case we are not required to wade through the various statutes of Missouri, and the decisions of the courts of the State, in order to determine whether or not the proceedings in question are valid. — DAVIS, J. McQuiddy *v.* Wade, 20 Wall. 17.

The bill of exceptions in this case is made up without any regard to the rules in accordance with which such bills should be framed. It is little else than a transcript of the evidence, oral and documentary, given at the trial, and covering ninety-six printed pages of the record, when the exceptions could have been presented with greater clearness and precision in any five of them. In its preparation counsel seem to have forgotten that this court does not pass, in actions at law, upon the credibility or sufficiency of testimony, etc. — FIELD, J. Lincoln *v.* Claflin, 7 Wall. 136.

The bill of exceptions furnishes the same ground of complaint which was remarked upon in Lincoln *v.* Claflin. . . . The points arising for our consideration could have been better presented in a very small part of this space. Such a mass of unnecessary matter has a tendency to involve what is really important in obscurity and confusion. . . . Winnowing away the chaff, we find the questions left for our examination neither numerous nor difficult of solution.—SWAYNE, J. Laber *v.* Cooper, do. 568.

The counsel on both sides have consumed much ink and paper in endeavoring to show the corrupt practices and dishonest motives of their adversaries' clients. We could not avoid reading all this. Conceding as a matter of courtesy the force and truth of all that is said on both sides, we have been unable to perceive its application to the construction of the code.—SWAN, J. Union Bank of Rochester *v.* Union Bank of Sandusky, 6 Ohio St. 262.

We have no doubt that the complainant honestly believes that he has been greatly wronged by the defendant below, who has taken the liberty of breaking his promise with regard to a parol contract for an exchange of property with the complainant; but we had supposed that in the opinion just delivered, we had shown clearly to the satisfaction of any person who did not suffer under some obliquity of mental vision, that by his own statement of his case the complainant had mistaken his remedy. In this case there was nothing shown but a breach of promise and a scrambling

possession, followed by litigation. The present application shows more perseverance and faith in the applicant than discretion or judgment; and presents not a single feature of a case proper for a bill of review. — GRIER, J. Purcell *v.* Minor, 4 Wall. 521.

Without great injustice to other interests it is impossible that our whole time shall be given to a single class of questions, and we have not therefore deemed it our duty when we have reached a conclusion with which we are satisfied, upon any given question affecting a class of cases, to answer at length, and expose what we deem a fallacy in every subsequent argument in which counsel may imagine they have successfully demonstrated the inaccuracy of our conclusions. — Per CURIAM. Speight *v.* People, 87 Ill. 599.

The Lucille, 19 Wall. 73, furnishes an instance where the court ignored the arguments of both counsel, and decided the case upon a point apparently not suggested by either.

This practice of unlimited assignment is a perversion of the rule, defeating all its purposes, bewildering the counsel of the other side, and leaving the court to gather from a brief, often as prolix as the assignments of error, which of the latter are really relied on. — MILLER, J. Phillips *v.* Seymour, 91 U. S. 648.

We do not find it necessary to pursue further an examination in detail of the complicated maze of pleas, demurrers, answers, amendments, and interlocutory orders, which followed the filing of this so-called cross-bill. — CURTIS, J. Shields *v.* Barrow, 17 How. 146.

A congeries of points or prayers of instruction exceeding thirty in number and covering nearly as many folios, were submitted to the court, some of which were given as prayed for, some with "qualifications," and many refused. If a judge in answering such a mass of hypothetical and verbose propositions should occasionally contradict himself, or fall into an error; or if the jury, instead of being instructed in law,— should be confused and misled, it may be considered the legitimate result of such a practice. We do not think it necessary, therefore, to examine particularly each one of this labyrinth of propositions, etc. — GRIER, J. City of Boston *v.* Lecraw, do. 432.

Notwithstanding the magnitude of the appellant's paper book, and the earnestness of his counsel in argument, the case admits of no extended discussion. . . . The latitude in adducing testimony before the examiner by the counsel for the plaintiff below is not to be commended, and I cannot doubt that if a little of the consideration bestowed on the argument had been present at the examination, much irrelevant testimony would, as it ought to, have been omitted. — THOMPSON, J. Leach *v.* Anspacher, 55 Pa. St. 89.

See Mussina *v.* Cavazos, 6 Wall. 363, where a case on a writ of error to the District Court for the Eastern District of Texas, was argued on a motion to dismiss for defect in the writ. The motion was denied. The case was afterward argued elaborately on its merits. The court then discovered that seven tenths of a closely printed record of 522 pages were taken up by a bill of exceptions that had not been signed or sealed by the judge below.

In Farnum *v.* Davidson, 3 Cush. 232, the court wastes no compliments upon either counsel. "The error which runs through the whole case, and seems to have been common to both parties, is in considering evidence as facts." — Per FLETCHER, J.

The position in which the court is placed in respect to this cause has been brought about mainly by the officious intermeddling of the counsel for the moving party with the scruples of a judge who, with a proper sense of duty, promptly declined to sit in the cause. — HURLBUT, J. Oakley *v.* Aspinwall, 3 Comstock, 549.

Such are some of the criticisms upon the handiwork of individual members of the bar to which their Honors have felt constrained to give expression, and no doubt the circumstances of each case warranted the reprimand. Let it be remembered, however, that they are not the result of a search through the reports, — a task one would scarcely feel inclined to impose upon himself. It is to be remembered too that they are but instances scattered here and there; while the pleasant things in the reports said by judges of counsel are too numerous to be counted. A counsel gets accustomed to hear the court, while reading an opinion, speak of his argument as "able and ingenious," — words of compliment that would be more satisfactory were it not that they so often foreshadow a conclusion that the wise men upon the bench have failed to become convinced by it.

MILLER v. RACE.

(1 SMITH'S LEADING CASES, 9th ed. 491.)

By John Popplestone.

[*Bank-note stolen. No title to chattel personal acquired from person having no title. Exception to rule.*]

THE post-boy takes the western way,
The London mail-bag at his back;
'T was where the ungentle Sheppard lay
Whose name was Jack.

There was within one letter's fold
A sight to make the miser gloat,—
Ah! better than the yellow gold
The crisp bank-note!

'T was sent by Mr. F. to pay
A debt he owed, had it but got
Safe guarded on its destined way;
But — it did not.

A shout, a shriek, at fall of night;
Black Bess, a highwayman thereon;
A post-boy in an awful fright;
A mail-bag gone!

. . . . .

"Come bring the breakfast forth, mine host;
The cheerful coffee-cup I beg,
Some rashers trim, and with my toast
I 'll take an egg.

"We who perforce must ride at night
When business calls, against our will,
Can boast a traveller's appetite.
Boots, bring the bill!"

How should our worthy landlord know
The note wherewith he paid his score
Was that the post-boy had let go
The night before?

Guileless he jogs to London town,
Seeks out the Bank, and straight thereat
Upon the counter puts it down,
With "Cash for that."

But Mr. Race, the cute cashier
(Commercial men were ever so),
When he had got the note, said, "Here!
Exactly so.

"This note was stolen the other night,
As, doubtless, very well you know;
Nor cash, nor note, since you 've no right,
From here will go."

"Why," said the jolly Miller, "why,
I 've always heretofore been told
Notes pass by mere delivery,
Just as does gold

"Or silver coin. If you refuse
To pay the note that 's fairly mine,
We 'll take a judge and jury's views,
Sir Superfine!"

'T was in good faith, the jury said,
The note was ta'en. No more he knew
Of Sheppard, or of Beau Brocade,
Than I or you.

And judgment did Lord Mansfield give,
"Bank-notes pass by delivery;"
So home the Miller went to live
By £. s. d.

Lays of a Limb of the Law.

THE ALBANY LAW SCHOOL.

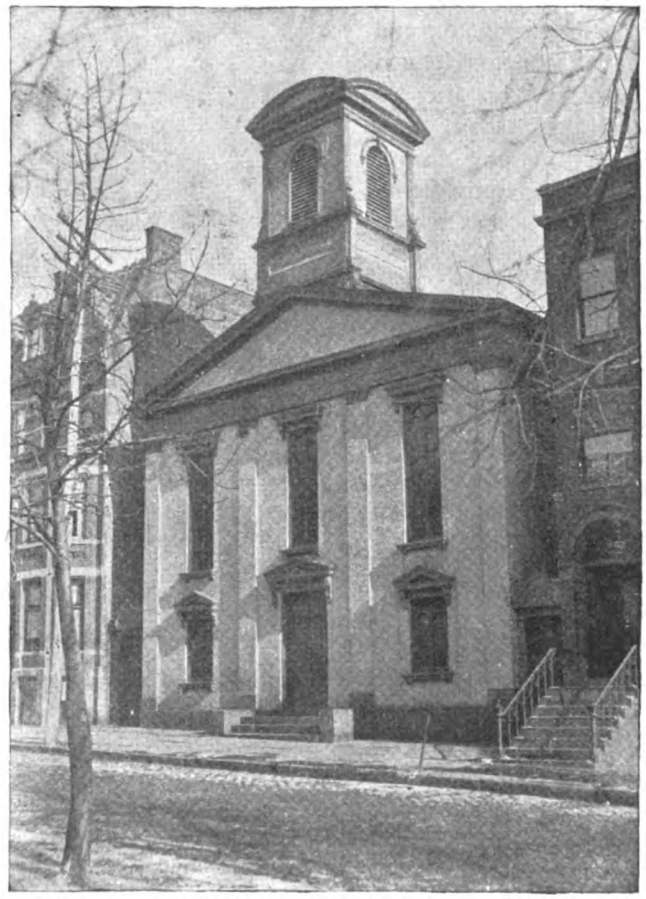
By Irving Browne.

AT the time of the organization of Union College, in 1793, there was a division of sentiment among its founders as to the location of it, one party favoring Albany and the other Schenectady. To the great disappointment of Albanians, it was decided to place it at Schenectady. Although all united in endeavoring to make the institution successful, the feeling that Albany should be a seat of learning continued; and to this was owing the passage of an Act of the Legislature in 1851, incorporating the University of Albany. The Act gave the original Board of Trustees power to organize a literary department, a scientific department, and a law department, and provided that the already existing Albany Medical College might unite with the departments to be formed, to constitute the University of Albany. The Albany Law School was organized in that year. The Dudley Observatory was the only scientific department ever organized, and no literary departments were ever founded.

The University of Albany was authorized to take and hold real and personal property, with the sole limitation that it should not own real estate yielding an annual income of more than ten thousand dollars. The prudent and conservative spirit of Albany has guarded against any danger of a forfeiture of the charter on this score. The Albany Law School has never had a dollar of productive endowment.

The University of Albany continued on this footing until 1873, when, chiefly through the efforts of Eliphalet Nott Potter, President of Union College, it was joined with that College to form Union University; and now the Albany Law School is a department of that University, and its instructors are members of the University Faculty.

When first established, the Law School had no competitor in this part of the country except Harvard and Yale. Now the State of New York alone has four other law schools; namely, Columbia, Cornell, New York, and Buffalo, the first two of which are richly endowed.



LAW SCHOOL BUILDING.

The Albany Law School was established soon after the Constitution of 1846 had swept

away the old system of clerkship, and had declared that any man should be admitted to practise law, provided he was found qualified on an examination by examiners appointed by the court. As if this were not loose enough, it was enacted that the diploma of the Albany Law School should entitle the holder to admission to practice without any examination at bar! It was a common thing for the Law School to grant a diploma on six months' study in the Law School; and many students ripened into lawyers in six months, without other study or any examination in court, being admitted on motion of the Faculty.[1] This state of things continued until 1871, when a new system was adopted and a new course of preparation was required by the State, so that now, from having been the loosest, its requirements have become the most stringent in the United States. It must be said for the Law School that it is alleged, and I believe truly, that no graduate of the school has ever been rejected by the court examiners.

IRA HARRIS.

In the first circular issued by the Trustees in 1851, they said: "They suppose also that they are presenting to the young men of the State and Nation facilities for acquiring varied knowledge which are nowhere else to be found of equal extent. The city of Albany is more centrally situated than any other place of the same size. It, more than any other, combines the advantages of city and country, presenting the abundant means and opportunities for improvement of the one, with the good health and cheapness of living of the other. As the capital, it is during the winter months the seat of legislation, with all its incidental benefits. In its State Library, soon to have a building especially erected for its accommodation, it presents the best selected, if not the most extensive law library in the United States.

"Besides these, the Trustees feel confident that no other city of the same size can offer to the law student equal facilities for the acquisition of legal knowledge. A special term of the Supreme Court for the hearing of motions is held on the last Tuesday of every month. Courts either for the trial of jury causes or of arguments at bar are almost constantly in session, and the students have thus opportunities of witnessing the progress of trials and of arguments conducted and made by men who are eminent in the profession. The examples thus afforded, in the efforts of men who occupy the first rank in the profession, cannot fail to produce the most salutary effect. Few American cities, and none of the same size, can boast an array of legal talent superior to the city of Albany. The recent passage of the amendments to the Code, permanently locating the sessions of the Court of Appeals in the city of Albany, is a circumstance of great importance in its bearing

[1] The writer of these lines was one of these favored individuals; but fortunately for him and his clients, he had studied in a law office for three years previously.

upon the Law School; affording as it will to students opportunities of listening frequently to the highest displays of judicial reasoning on questions of great and absorbing interest." They also stated that "the price of board in respectable families ranges from $2 to $2.50 per week."[1] Excepting the last, the foregoing advantages all exist to-day. Albany is undoubtedly the best place in this country for the study of law, leaving law schools out of the question. The State Law Library, now housed in the magnificent new Capitol, contains forty-five thousand volumes. The Court of Appeals is the most important court in the country, excepting the Supreme Court of the United States. There are many fine private law libraries and many lawyers doing a large and varied business. I do not know that I should lay much stress on the "incidental benefits" of the Legislature; and I am sure that the "fossils" and "morbid specimens" of which the Trustees speak in another part of the circular as important aids to education, are not confined to the museum and geological hall. As to board, probably the Trustees' figures should be rather more than doubled, but the "fossils" and "morbid specimens" are still free.

AMOS DEAN.

[1] Among the "Livingston Correspondence," a collection of manuscripts described in the sale catalogue of the library of the late Samuel L. M. Barlow, of New York, is a letter from Peter W. Yates, of Albany, dated Sept. 14, 1782, in answer to Brockholst Livingston, who is "anxious to go to Albany to finish his law-studies," stating that "the price for boarding will be about £45 annually."

Having no endowment and no building of its own, the school was obliged to content itself with rented rooms for several years,[1] until about 1854, when the south wing of the Medical College was built for its use, containing but one room, which it occupied until 1879, when it was enabled to procure its present spacious, comfortable, and appropriate quarters in an independent building, in State Street, a few rods from the new Capitol.

As was stated in a sketch of the school published in the "Albany Argus" in 1877, —

"During the first few years the school sought merely to aid students in their studies, without adopting any very comprehensive scheme of instruction. By degrees a system of instruction grew up and was enlarged, and the length of the course was increased until it became (as it is now) the longest annual course in the country. Some time after, several years after the opening of the school, — the law of the State prescribing no term of study, — it adopted and imposed upon itself a rule, insisting upon at least one academical year's study in the school. This was not a privilege granted to the school, but a rule which it imposed upon itself at a time when its students (young America) were at liberty to walk out of the school, as they often did, in the middle of the course, and

[1] The first course of lectures was delivered in a large hall in a building which formerly stood where the new Post-Office and Federal Building now stands, at the foot of State Street, on Broadway. The next two years the lectures were delivered in the Cooper Building, which stands on the corner of State and Green Streets.

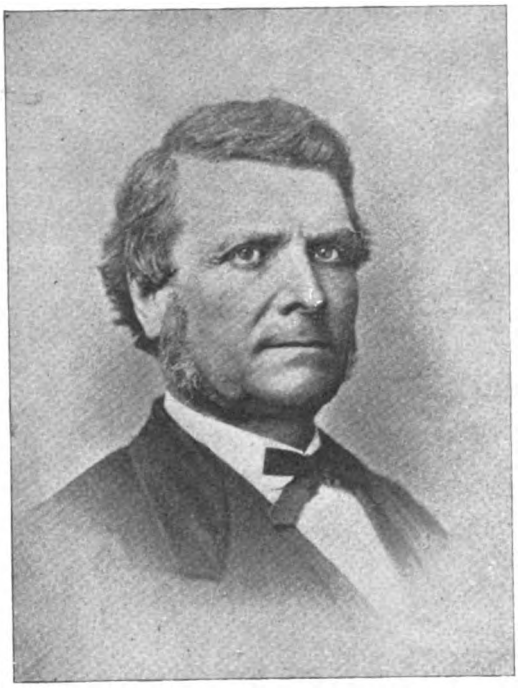
step into the class being examined by a committee of the court, — thus eluding the test of qualifications insisted upon by the school."

From another sketch I derive the following: —

"For the first three years but one term of sixteen weeks was held per annum. In 1864 it was thought advisable to hold two terms of twelve weeks each; and this arrangement continued until 1859, since which time three terms of twelve weeks each have been held yearly.

"The first class graduated but twenty-three men,[1] the second class fifty, and after that a regular increase until the breaking out of the Civil War.

"The class of 1856 graduated eighty-five, the class of 1858 one hundred and eight, and the class of 1860 one hundred and twenty-nine. At the close of the war the classes were larger than ever before, one class numbering one hundred and fifty members. At one time every rank in the army, from private up to brigadier-general, was represented among the students.



AMASA J. PARKER.

"Many there were minus limbs and otherwise disfigured as the result of their service in the army. The Law School is justly proud of her roll of honor, for thereon are inscribed the names of many of her sons who went forth to battle for their country at the expense of personal ambition."

The first President of the Faculty was Chancellor Walworth, one of the most brilliant and distinguished lawyers that ever graced the magistracy of this country. Succeeding Presidents have been Orlando Meads and William L. Learned.

The first corps of instructors consisted of only three, but they were men of national reputation and profound learning, and gave the school its early and well-deserved reputation. They were Ira Harris, Amos Dean, and Amasa J. Parker. For seventeen years they continued to hold their position together. The course was divided into three hundred and sixty annual lectures, of which Professor Dean gave one hundred and eighty, and Professors Harris and Parker ninety each.

Professor Harris lectured on Practice, Pleading, and Evidence; Professor Parker on Real Estate, Wills, Criminal Law, Personal Rights, and Domestic Relations; and Professor Dean on Personal Property, Contracts, and Commercial Law.

I can speak of these three eminent and useful men from having heard their lectures and from a long subsequent acquaintance with them.

Ira Harris was born at Charleston, Montgomery Co., N. Y., in 1802. He graduated from Union College in the class of 1824; studied law at Albany, and there commenced his practice. He rapidly rose to a position of eminence in the profession, and in 1844 became a member of the Legislature. In 1847 he became a Justice of the Supreme Court, which position he held until 1860. He was a member of the constitutional conventions of 1845 and 1867. In 1862 he was elected to the United States Senate, which position he

[1] An error. The first class consisted of twenty-three, and graduated but seven.

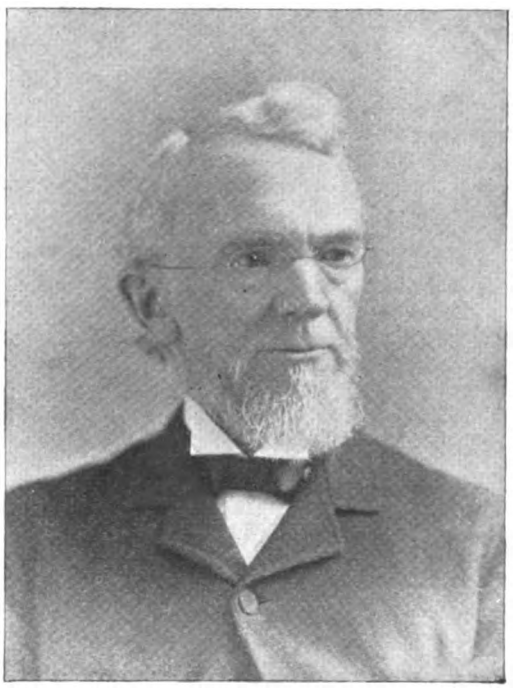
held for six years. He died in 1875, having been a lecturer in the Law School from its establishment to the time of his death. He was one of the ablest judges and one of the most admirable judicial writers in the history of our State. His opinions in the volumes of Barbour and in the Court of Appeals are models of learning, judgment, and expression. He rendered great service to the State by his advocacy of the new system introduced by the Code of Procedure of 1848, and by his numerous opinions in construction of it. Indeed, he may well be called the great judicial expounder of the Code. His lectures on the Code, on evidence, and on the conduct of trials were the most admirable and useful, in my opinion, ever delivered at the school. They were always extemporaneous, and illustrated from the wealth of his experience. He cited very few authorities; he himself was authority. His manner toward the students was paternal, and he attached them very strongly to him. His kindness followed them in a practical manner, as I can testify; for more than once he responded very fully in writing to my inquiries on knotty points. In person Judge Harris was a giant, but his shoulders were stooping; his complexion was swarthy, his hair long, his eyes were deep set and dark, his voice was grand and musical. His manner of speaking was very dignified and deliberate, — the true senatorial manner. As he sat on the bench, he presented a wonderful likeness to Daniel Webster.

ISAAC EDWARDS.

Amos Dean was a born educator, organizer, and manager. It was largely due to his efforts that the school was organized and met with such extraordinary success. He was the business manager of it during his seventeen years' connection with it. Besides being an accomplished lawyer, he had considerable literary acquirements and was learned in medicine. His work on "Medical Jurisprudence" and his extensive "History of Civilization" are notable monuments to his learning and research. He was one of the most excellent of the race, a gentleman in the highest sense, — courteous, genial, kind-hearted, and as simple and unaffected as a child. After the lapse of thirty years I recall him with affection and gratitude.[1] Mr. Dean knew how to manage young men to perfection, for he was tactful, hearty, humorous, and considerate. His lectures were carefully and admirably written; but he was prone to cite too many authorities, as it now seems to me. So concise and striking was his expression of principles, however, that I can recall some of them in his very words to this day. He died in 1869.

[1] If I may be pardoned a personal reminiscence, he was the first man to speak a word of praise and encouragement to me in my chosen profession, and he sent my graduating thesis — favoring the admission of parties as witnesses in their own behalf in civil actions — to the "American Law Register;" and that magazine published it with a careful disclaimer of being committed to its doctrine!

Amasa J. Parker is the only survivor of this great trio of instructors. Some of his subjects were of a less interesting although not less important character than those of his associates, and consequently he came less strongly in contact with the students. It is practically impossible for a professor to magnetize his pupils by dissertations on the rule in Shelley's Case, or our statutory law of trusts. But Judge Parker always commanded the attention and respect of the students, and probably they found his lectures of the kind that like wine grow better with the age of the article and the user. Judge Parker was always, and is to this day, one of the stanchest friends and champions of the school, and for many years was president of the Board of Trustees. Judge Parker has a wide reputation. He was once candidate for the office of governor. He has a wonderfully acute, quick, subtile, and ingenious intellect, and his presentation of causes in banc has always been remarkable for adroitness and tact, dignity and courtesy, as well as for learning and foresight. As a judge, he was one of the most efficient that ever sat at circuit in this State, and as a lawyer, for some years he argued a large proportion of the causes in the Court of Appeals as counsel for attorneys in various parts of the State. He retired from his professorship in 1870. At the age of eighty-four he is still among us, argues causes in the appellate courts, is active and alert as a young man, his hair hardly tinged with gray, his interest in national and municipal affairs unabated.



HORACE E. SMITH.

Judge Parker was succeeded, as lecturer on Real Estate, by Judge William F. Allen, who filled that chair until his death in 1878. Judge Allen was for many years a judge of the Supreme Court, and from 1870 until his death was a judge of the Court of Appeals. His mental powers and legal acquirements were of the highest order. He ought, in my opinion, to be ranked with the greatest judges who have sat on the bench of this State in my professional lifetime, — the peer of Denio, Comstock, and Rapallo, equally powerful and adroit with the pen or in the discussions of the consultation-room. His intellect was like a Damascus blade, shining, sharp, swift, and unerring; and withal he had the industry and research of an antiquary. The State was a sad loser by his death at seventy; for I feel confident that in his retirement he would have produced some law treatise of great learning, strength, and brilliancy, and he had announced his intention to devote a considerable part of his time to lecturing in the school.

Mr. Dean was succeeded by Isaac Edwards, who continued in the business charge of the school until his untimely and lamented death in 1879. He is widely and favorably known to the profession as the author of several legal treatises, especially those on Bills and Bailments. For many years he was constantly a judge off the bench, being

a favorite and approved referee. Under his administration the school continued largely attended. He greatly endeared himself to the students by his gentle and winning manners and his kind and sincere nature. He was an amiable, excellent, and sound man, and a very accomplished lawyer.

Mr. Edwards was succeeded in 1879 by Horace E. Smith, of Johnstown, N. Y., a gentleman of mature years, wide experience in practice, and ample professional learning. As manager of the business interests of the school and a daily lecturer for ten years, Mr. Smith has done a very useful work and has earned an honorable reputation. It was largely through his influence and persistent energy that the present improved accommodations were obtained for the school. The Faculty and friends of the school regretted his determination in 1887 to resign his post, and in compliance with their urgency, he postponed his action until the spring of 1889. Mr. Smith's written lectures were distinguished by copious learning and comprehensiveness and accurate analysis, and he commanded the respect and esteem of his pupils and associates by the dignity and courtesy of his demeanor and his ardent devotion to the duties of his position.

GEORGE W. KIRCHWEY.

George W. Kirchwey, one of the most brilliant and best educated of the young lawyers of Albany, was, by the unanimous voice of the Faculty and Trustees of the school, chosen to succeed Mr. Smith. He is thirty-four years of age, and was graduated at Yale in 1879. He brings to his arduous post the gifts of youth, energy, tact, physical and mental vigor and power of expression, and the acquirements of professional and general scholarship in a remarkable degree. The opening of his administration has been characterized by an unusual measure of success, and the Faculty predict for him great eminence as an instructor, and an increase of usefulness and prosperity for the school. Mr. Kirchwey has adopted a new and most effective method of instruction, based upon the Harvard system of teaching by leading cases. His lectures, which are entirely extemporaneous and are combined with the discussion of carefully selected cases previously assigned to the class, have resulted in stimulating the interest of the students to a remarkable degree.

The following is a list of the present Faculty, with the subjects of their lectures: Hon. William L. Learned, LL.D., President of the Faculty and Professor of Equity Jurisprudence and the Trial of Causes; George W. Kirchwey, Dean of the Law School and Professor of Jurisprudence, the Law of Contracts, and Corporations; Hon. Judson S. Landon, LL.D., Professor of Constitutional Law; Hon. Matthew Hale, LL.D., Lecturer on Personal Rights and Professional Ethics; Charles T. F. Spoor, Professor of Pleading, Practice, and the Law of Real Property; Hiram E. Sickels, Professor of the Law of Evidence; Irving Browne, Professor of the

Law of the Domestic Relations and Criminal Law; Nathaniel C. Moak, Lecturer on Books and Judicial Systems; James W. Eaton, Jr., Professor of Elementary Law, Wills and Torts; Maurice J. Lewi, M.D., Lecturer on Medical Jurisprudence.

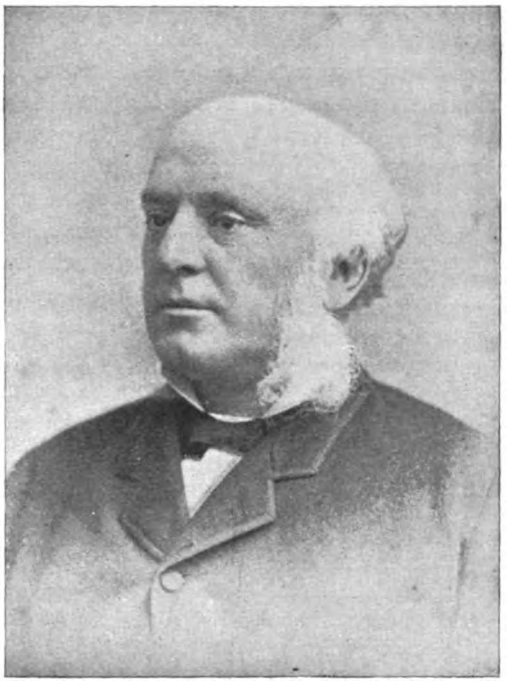
William L. Learned, the present President of the Faculty, who has held that post for ten years, is one of the few men on the bench whom Mr. Bishop would consider capable of being a "jurist." He has been for twenty years a Supreme Court Judge, and for fifteen years of that time presiding judge of the general term of the Supreme Court for the Third Department, — the intermediate appellate court, — and has long enjoyed the reputation of unusual learning and temperate and sound judgment in the law, and of liberal general culture. He is a skilled civil lawyer, and formerly gave a course of lectures on the civil law in the school, which was unfortunately crowded out by the exigencies of the one-year system. No resident of Albany is more beloved and respected than this excellent and useful citizen, who in his life of sixty-eight years has paid his debt to society many times over. Probably no other resident here is so much interested in the cause of general instruction and is in authority in so many educational institutions. He adds to his extensive legal acquirements a general cultivation in letters and the charm of polished discourse. Although his judicial labors are exceedingly onerous, his time and talents have always been at the service of his State and city, and his hand has always been open in good works for the elevation and improvement of the community.

WILLIAM L. LEARNED.

Mr. Hiram E. Sickels has for eighteen years discharged with marked ability the duties of reporter of the Court of Appeals, and has edited seventy-one volumes of those famous reports. This experience alone is enough to make a learned lawyer of any man, and his elaborate and profoundly learned lectures on Evidence corroborate the reputation which would thus be inferred. He has taught this branch in the school with distinguished ability and success for fourteen years. Mr. Sickels is justly a favorite of the judges of his court, and he is greatly esteemed in the community for his manly qualities and his courteous demeanor.

Mr. Matthew Hale and Mr. Nathaniel C. Moak are active leaders of the Albany Bar, and have a national reputation. Their business is so engrossing that they are not able to give extended courses of lectures. Mr. Hale formerly gave many more, succeeding Judge Parker, and immediately preceding the writer as lecturer on Domestic Relations and Criminal Law. He is still young, — not above sixty (although it was judicially decided the other day in England that any one above fifty is "aged"), — and has the most winning personal qualities, as well as learning and culture quite remarkable in so brilliant an advocate. Mr. Moak is about fifty-seven years of age, and is one of the most cele-

brated lawyers in the country. Fortunate is the student who can browse in his superb law library of sixteen thousand volumes, every one of which bears the pencil-marks of his appalling industry and research. These two remarkable men are not only willing but glad to shed the light of their talents in the lecture-rooms of the old Albany Law School. Mr. Moak's lectures on the selection, merits, and use of books, and the history, organization, and jurisdiction of the Courts of England and the United States, are quite unique and very interesting.



MATTHEW HALE.

Mr. Charles T. F. Spoor, who has lectured in the Law School for fourteen years, is an expert in Code learning and practice, and on the law of Real Estate a worthy successor to Mr. Henry S. McCall, who for many years was the excellent instructor on that subject. Mr. Spoor is about forty-three years of age, a graduate of Williams College of the class of 1865, and is a popular and successful instructor as well as a sound and judicious lawyer.

Mr. James W. Eaton, Jr., a recent addition to the faculty of the School, is thirty-three years of age, a graduate of Yale in the class of 1879, and is favorably known to the profession by his excellent edition of Reeve's Domestic Relations. He has a bright intellect, an energetic temperament, and an incisive manner, and has already justified the expectations of the Faculty as a popular and efficient lecturer.

Dr. Maurice J. Lewi is one of the best known and most reputable of the younger physicians of Albany, and fills his important chair with learning and grace. He has lectured on this topic here for six years.

Judge Judson S. Landon, of the Supreme Court, who has for some years lectured in the collegiate department of Union University on Constitutional Law, has engaged to deliver a course on that subject annually in the Law School. The substance of his lectures has been recently published in a volume entitled "The Constitutional History and Government of the United States," which has met with high commendation from distinguished sources. Judge Landon is one of the most scholarly men on the bench of this State, and has taste and talent for instruction. For several years he was president *pro tempore* of Union University, meeting with excellent success, and he still is president of the Board of Trustees.

It will be seen that most of the instructors are men of long and varied professional activity, — not mere theorists or scholastics, but accustomed to the ways of the world and of courts, intimately acquainted with human nature, and stored with valuable and interesting experiences and recollections. Each has his favorite method of imparting instruction. By written and extemporaneous lectures, recitations from text-books, examinations on leading cases and moot-courts, the student is made acquainted with the principles of the law and the method of

applying them.[1] It is the aim of our school and of every teacher in it to arm the learner for the actual and practical struggles of the bar, — to meet the real and probable exigencies of the court-room, — and it is believed that its graduates have been able to hold their own against all comers, and to earn distinction for themselves and credit for the school. Fifteen lectures and recitations are held each week, and the pupils are examined daily as the lectures advance; Saturday is moot-court day, and on every Wednesday the whole class is orally examined on the lectures of the past week; while stringent written examinations are held at the close of each term.

The following is the course of study for the year 1890-1891: —

JUNIOR CLASS.

Elementary Law (Recitations); Contracts (Lectures and Recitations); Domestic Relations (Lectures and Recitations); Criminal Law (Lectures); Medical Jurisprudence (Lectures); Torts (Lectures and Recitations); Personal Property (Recitations); Real Property (Recitations); Sources of Municipal Law (Lectures); International Law (Lectures).

SENIOR CLASS.

Jurisprudence (Lectures); Contracts (Lectures and Discussions); Commercial Law, including Agency, Partnership, Sales, Commercial Instruments, Bailments, Insurance, etc. (Lectures and Discussions); Corporations (Lectures); Equity Jurisprudence (Lectures); Real Property (Lectures and Recitations); Practice and Pleading, Common Law and Code (Lectures); Evidence (Lectures); Constitutional Law (Lectures); Roman Law (Lectures); Patent Law (Lectures).

In addition to the above there will, during the course, be lectures on Federal Jurisprudence, Shipping and Admiralty, Corporate Trusts, Trial of Causes, Codes and Codification, Legal Ethics, and Judicial Systems.

Up to the present, the Law School has always maintained a one year's course. In some respects this has been advantageous, in others disadvantageous. Young men who could afford to wait two or three years and could bear the expense, have generally preferred the great schools of Harvard, Yale, and Columbia, with their leisure and ease; but for ambitious men, of limited time, anxious to enter upon practice and unable or unwilling to undergo the expense of a long course, and willing to work hard, Albany has always presented an excellent field of preparation. Such are the men who have come to and have gone out from this school and who now make up its classes. It is believed that the school is unique in this respect. Its students almost without an exception belong to the class of workers. It has no drones. It holds out no inducements to men who go to a law school to kill time, and such men fight shy of it. The spirit of intellectual emulation and of work for work's sake which pervades the school is so pronounced that it affords a fresh surprise to the members of the Faculty at the incoming of each class, and attracts the attention of all who come into contact with the students during their stay in the city.

The course at this school is a very arduous one. As much is taught here in one year as in Columbia in two years. I will not say it is as well done. The professors have long felt the limitation of time, and it will be much more gratifying to them, and better if not easier for the students, to have two years for the work.

In pursuance of this idea it has been determined by the Faculty, co-operating with the new dean, at once to expand the course into one of two years. The present scholastic year is the last under the old system, as our school is the last to adhere to that system. The great extension of the field of law which recent years have witnessed, the enforced deliberation of new and more effective methods of instruction, and more than all, a growing conviction of the importance to a lawyer of a thorough grounding in legal principles such as no amount of instruction can give in a single year, hav induced the

[1] The writer of these lines has not scrupled in his lectures to read an occasional leading case in verse, destined for the "Green Bag." He tries them first in this way, as Molière used to read his comedies to his servant-maid.

Faculty and Trustees of the Albany Law School to take this important step without further delay. It is not intended, however, greatly to mitigate the severity of the courses of study, or so to alter their character as to lower in any degree either the quality of the students who will be attracted to the school or of their work within its walls. It is believed that two full years of hard work is not too much time to devote to the task of acquiring such a knowledge of the principles of law as every man should have who is, by virtue of his profession and title, supposed to be "learned in the law."

NATHANIEL C. MOAK.

Accordingly, while the diploma and degree of the school will be awarded only to those who have gone over the curriculum and stood the tests of a two years' course, the institution will extend welcoming arms to those who have only a single year to devote to a systematic study of law, with which to supplement or give body and coherence to studies pursued elsewhere. To the law-clerk, serving the apprenticeship prescribed by the Court of Appeals of this State, it will still, as heretofore, afford the opportunity of a rapid and yet thorough survey of the field of law, such as no office study, no matter how judiciously directed and faithfully pursued, has ever yet succeeded, or can ever succeed, in giving to the student. It will not be less true hereafter than it has been in the past, and I believe is now, that there is no other place in the world where an earnest and industrious young man can learn so much law in a year as he can in Albany.

The Albany Law School has sent out more than two thousand graduates, and probably nearly as many more have taken partial courses. It is impossible to point out all who have attained eminence at the bar, or in other pursuits; but on glancing over the list of alumni the following names strike me: Wheeler H. Peckham, and Everett P. Wheeler, of New York City; Esek Cowen, of Albany, N. Y.; Harris W. Plaisted, Bangor, Me., ex-Governor; Abraham Lansing, Albany, ex-State Senator and Supreme Court Reporter; Charles E. Fitch, Rochester, N.Y., editor of the "Democrat and Chronicle," and a Regent of the State; William S. Opdyke, New York City; George L. Stedman, Albany; Stephen B. Griswold, Librarian of the Law Department of the State Library, Albany; Wheelock G. Veazey, Rutland, Vt., Judge of the Vermont Supreme Court; George M. Bliss, of New York City; William H. McElroy, of the "New York Tribune;" William P. Prentice, of New York City; J. Edward Simmons, ex-President of the Stock Exchange, and now serving his fifth term as president of the Board of Education of New York City; James Lansing, of Troy, N. Y.; Amasa J. Parker, Jr., ex-State Senator; Daniel A. Dickenson, St. Paul, Minn., ex-Judge of the Supreme Court; Marcus T. Hun, Albany, Supreme Court Reporter; N. S. Gilson, Fond du Lac, ex-Judge of the Fourth Judicial District; D.

Cady Herrick, Albany, ex-District Attorney (and now Corporation Counsel); Grenville A. Tremain, Albany, deceased; Zerah S. Westbrook, Amsterdam, N. Y., County Judge; Wm. T. Vilas, Madison, Wis., ex-Postmaster-General; David A. Thompson, President "Nineteenth Century Club," New York City; Chas. Theo. Boone, San Francisco, author of several legal text-books; Andrew S. Draper, Albany, late Judge of the Court of Alabama Claims and present Superintendent of Public Instruction of the State; Alton B. Parker, Kingston, N. Y., Judge Second Division Court of Appeals; D. Willers, Jr., Varick, N. Y., ex-Secretary of State; Joseph H. Willard, Captain U. S. Engineers; Lewis A. Barker, Bangor, Me.; Tracy C. Becker, Professor in Buffalo Law School; Chas. B. Hubbell, New York City, Member of the Board of Education; Adelbert Moot, Buffalo, N. Y.; Ward McAllister, Jr., New York City;[1] Norton Chase, Albany, State Senator; John V. L. Pruyn, Jr., Albany, N. Y.; E. Corning Townsend, Professor in Buffalo Law School; Miles Beach, Judge of the New York City Common Pleas; T. C. Callicott, editor of the "Albany Times;" R. H. McClellan, Galena, Ill.; St. Clair McKelway, editor of the "Brooklyn Eagle" and a Regent of the State; Irving G. Vann, Syracuse, N. Y., Judge Second Division Court of Appeals; George A. Madill, Professor in the St. Louis Law School; Redfield Proctor, ex-Governor of Vermont, and Secretary of War, I have made no attempt to note the crowd of M. C.'s.

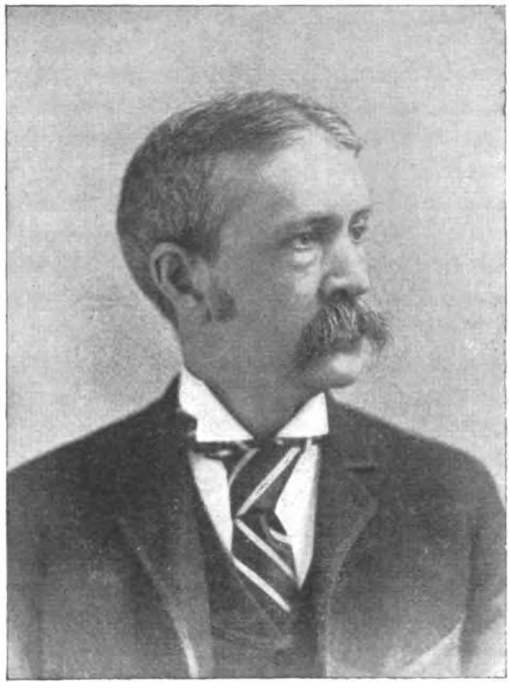
HIRAM E. SICKELS.

The building now owned and occupied by the Law School is situated on the very finest block in Albany, next to the Capitol, surrounded by the best private residences in the city. It was formerly a church, and is very well adapted to the purposes of the school. It is two stories high, — the first occupied by a spacious room for the library and for study, examinations and moot courts; the second by the large and lofty audience-room used for the lectures. It is hoped that some of the odor of the sanctuary still clings to the building; at all events, the standard of morality is high, and the students are uniformly well behaved, both in school and out. In obtaining this edifice the school owed much to the strenuous efforts and liberality of the late Thomas W. Olcott, president of the Board of Trustees, and to some of his associates. The school library is not extensive, but is well selected; and the nearness of the State Library dispenses with the necessity of a large collection at the school. At the dedication of this building in 1879, Judge Parker felicitously remarked: "Let it be dedicated with all due ceremony to its future purposes, second only in sacredness of character to that for which it has heretofore been used. Reminded by the impressive and undying maxims inscribed on your walls, that you are here to learn to follow implicitly the

[1] Is this the great leader of the "Four Hundred"? I await a reply in suspense.

rules of justice, truth, and honor, and remembering the old Roman motto, 'Justitia virtutum regina,' that Justice is the queen of the virtues, who will dare say that this temple is not consecrated to a sacred use?"

The writing of this sketch has recalled to me my boyish student days of 1856–1857, when I boarded in this city, "in a respectable family," for $2.00 a week, and froze my ears in crossing the river on foot or in a sleigh to take the Hudson River Railroad at Greenbush; when I saw Rufus Peckham, Sr., walk up State Street and John V. L. Pruyn walk down, — which James T. Brady said it was worth a journey from the city of New York to see; when the old State Library was standing, whose alcoves I frequented; when the old Capitol was standing, where I listened to General Sickels contesting for his seat as Senator; when the old City Hall was standing, where I heard William J. Hadley in one of his unrivalled criminal defences, and listened to such advocates and orators as John K. Porter, Henry Smith, Rufus Peckham, and Lyman Tremain; when the Court of Appeals held its sessions in a small room in the old Capitol, where I hung on the debates of Nicholas Hill, John K. Porter, and John H. Reynolds, heard Charles O'Connor and James T. Brady argue a question of alimony in the Forrest divorce case, and where for three weeks I listened to Greene C. Bronson, Samuel Beardsley, Nicholas Hill, Benjamin F. Butler, Charles O'Connor, William Kent, and William Curtis Noyes, arguing the great case of Curtis *v.* Leavitt (16 N. Y. 9) before Hiram Denio, Alexander S. Johnson, George F. Comstock, and Samuel L. Selden. When did such an array of lawyers ever before or since address such a bench? All of these great lawyers have gone to rest save two. Truly there were giants in those days. Now three great bridges span the river here, and an eighteen-million-dollar Capitol crowns the hill. Have the lawyers held their own in talents and education? Perhaps the giants are fewer, but the average is higher. In those years Hill, Hand, Porter, Reynolds, and Parker argued nearly all the causes in the Court of Appeals, as counsel for the attorneys; but now, by reason of a day calendar and swift trains, the attorney himself comes overnight across the State and argues his own cause, not fearing any overpowering Albany antagonist. Many of these attorneys have been educated at the Albany Law School, and they probably argue their own causes better than the giants of old would do it, because they are better acquainted with them. Just now the President has appointed a graduate of the Albany Law School of 1858 to the Federal Supreme Court bench. Mr. Justice Bradley, who acquired the rudiments of his legal education by reading while driving his charcoal-cart from a neighboring town to this city, might not have been a better lawyer if the Albany Law School had been open to him, but he would have found the path easier.



IRVING BROWNE.

The Albany Law School has a proud record. It has done a useful work, and thanks to the unselfish members of our city bar who are willing to bestow their time and talents in its service for very small pay, in spite of a cloud of competitors in States where admission to the bar is easier than in ours and which have rich endowments or large colleges as feeders, it seems likely to continue to do so for many years. I do not doubt that if Macaulay's New Zealander shall ever take his seat on a broken arch of the Hudson River Railroad bridge to sketch the ruins of the Capitol, the Albany Law School will still be "in full vigor and prosperity."

IN THE NAME OF THE LAW.

IN this enlightened age of tolerance and forbearance, it is difficult for us to understand the bigotry and intolerance which distinguished our forefathers in the Old Colony days. Fleeing as they did from civil and religious persecution, one would naturally suppose that the early settlers of New England would have been actuated by feelings of sympathy for others in like circumstances. Strange as it may appear, the Pilgrim Fathers proved no better than the oppressors from whose intolerance they sought a refuge on our shores. The early colonial records are filled with acts of the colonists which bring the blush of shame to the cheeks of their descendants.

In fanatical persecution Massachusetts easily takes the lead; and the opening chapters of her history are black indeed, filled as they are with cruel, bloody deeds, executed in the name of the law.

In his "American Criminal Trials" Mr. Chandler has given us graphic accounts of the persecution of the Quakers, and from them we may extract some sad but very interesting material.

In the year 1656 the colonists of Massachusetts were very much surprised to learn that two women of the sect which had begun to be called Quakers had arrived in Boston from Barbadoes. There was no law in the colony against such persons, but that was considered unimportant; it was easy to make a law for the occasion, or easier still to act without any law at all. This last alternative was adopted.

These two poor women, irreproachable in character, were seized and put in prison; and after suffering great indignities, they were driven from the country. It would seem as if the misusage of these two women caused a flocking of Quakers from all points of the compass to Boston, only for the sake of getting ill-treated. In this respect they were certainly gratified; for eight, who made their appearance within a short time, were in like manner imprisoned and banished. As dealing with this peculiar class now seemed likely to require much attention from the authorities, it was thought the time had come to have a little law to regulate proceedings; and a local court passed an enactment declaring that any Quakers who should hereafter arrive in the colony should be severely whipped, and confined at hard labor in the house of correction. Shortly after this several came, were whipped, confined, and dismissed; and others took their places. Finding that the law was apparently too lenient for the purpose for which it was designed, a fresh enactment was passed. Fines were imposed on every person who gave house-room to Quakers, or who attended their meetings, or otherwise sanctioned their pernicious opinions. After a first conviction every Quaker, if a man, was to lose one ear, and after a second, the other; if a woman, she was each time to be severely whipped; and for the third offence, both men and women were *to have their tongues bored through with a red-hot iron.*

These harsh enactments, however, did not deter the Quakers, who continued to arrive in great numbers and seemed to glory in their persecution. Whippings, confinement, hard labor, fines, cutting off the ears, and boring the tongue proving utterly ineffectual, a new law was passed in 1658, declaring that all Quakers who in the future intruded themselves into Massachusetts should be banished on the pain of death. Three Quakers forthwith offered themselves as the first victims. Their names were Mary Dyer, Marmaduke Stephenson, and William Robinson. Their defence at their trial clearly showed that they were persons in a state of frenzy; they asserted that by means of visions they had been induced to come to Massachusetts and brave the worst that could be done to them. On the 19th of

October, 1659, they were condemned to death, and three days later they were led to execution. Mary Dyer, after seeing her two brethren die before her eyes, was at the last moment, as she stood upon the scaffold with the rope about her neck, reprieved. She was taken home to Rhode Island; but the spirit again moved her to return to the "bloody town of Boston," where she arrived in the spring of 1660. This determination of an old and feeble woman to brave all the terrors of their laws might well fill the magistrates with astonishment; but they had already gone so far that it was now impossible for them to recede. The executions which had already taken place had caused much unfavorable comment, and it was hoped that the condemned would consent to depart from the jurisdiction. When Mary Dyer was sent for by the court after her return, Governor Endicott said to her: "Are you the same Mary Dyer that was here before?" thus giving her an opportunity to escape by a denial of the fact. But she would make no evasion. "I am the same Mary Dyer that was here the last General Court." "You will own yourself a Quaker, will you not?" "I own myself to be reproachfully called so;" and she was sentenced to be hanged on the morning of the next day. "This is no more than thou saidst before," was her reply. "But now," said the Governor, "it is to be executed; therefore prepare yourself, for to-morrow at nine o'clock you die." "I came," she said, "in obedience to the will of God, to the last General Court, desiring you to repeal your unrighteous laws of banishment on pain of death; and the same is my work now, and earnest request, although I told you if you refused to repeal them, the Lord would send others of his servants to witness against them."

At the appointed time on the next day, she was brought forth, and with a band of soldiers led through the town about a mile to the place of execution, the drums beating before and behind her the whole way. When she was upon the gallows, it was told her that if she would return home she might come down and save her life; to which she replied, "Nay, I cannot; for in obedience to the will of the Lord I came, and in his will I abide faithful unto the death." Another said that she had been there before; she had the sentence of banishment upon pain of death, and had broken the law in coming again now, and therefore she was guilty of her own blood. "Nay," she answered; "I came to keep blood-guiltiness from you, desiring you to repeal the unrighteous and unjust law of banishment upon pain of death, made against the innocent servants of the Lord; therefore my blood will be required at your hands who wilfully do it; but for those who do it in the simplicity of their hearts, I desire the Lord to forgive them. I came to do the will of my Father, and in obedience to his will I stand even to death." A minister who was present then said: "Mary Dyer, repent, oh, repent, and be not so deluded and carried away by the deceit of the devil!" But she answered, "Nay, man, I am not now to repent." She was then asked to have the elders pray for her; but she said, "I know never an elder here." She added that she desired the prayers of all the people of God. "Perhaps," said one, scoffingly, "she thinks there is none here." Then looking round, she said, "I know but few here." She then spoke of the other world and of the eternal happiness into which she was about to enter; and, "in this well-disposed condition was turned off and died a martyr of Christ, being twice led to death, which the first time she expected with undaunted courage, and now suffered with Christian fortitude." "She hangs as a flag for others to take example by," said a member of the court, as the lifeless body hung suspended from the gallows.

As Mary Dyer had prophesied, the Lord sent others of his servants to testify against these wicked laws. Shortly after her death another Quaker named William Leddra made his appearance, and after a long im-

prisonment, during which he was chained to a log of wood, he was brought to trial on the usual charge of returning from banishment. There was a dash of the ludicrous in the proceedings. One of the charges against him was that he refused to take off his hat in court, and another was that he persisted in saying "thee" and "thou." "Will you put me to death," he asked, "for speaking good English, and for not putting off my clothes?" "A man may speak treason in good English," was the reply. "Is it treason to say 'thee' and 'thou' to a single person?" This was a poser for the judges; and while they were trying to stop his mouth by a few more questions, to their exceeding dismay another Quaker, named Winlock Christison, who had also returned from banishment, entered the court and placed himself beside the prisoner. The case of Leddra was first despatched by condemning him to be executed, and this atrocity was committed on the 14th of March. Christison, at a second appearance, received a like sentence; but he was accorded the choice of voluntary banishment, and this latter alternative he appears to have embraced.

At the same session of the General Court Judah Browne and Peter Pierson were ordered to be taken out of prison and stripped from the girdle upward by the executioner, and tied to the cart's tail and whipped through the town with twenty stripes, and then carried to Roxbury and delivered to the constable there, who was to tie them, or cause them in like manner to be tied, to a cart's tail, and again whip them through the town with ten stripes, and then carried to Dedham and delivered to the constable there, who was again in like manner to cause them to be tied to the cart's tail and whipped with ten stripes through the town, and from thence they were immediately to depart the jurisdiction at their peril. Following this order on the records of the General Court, without the separation of a line, there is an order by the Court for a day of thanksgiving to Almighty God, on the 4th of July, 1661, "for the many favors wherewith He hath been pleased to compass us about for so many years past in this remote wilderness."

These executions of Quakers had caused much dissatisfaction among the people, and public sympathy was turned toward the sufferers. The court was obliged to take strong measures to keep away the crowds of citizens who constantly thronged the windows of the prison where they were confined. At every execution a large body of armed men was in attendance to prevent disturbance, and soldiers were left to guard the town "while the rest of the citizens went to the execution."

Accounts of these proceedings reaching the ears of King Charles, that monarch, who had other reasons for being dissatisfied with the colonists, immediately granted a mandamus directed to all the governors of New England, requiring them to proceed no further as to corporal punishments against the Quakers.

LEGAL ACUTENESS.

EVERY lawyer knows that since the withdrawal from our law system of "special pleading," and since the power of the judges to "amend" has been conferred by legislative acts, the arena in which combats of legal disputation took place has been very much narrowed.

Formerly the most minute error in an indictment or record was a sufficient ground for *quashing* the one or directing a nonsuit

in the other; and we have in the old law-books criminal cases where men have been acquitted on the ground that the indictment charged them with stealing "a field of hay," whereas it was *grass* they stole, not having been dried into hay; of others getting off upon a charge of stealing a sheep, which being taken from a butcher's shop after being skinned was only a *part* of a sheep; and also a case of larceny of a dog where it was proved that the stolen animal had been docked of its tail and was only part of a dog. In the same manner we have, on the civil side, records of "Nisi Prius" being adjudged *null and void*, because the declaration omitted the words *Anno Domini*, or the "scientia," — that is, the expression "which he well knew," — or the plea called the plaintiff "Jones" instead of "Jonas."

All these frivolous objections are done away with now, and the judge can, at the trial, amend all proceedings to an unlimited extent, and counsel have to contend against legal deduction in place of contending against written matter, the former being in its very nature (save as it is now mixed up with equity) unchangeable.

Notwithstanding all this, there is room enough and to spare, even now, for counsel to win wondrous verdicts on behalf of their clients by exercising acuteness and ingenuity. Of the moral aspect of the cases the reader will form his own conclusions.

The great Irish advocate, Curran, was once applied to by a humble yeoman who was in much distress and difficulty. He had deposited with a neighbor £100 to keep for him until he required it. On applying some time after for the money, his dishonest friend disclaimed all knowledge of having received it. Curran, after abusing the poor farmer some time for his carelessness in not taking a receipt, advised him to wait a week or two, and then try to scrape together a second £100 and deposit it with the same neighbor, but to be very careful *to take a receipt for it.* This apparently absurd suggestion was followed. The money was with difficulty borrowed, deposited with the surprised neighbor, and a receipt duly taken. A few weeks later Curran instructed his client to demand back his second £100, but to retain the receipt. The unsuspecting neighbor, knowing that he had given a receipt for the money, at once handed it back. The depositor had now a receipt for £100 in his possession, which very soon after, under his sagacious counsel's advice, he produced, threatening legal proceedings if the money was not refunded, professing utter ignorance of ever having deposited, or received back again, the *second* £100, which his receipt represented.

We remember an audacious trick by which a living ex-judge, then Sergeant B., once obtained a verdict for £1,000 on no evidence or materials at all. He informed the jury that the case was a short undefended one, — an action on a bond for £1,000 given by Messrs. Cubitt, the great builders, for the completion of some houses within a certain time, and that, there being some mistake in the specification, the houses had never been commenced, and the bond was therefore forfeited. The learned counsel then called for his witness to prove the execution of the bond, but again addressing the jury, said that the bond (holding up a paper) carried interest at five per cent, which they would not press for, though it amounted to £250, but would go simply for the £1,000. This unexpected speech surprised and aroused the very excitable Sergeant C., who defended, and who immediately started up and said that "he feared that they could not contest the bond, it was a mere question of interest, and as that had been given up they would take a verdict *by consent* for the £1,000 without any proof of the bond." This was done; the two Sergeants met in the robing-room. "Brother," said Sergeant C., "you *sold* your client nicely!" "How so?" quoth Sergeant B.; "I am not accustomed to sell my client, though I sometimes sell counsel on the opposite side." "But why did n't you go in for the £250 interest? You must have got it if you had read your

bond." "We didn't want to read it." "Why?" "Because *we've lost it!*" "Why, what was the paper you had in your hand?" "Only a blank sheet of foolscap, brother!" The verdict had been taken *by consent*, and could not be disturbed.

A nice piece of legal ingenuity in argument occurred at the Cambridge Assizes a few years since. A gentleman was seated in his library one evening, in a lonely country-house, when, hearing a noise outside in his garden, he summoned his servant and proceeded after the supposed robbers. In the garden they encountered a man pocketing potatoes, and called on him to surrender. He refused; a scuffle ensued, and in the struggle the servant was mortally wounded by the thief, who was subsequently arrested and tried for the alleged murder. The facts were undisputed; but the ingenious chain of argument adopted to obtain an acquittal was the following. These potatoes which the prisoner was pocketing were not proved to have been *dug up* before he took them; and as a spade was near him, and the adjoining earth freshly turned, the presumption was they were *in* the earth, or *attached to the freehold*, when the prisoner came upon them. If this were so, they were not the subject of larceny, and the prisoner was not committing a felony in taking them, but only a civil trespass. If so, the master and servant had no right to arrest him, and what he did was done in self-defence, and was justifiable homicide. On this ground he was acquitted; but it certainly appeared remarkable that the question in the case of hanging or acquittal should depend upon the question of a pound or two of potatoes having been dug up or not by a particular person. Had the gardener dug them up, legally the prisoner would have been executed; as he dug them himself, he was acquitted! We ought, however, to add that the law has been very considerably altered and amended since the trial of the case referred to.

Many of our readers will remember the strange line of defence which Sir Fitzroy Kelly took in the celebrated Tawel murder case, tried at Aylesbury, in which he appeared for the defence. The victim had been poisoned with prussic acid, and all the facts pointed to the prisoner as having administered it. Sir Fitzroy Kelly, however, elicited from some of the witnesses the fact that the deceased woman was very fond of apples, from others that she had had a present of a bushel of apples, and from the doctors called that the pips of apples contained this acid. Stringing these three facts together, he gravely urged the jury to believe that the woman had eaten so many apples that she had poisoned herself with the prussic acid of the pips! The jury preferred to find the prisoner guilty, and he was duly hanged, his counsel being honored with the sobriquet of "Apple-pip Kelly" for a long time afterward.

The late Mr. Justice Byles had a most shrewd and ingenious manner of adapting stern and unyielding facts to the most clever theory of science. We recollect the conviction before him at Exeter of a lady who was perpetually stealing trifling articles from the shops she patronized. Being "called upon" for judgment, her counsel argued that she was the victim of kleptomania. "Kleptomania?" asked the judge, in the most innocent manner; "what *is* kleptomania?" "A disease, my Lord," said her counsel, "the subject of which is uncontrollably addicted to larceny." "Oh, I see," said the judge; "and a disease, sir, which the judges are sent on circuit, as physicians, to cure. *My* prescription on the present occasion is twelve months' imprisonment with hard labor!"—*The Leisure Hour.*

LORD CHANCELLOR HALSBURY.

THE LORD CHANCELLOR OF ENGLAND.

HARDINGE STANLEY GIFFARD, Baron Halsbury, the present Lord Chancellor of England, is the third son of the late Stanley Lees Giffard, LL.D.,— for more than a quarter of a century the editor of the "Standard" newspaper, — and was born in 1825.

"Early Struggles," "Silk," "Office," "Knighthood," and "The Woolsack,"— these are the necessary chapters in the biography of a Lord Chancellor; and the external facts in Lord Halsbury's career range themselves under the usual headings naturally and appropriately. He was admitted as a student of the Inner Temple in 1847, was called to the bar in 1850, assumed the silk robes of a Queen's Counsel in 1865, was raised to the Solicitor-Generalship and received the honor of knighthood in 1875, and just ten years later became Lord Chancellor. After

having twice contested Cardiff unsuccessfully in the Conservative interest, Lord Halsbury, then Sir Hardinge Giffard, Solicitor-General, was elected member of Parliament for Launceston in 1877, and continued to represent that constituency till his promotion to the woolsack.

The traditions of the Temple declare the attainment at once of strictly professional and of political or administrative eminence to be well-nigh impossible. There are lawyers and there are politicians in the High Court of Justice; but the politicians are not lawyers, and the lawyers, for the most part, are not politicians. Sir William Harcourt, for instance, is a powerful parliamentary debater and an astute party leader, but his ignorance of law is a standing joke in the House of Commons. Sir Horace Davey, again, has forgotten more law than Sir William Harcourt ever knew, and will take his place in legal history with Benjamin and Selborne and Cairns, but many third-rate politicians are greater than he. Sir Henry James alone among living advocates has taken a double first, in politics and in law. His defence of Mr. Justice Keogh in the famous Galway Election Petition debate; his apostrophe on the same occasion to the Archbishop of Tuam, — "I tell thee, proud prelate of the West," etc.; his management of the Judicature and the Corrupt Practices Acts; his reply to Mr. Goschen on the second reading of the Franchise Bill of 1884, and his speech in the course of the Home Rule debates in 1886, — render intelligible the doubt which Sir Henry James's friends have all along entertained whether his proper place was the Cabinet or the Bench, and explain the ready credence accorded in 1880 to the rumor that he was going to the Home Office as Secretary of State.

Now, Lord Halsbury's reputation is not parliamentary. He has engineered several important measures, but so in their day did Baron Huddleston and Sir John Coleridge. Perhaps the incident best known in the Chancellor's political career is the delay in his admission to the House of Commons in 1877, caused by the writ certifying his election having been misplaced! Neither is Lord Halsbury an eminent lawyer in the strict sense of the term. No conscientious biographer would put him on the same plane with Sir Richard Webster or Mr. Henry Matthews, not to speak of even greater names than theirs. He has never done, and could not do, such splendid judicial work as Sir James Hannen has quietly achieved in his dingy and ill-ventilated court. Lord Halsbury, his official position notwithstanding, must ever be third best in a tribunal to which the Earl of Selborne and Lord Bramwell belong.

Again, the Lord Chancellor's reputation is not derived from any triumphant victory over early difficulties. He was neither a Scotsman nor a poor clergyman's son. He was not called upon to write paragraphs for the newspapers, or to haunt the theatres as a dramatic critic, or to "coach" idiots for a profession which they will only bring into contempt. We must seek elsewhere for the sources of his eminence. Lord Halsbury has risen to the woolsack from the Old Bailey. He has never been Attorney-General; and he was engaged in nearly every *cause célèbre* tried in the English Courts from 1864 to 1885.

It may be interesting to run rapidly over the chief incidents in the Chancellor's forensic career. In 1864 Franz Müller was tried for the murder of an English gentleman, Mr. Briggs, on the North London Railway. The excitement to which the case gave rise can still be faintly traced in the pages of the "Annual Register," where the best account of it is to be found. Müller escaped to New York, was promptly arrested on his arrival, brought back to England, tried, condemned, and duly executed, in spite of the foolish efforts of a German Protection Society and of the King of Prussia (who telegraphed to Queen Victoria, requesting her personal intervention) to procure a reprieve. Now, in this case Mr. Hardinge Giffard, along with

the Solicitor-General, Sir R. P. Collier, and Mr. (now Sir James) Hannen, conducted the prosecution. Two years later, "the London tailors"— Druitt, Partridge, and the rest — were tried before Baron Bramwell for picketing and intimidation during the great strike. Mr. Coleridge, Q. C., the present Lord Chief-Justice, Serjeant Parry, and Hardinge Giffard defended the prisoners; but the law was too strong for the advocates, and a conviction followed. "I lay it down," said Baron Bramwell to the jury, "without hesitation, that whenever two or more persons agree that they will by molestation, annoyance, threats, intimidation, or any other manner of coercion, — not by persuasion, — influence the minds, wishes, and wills of others as to the modes in which they should or should not bestow their labor, the persons who so act are guilty of a criminal offence." In 1868 came the Fenian trials. Here the Attorney-General (Sir J. B. Karslake), the Solicitor-General (Sir Balliol Brett, now Lord Esher, Master of the Rolls), and Mr. Giffard appeared for the Crown; but only a single conviction was obtained. Montagu Williams and Edward Clarke, now a Knight and Solicitor-General, had been retained for the defence. Mr. Giffard was a member of the Welsh Circuit, and at the Glamorganshire Assizes held at Cardiff in July, 1869, he was pitted against Mr. Grove, Q. C., in the strange case of "Esther Lyons." This was an action raised by Barnett Lyons, a Jew and a money-lender in Cardiff, against a Welsh dissenting minister and his wife, for having enticed away his daughter Esther with the view of converting her to Christianity. Mr. Grove was an eminent man of science; his name is associated with a galvanic battery of some notoriety; he is the author of a work on the correlation of physical forces; he enjoyed the reputation of being the best patent lawyer of his day; he was for many years a Justice of the High Court, and is now a Privy Councillor. But as a *nisi prius* advocate he was helpless in the hands of Hardinge Giffard; and the money-lender got a verdict for £50, to the surprise and against the charge of the presiding judge, Mr. Baron Channell.

In the same year Giffard, together with Karslake, Coleridge, Hawkins (now a Judge of the High Court), and other celebrities, successfully defended the Directors in the famous Overend Gurney prosecution. On the first Tichborne trial he appeared, with Serjeant Ballantine, for the plaintiff, who was afterward represented by Dr. Kenealey. In 1871 Boulton and Park were tried for frequenting theatres and other places of public resort in women's clothes. Hardinge Giffard prosecuted with the law officers of the day and Sir Henry James, but failed to secure a conviction. In Belt *v.* Lawes Sir Hardinge Giffard was matched against Charles Russell, now the unchallenged leader of the common-law bar. Not without dust and heat do such rivals engage, —

> "They brandish law 'gainst law;
> The grinding of such blades, each parry of each,
> Throws terrible sparks off, over and above the thrusts,
> And makes more sinister the fight to the eye,
> Than the very wounds that follow!"

But Hardinge Giffard remained master of the field. The plaintiff, for whom he appeared, got £5,000 damages; and the Court of Appeal declined to disturb the verdict, at least to his disadvantage. Belt *v.* Lawes was an action of libel. The defendant had alleged that certain busts and pieces of sculpture attributed to Mr. Belt, and claimed by him as his own, had in fact been executed by persons in his employ. The case was tried before Mr Baron Huddleston at Westminster; the trial lasted for forty-three days, and the present Attorney-General shared in the defeat of Sir Charles Russell.

Lord Halsbury has carried with him to the woolsack not only the tact and acumen of the Old Bailey lawyer, but the patience and courtesy which Old Bailey lawyers so seldom possess. He will learn Equity by associating with the Earl of Selborne and Lord Macnaghten.

A. W. R.

A CURIOUS VERSION OF JUSTINIAN'S INSTITUTES.

By Hon. William L. Learned.

MR. IRVING BROWNE has lately given in the "Green Bag" a poetical and witty version of an old law case. Other attempts have been made to add the flowers of poetry to the dry sticks of the law. Probably all lawyers are familiar with,—

"Tenant in fee
Simple is he,
And need neither quake nor quiver,
Who holdeth his lands
Free from all demands
To him and his heirs forever."

The boldest and most successful undertaking of this kind which I have seen is the version of Justinian's Institutes in Latin hexameter. It may not have fallen under the notice of all the readers of the "Green Bag," and they may be willing to see some account of it.

The person who thus undertook, in the language of the address to the reader, "jus civile arduis questionibus involutum in rithmorum dulcedinem utilissime transposuisse," was John Baptist Pisacani. He appears to have been a young man, about thirty, when he wrote this book; "opus non poetici estus furore, sed ingenii acumine, solidaque amenitate natum." The work was published at Naples in 1684.

The procemium begins thus: —

"Qui regit imperio populos, orbemque gubernat
Legibus armandus justis, decorandus et armis
Tempus ut utrumque et belli pacisque regatur."

The familiar beginning of the first title is thus put into metre: —

"Jus cuicumque suum tribuendi firma voluntas
Justitiæ est virtus. Jurisprudentia rerum
Est hominum superumque scientia et omnis iniqui
Lucida cognitio et certissima notio recti."

For another specimen I give (book ii. tit. 1, § 1), —

"Sunt naturali cunctis communia jure
Aer atque imber vastum mare, litora pontis,
Ad maris hinc omnes possunt accidere litus.
Dum tamen a villis, monumentis, ædibus absint,
Quæ non sunt juris gentis velut æquoris unda."

Even the names of relationships are worked into hexameter; as, for instance (book iii. tit. 6, § 6), —

"Trique avia est senis gradibus triavusque superne.
Est trinepos infra, gradibusque trineptis iisdem.
Abque nepos ex transverso, abneptisque sororis.
Fratrisque abque amita, abpatruus, fraterque sororque.
Nempe abavi, atque abavunculus, abmatertera nempe
Abque aviæ soror et frater; quoque filia natus
Propatruus quos progenuit, proavunculus atque
Promatertera, proque amita."

Without wearying the reader with quotations, I will only add from book iv. tit. 17, pr., —

"Judicis officium quicumque agnoscere debet,
Et judex plane in primis servare tenetur,
Judicet at juxta leges, moresve statuta."

A very good rule, whether expressed in prose or in poetry.

Any one familiar with the size of the Institutes and with the style will understand that the writer of this paraphrase must have spent much labor in the production of so many hexameters. How useful the labor was we cannot say. Perhaps it was only to be classed with the "laborious trifling" of anagrams and the like. With one of these, out of five prefixed to the work by some admirer, I will close, —

"Apis bona sapientias canit."

The reader will see that this is, as it is called, anagramma purissimum of the name Ioannes Baptista Pisacani.

CAUSES CÉLÈBRES.

XVI.

DE PRASLIN.

[1847.]

ON the 17th of August, 1847, the Duchesse de Choiseul-Praslin, the only daughter of Count Sebastiani, accompanied by the Duke, her husband, and her family, left the magnificent Château de Vaux-Praslin, near Melun, to return to Paris, whence an excursion to the baths at Dieppe was contemplated. On reaching the city the Duke and Duchess separated. The former, accompanied by his daughters, went to pay some visits; Madame de Praslin, with her sons, was driven at once to the Hôtel Sebastiani, the city residence of the family. She reached the house about nine o'clock in the evening. The Duke did not return until about eleven o'clock, when he conducted his daughters to their apartment and then descended to his own, which was situated on the ground-floor and separated from that of the Duchess by a small antechamber. At midnight the house was buried in darkness. All was silent.

At half-past four in the morning frightful cries were heard, coming apparently from the chamber of Madame de Praslin. A passer-by compared them to those of a madman in an access of fury. A few moments later a sharp ringing of the house-bell awaked Auguste Charpentier, the Duke's valet, and Madame Leclerc, the femme-de-chambre of the Duchess. Both dressed hastily and descended. On attempting to enter Madame de Praslin's chamber, they found the door, contrary to the usual custom, locked on the inside. Hoarse, despairing cries came from the apartment, filling the souls of the two domestics with terror. They tried to force the door, but, being unable to accomplish this, they sought another entrance leading from the grand salon. The door communicating between the salon and the chamber was also firmly locked on the inside. They knocked, calling loudly, "Madame! Madame!" There was no response. They listened intently, and could hear distinctly a hoarse breathing, which seemed to come from the middle of the room. Evidently a crime had been committed. The two domestics then went out into the garden; the blinds of Madame de Praslin's chamber were closed as usual, and fastened on the inside by iron bars. But on reaching the extremity of the building, they saw that the door of a wooden stairway leading to the antechamber which separated the Duke's apartment from that of the Duchess was wide open. The valet entered. The darkness was profound; no sound was to be heard. Charpentier, thoroughly alarmed, then ran and awakened a friend.

"Something terrible has happened," he said; "I fear Madame has been murdered!"

Accompanied by his friend, he returned to the Hôtel Sebastiani, and the two ascended the wooden stairs and finally succeeded in entering the Duchess's room. There a horrible spectacle met their eyes. The body of the unfortunate woman lay extended upon the floor, covered with gaping wounds. Seized with terror, they rushed from the room out into the court, and there they consulted, gazing with frightened eyes toward the windows of the room they had just left. As they gazed they saw a column of smoke rising from the chimney of the Duke's apartment. This seemed to them extraordinary at this hour and at this season of the year. There was no sign of a light in his room; the blinds were tightly closed. This recalled to them the fact that in spite of all the noises the Duke had not yet appeared. In a few moments there was a general alarm in

the house. All the inmates were aroused, and presently assembled in the grand salon. Then, suddenly, the Duke opened the door communicating from the salon with his wife's sleeping-chamber; he wore a gray dressing-gown, and his features bore a frightened expression. He struck his head with his hands, repeating, "What is it? What is it?" And as he drew back, and as the light entered the chamber from a window which had just been opened, all the domestics saw the body of the Duchess lying upon the floor. Then M. de Praslin cried, "Ah, mon Dieu! mon Dieu! What a misfortune, what a misfortune! Who could have done that? Help! help! Send for a physician!" The wife of the porter, Brifflard, ran to the Duchess. She still breathed, but in a moment all was over, life had fled. A physician arrived, but it was too late. Then the Duke, who had gone out, returned to the chamber and approached the body of his wife.

"Ah, poor wife, poor wife!" he murmured; "what monster has done this deed?" He threw himself upon the bed, uttering despairing cries: "Oh, my poor children! Who will tell them? They no longer have a mother!"

A general alarm was given by the domestics, and in a short time the officers of justice were at the house, and proceeded to make an examination. It was evident that the assassins could have entered the building only by the wooden stairway leading from the garden. No trace of their presence could be ascertained except a loaded pistol, the handle of which was covered with blood, and on it were found some hairs and a bit of the skin of the victim. Everything proved that the Duchess had attempted to escape from her assassin, either by rushing toward the doors to get out of the bedroom, or by endeavoring to pull the bell-ropes that her servants might come to her aid. It was thought that the first blows had been given her while in bed, and that she made her most desperate efforts near the fireplace. The murderer, necessarily covered with blood, must have left traces of it on his way; and, strange to say, that stained way was found to lead, not out of the building, but toward the apartment of the husband, the Duc de Praslin. Drops and marks of blood were visible from the door of the Duchess's room to the door of the Duke's bedroom. M. de Praslin explained, with an emotion which seemed perfectly natural in the presence of such a frightful catastrophe, that the pistol found had been brought in by himself at the time he had heard the cries; that the traces of blood must have come from himself, after he had raised the body of his wife, and when he returned to his chamber, his hands covered with blood. Being further interrogated, he stated:—

"This morning, at break of day, I was awakened by cries, when I caught up a pistol, and rushed into the chamber of Madame de Praslin. I found the Duchess seated on the floor, her head against a couch. Her face was covered with blood. I had scarcely attempted to afford her aid, when I heard a knocking at the door communicating with the salon. I went and unbolted it, and found there my valet, my porter, and other people of the house, coming also to the assistance of the Duchess. In attending to my wife, I had stained myself with blood. My head was quite gone; I returned to my chamber and washed my hands. I endeavored to clear off with water the blood-stains upon my breast and my dressing-gown. I did so that I might not alarm my children, to whom I wished to communicate what had befallen their mother; but I had not the courage to tell them."

Upon his attention being called to the hair and piece of skin sticking to the handle of the pistol, glued to it by blood, the Duke showed a moment's hesitation, but ended by saying, "I formally deny having struck Madame de Praslin with that or any other weapon. As to the hair and flesh upon the pistol, it is impossible for me to explain it!" The conviction of the magistrates was already formed; it was M. de Praslin who had

murdered his wife. It was impossible that it could be any one but himself. Every presumption pointed directly to him. And yet it was a serious matter to charge him with such a crime, and the officers of justice still hesitated. They continued their searches, they accumulated proofs. In the Duke's chamber they discovered several knives, all of which bore marks of blood. The person of the Duke was then examined. On his right arm was a recent bruise, as if made by the pressure of a finger; both hands were scratched, and the right hand was further injured, apparently from a bite. The Duke endeavored feebly to account for these marks in a manner which bore little likelihood of being truth. An investigation into the domestic life of the De Praslins established the fact that for some time the relations between the Duke and the Duchess had been strained, and a certain coldness had existed between them, especially since the entrance into the De Praslin mansion of a certain Mademoiselle Deluzy, who had been engaged in 1841 as a governess for the Duke's nine children. Public rumor spoke of private scandals, and a family disunited by the manœuvres of this young woman.

The whole of this investigation could lead to but one conclusion, — that the Duke was the murderer; but under the erroneous notion that they could not commit a peer of France to prison, the authorities merely ordered him to be kept under the guard of M. Allard and some agents, in his own house. Meanwhile a messenger was sent to King Louis Philippe, then at Eu, to pray that he would at once, by special ordinance, convoke the Chamber of Peers as a High Court of Justice. This his Majesty immediately did, and the President of the Chamber directed that the Duke should be committed to the prison of the Luxembourg. But it was too late, at least for fully carrying out the intentions of justice. On the evening of the day the murder was discovered, the Duke seized an opportunity, while alone in his room, of swallowing a strong dose of arsenic. The effect of the poison, however, was not immediately fatal, and in the darkness of the night, to avoid the fury of an incensed populace, the wretched Duke was conveyed to the prison of the Luxembourg. There he was examined by Chancellor Pasquier, President of the Chamber of Peers. The judge adjured him earnestly to relieve his mind by a frank confession of his crime, and when he pleaded weakness as a reason for not entering into details, the judge replied that nothing more was requisite than *yes* or *no*. Still he urged his state of feebleness, but to various questions of detail he replied with sufficient readiness. The High Court of Justice was now prepared to sit on the trial of the accused, and society awaited a great judicial example. Suddenly a report spread that the Duke was dying of the poison, — that he was dead. The effect of this news upon the public was beyond description. The report was true, however; the Duc de Praslin expired in the Luxembourg. To the last he shrunk from positively denying the murder; and when, just as the agony of death was upon him, he was adjured to relieve his soul by an avowal of the truth, his last words were: "I am too worn out, too suffering to-day, but tell the Chancellor that I beg him to come to me to-morrow."

In consequence of his death, the Chancellor made the following report to the Peers: —

"An account is due you of how we used the powers committed to us, for investigating the murder of the Duchesse de Praslin. The inquiry was conducted upon the presumption, which proved too well founded, that her husband, the Duc de Praslin, was the actual criminal. The time the Duke was under your jurisdiction was of no long duration. At five o'clock on the morning of Saturday he was committed to the prison of the Luxembourg, in virtue of an order that I had given on Friday, but which could not sooner be put into execution. He lived four days only from the date of his entering the prison, having, a few hours after the murder, taken

a powerful dose of arsenic. On Tuesday, the 24th, at half-past four in the evening, he died, just seven days and a half after the perpetration of the atrocious deed. This short period, however, sufficed for bringing to light the truth in all its details. It is probable that the Duke took the poison when he saw his plans for hiding the murder defeated, expecting its effect would be much more rapid than it actually was. . . . Although the accused could not be brought to an actual confession of his crime, yet the absence of all denial, even when the choice was formally given him between *yes* and *no*, may be well received as such. . . . As regards the Duke, all then is made plain. All is accomplished, — the justice of man has no longer any power over him. But at the commencement of the preliminary inquiries, the ordinary judges did not hesitate to arrest Mademoiselle Deluzy, under suspicion of having been a party to the crime. For six years she had been a governess to the Duke's children, and only left the house and her situation on the 18th of July last. I have continued this arrest, by issuing against her an order of imprisonment, in virtue of which she is still detained in the Conciergerie."

Mademoiselle Deluzy was soon after set at liberty, on the report of the Procureur du Roi that there were no grounds for supposing her to have had any participation in the murder. The Duke's remains were buried secretly at night. The people were so enraged against him, and were so incensed at the impunity he obtained in the eyes of the world by dying, that many refused to believe that he really was dead. There were some who maintained that the noble families, interested in stifling the details of the scandal, had procured the government's connivance at the evasion of the accused. Those who had too much sense to credit so absurd a supposition, declaimed none the less loudly against the system of tolerance, consideration, and insufficient restraint allowed him, which enabled him to escape the merited disgrace of a public execution. Strange to say, this gave rise to a kind of general undefined feeling against the then existing monarchical government, which grew and continued a canker on the public mind until there came a mighty revolution which made the Praslin affair seem a gloomy prelude to a swelling scene of horrors.

The letters which the Duchesse de Praslin wrote to the Duke, during the period of discord caused by the presence of Mademoiselle Deluzy, were published after her death and obtained quite a literary fame, from the exquisite tenderness, the purity and goodness of mind, and the energy of feeling they display. The correspondence minutely details and painfully lays bare the long agony the unfortunate wife must have endured. The following is an extract from a letter (probably the last she ever wrote) addressed by the Duchess to her husband, and found in her desk at Vaux-Praslin, after she had perished by his hand : —

"If by your threats [writes the miserable broken-hearted creature] you wish me to understand a divorce, you should recollect that the initiative is not with yourself. For years you have treated me without esteem, without regard. You are free, but you bring up your children in alienation from their mother, in contempt of her; you abandon them to a woman who cajoles you, whose manners are corrupt. I must confess I think you a little singular in being angry, when for once I endeavor to escape from this detestable kind of life. You seek pretexts against my journey. So long as I had a husband, children, and a home, I was happy, and never thought of quitting them; now that you have robbed me of them, I own that I am thinking of escape from this hell, for surely there are no words that can express the tortures I endure."

The poor woman, it seems, had a premonition of her approaching end. One day, shortly before their departure on the fatal journey to Paris, the Duke requested her to descend into the funeral vault at Vaux, which had been recently repaired; she refused, saying, "Shall I not soon go into it forever?" Her presentiment of death was

only too true, but she was wrong as to her place of sepulture. Her murdered remains lie far away from the vaults of the Château Praslin; they are entombed near those of her mother, at Olmetta, the residence of the Sebastianis, in Corsica.

THE IDEAL LAWYER.

By Theodore W. Dwight.

From an Address delivered before the Graduating Class of the Columbia Law School, June, 1889.

WHO is the ideal lawyer? In ascertaining this, we cannot separate him from his functions. He is to study, to think, and to do. He is both a man of the closet and a man of action. He masters principles, and he wins verdicts. He spends his nights with old Lord Coke, who has been dead almost these three hundred years, and is still wonderfully alive; and in the morning he untangles, before an expectant jury, the mysteries of some recent murder, or perhaps unravels the winding threads of some complicated fraud. At one time he is all contemplation; at another, he is all action. He never supplies the contrast imagined by Dante, between Leah and Rachel, daughters of the patriarch Jacob, — the one gathering flowers in the garden of Paradise to give pleasure to others, and the other dreamily searching in a mirror the excellences of the reflection from her own eyes.

On the other hand, what the good lawyer thinks, that also he does. Above all, he is honest, — honest towards himself, for he never over-estimates his powers; honest towards his client, for he never encourages him with false hopes, knowing that if he does, the sure harvest will be bitter disappointment, bursting out at length into hot indignation; honest towards the judge, whom he never misleads by a false statement, or a miscitation or quotation of an authority; honest, emphatically, towards the jury, whose confidence he sincerely strives to win. The result is, that he is never short-sighted. He never for a temporary advantage sacrifices a reputation which he has spent toilsome years to win. Ah! it is a noble thing to be a great lawyer who, like a great musician, never utters a false note, or like a great actor, who never makes a false gesture, or like a great dancer, who never makes a false step. It is an easy thing to make a moderate lawyer; it is a simple thing to make constant blunders which disturb the inner gravity of a sound-minded judge, who strives to give no outward sign of his hidden well-spring of mirth. It is an uncanny thing to play tricks with the judge and jury; for by and by will come the avalanche, and then where will the trickster be?

. . . . . .

The ideal lawyer is also a true man. Nothing is of more value to him than a high and honorable character, strengthened and purified by the struggles, trials, and discipline of life. The great inquiry for us all is, How shall we develop ourselves, and use our development best in aiding our fellows? Self-culture is an excellent thing; but its crowning excellence is as an instrument of good. When self-centred it has its enjoyments, but they are fleeting; while those which are derived from service rendered to others are permanent and undying.

There is no finer object of contemplation among men than an aged jurist, full of honors, who having rounded up the measure of his active years, receives the tributes of his fellows for his earnest spirit of work, the breadth and solidity of his judgment, the worth of his transparent character.

The Green Bag.

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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.

THE GREEN BAG.

A NEW YORK correspondent favors us with the following amusing anecdotes: —

Editor of the "Green Bag":

When I was a student at Yale, I often listened to the stories told by the Hon. Simeon Baldwin, grandfather of the present Law Professor of that name, — one of the most renowned names, by the way, in the annals of Connecticut. Here is one of them, which is now so old that it may be new. "This may be a paradox, but the time gives it proof."

"Roger Sherman and Oliver Ellsworth were often pitted against each other at the New Haven Bar. On one occasion Sherman, while addressing the jury, severely criticised the arguments of Ellsworth, charging him with forensic disingenuousness and with splitting of hairs, whereby the judgment of the jurors was led astray. 'If so disposed, gentlemen, I could split hairs as well as he.' Ellsworth thereupon turned to Sherman, and twitching a hair out of his own head, handed it to Sherman with a smile of mockery. Sherman declined to receive the filament, and it dropped to the floor, where it lay in sight of the jury. Pointing to it, he said, 'Gentlemen, I said hairs, *not* bristles!'"

The name Sherman reminds me of Evarts, the families being connected by blood-relation. William M. Evarts, whom the survivors of the class of '37 always speak of as Maxwell Evarts, is famous as a wit of a supremely caustic nature, often mingled with the good nature and *savoir-faire* of an accomplished man of the world. At a Yale supper I once heard him say this: "Congressmen sometimes say to me, 'Mr. Evarts, do you not find that the different kinds of wine which you absorb at banquets have a tendency to disturb your digestion?' My answer invariably is, 'Gentlemen, the different kinds of wine do not disturb my digestion: the only danger is to be apprehended from the *in*different kinds of wine which I am sometimes so unfortunate as to meet with.'"

I may remark *en passant* that Mr. Evarts has an enviable capacity of digestion, which no one has ever seen disturbed or unequal to whatever stress may be laid upon it. One observer said, "He is hollow down to his boots." Mr. Evarts himself says he attributes his excellent appetite to the fact that he *never* takes any exercise whatever!

ANOTHER correspondent writes: —

Editor of the "Green Bag":

The article in the January "Green Bag," on the "Women Lawyers of the United States" recalls an incident which happened in the Supreme Court of the District of Columbia some years ago. The late Chief-Justice Cartter of that court was noted alike for his brusque speech and ready wit. On the occasion referred to, Mrs. Belva A. Lockwood asked the court to appoint Mrs. Marilla M. Ricker a constable of the court, and in the course of her remarks in support of the request, said, —

"Sometimes, as your Honors know, constables have to execute writs against women, and they are generally very harsh in so doing. Besides, your Honors, as everybody knows, the constables here are a *shiftless* lot."

"And I suppose, Mrs. Lockwood," interposed the Chief-Justice, in his stammering way, "you are prepared to defend your client against that last aspersion."

THE following letter from Miss Robinson forms an interesting appendix to her valuable paper on "Women Lawyers in the United States," published in our January number: —

Dear "Green Bag":

Is it any wonder that perfectly honest witnesses are so often unreliable when we ourselves, with the best intention of speaking truth, slip up so badly on the treacherous ice of cold facts? I think that even from a casual glance at my paper on "Women Lawyers" in your January number of the current year, it must appear that I used as much care in its composition as I would in preparing the declaration in my very best case for my very best client, and yet it proves to be demurrable in one point, and probably in others. My "sister-in-law," Mrs. Marion

Todd, is stated by me to have graduated at the Hastings College of Law in San Francisco, when the fact is that though she studied two years in that school, she did not remain the third year for graduation, but applied for and obtained her license to practise upon examination by the Supreme Court. By her request I make this correction, and the further statement also that her work for the Knights of Labor has been of minor importance compared to her labors in the field of politics generally. Mrs. Todd has left Michigan, and is now located at Chicago, Ill., where she has accepted a position on the editorial staff of the "Express" of that city.

With all my endeavors to gain full information concerning the States where women are admitted to practise law, I did not learn of Montana, where a bill to that effect was passing the Legislature at the very time when I was writing my article. The bill became a law; and Miss Ella J. Knowles, of Helena, immediately took the bar examination and was admitted. I understand that Miss Knowles is a New Hampshire woman. She graduated from the State Normal School of New Hampshire, and in 1884 from Bates College, in Lewiston, Me. She studied law in an office in Manchester, N. H., and afterward continued her legal studies for two years in the office of J. W. Kinsley, Esq., of Montana. The "Helena Independent" says of her: "Miss Knowles passed a very severe and most creditable examination. Her examiners say that not one question was missed in her answers."

Mrs. Martha Strickland, of Detroit, Mich., has recently won a case in the Supreme Court of her State which has been sharply contested for two years, and her able handling of it has attracted much attention to her. She has been in practice about seven years, during three of which she was assistant prosecuting attorney of Clinton County, and actively engaged in all the criminal prosecutions, at the same time carrying on with the prosecuting attorney a good civil business in law and chancery. In 1887 Mrs. Strickland was chairman of the committee for examining candidates for the bar in Detroit.

The Legislature of Virginia has refused to pass the bill to allow women to practise law in that State, the Senate killing it on the final vote by a small majority. If I remember rightly, Virginia is the only State except Pennsylvania which has not passed such a law when requested. There is talk of passing a private bill for the exclusive benefit of Mrs. Annie Smith, of Danville, who is seeking admission.

In a newspaper interview with Mr. P. A. L. Smith, himself an attorney and husband of the lady, he is reported to have said concerning the argument that the admission of women to the legal fraternity will seriously interfere with woman's domestic affairs: "This is all bosh, – for in the first place, she may not have any domestic affairs to look after; and in the second place, she herself is the best judge as to whether it pays her better or suits her better to look after other business and pay some one to keep an eye on domestic affairs. One or two little domestic affairs," remarked Mr. Smith with a smile, "are not expected to occupy all of a smart woman's attention, and in the mean time why should n't she be allowed to practise law if she wants to? My wife has studied hard, prepared herself for the bar, and is fully competent to stand the legal examination required of men; and I see no reason convincing to me why she should not practise. She has studied at my request, and anything I can do to secure her admission to the bar will be done."

Who would not be willing to stand up in a horse-car when this new nineteenth-century gallantry is given us in exchange for the old superficial kind!

Mrs. Kilgore, of Philadelphia, has been admitted to the bar of the United States Supreme Court since the date of my article, making the fourth woman to receive this honor.

Miss Alice Parker, of Lowell, recently of the San Francisco Bar, has been admitted to the bar of Middlesex County, Massachusetts, and I had the pleasure of making the motion for her admission. She is the third woman to be admitted in Massachusetts, and the first in Middlesex.

In the face of all the facts concerning women lawyers in this country, what do you suppose, dear "Green Bag," that I read in my last letter just received from Mlle. Marie Popelin, Docteur en droit, of Brussels, who having been finally refused admission to the order of advocates by the Supreme Court on appeal from the decision of the lower court, is now working to gain recognition through the legislature? Mademoiselle Popelin says that a friend of hers, wife of an eminent member of the Chamber of Representatives, and herself much interested in "la cause de la femme," while travelling last fall in Italy and Greece, met an American lady who said to her: "Mais il n'y a pas de femmes avocats aux États-Unis. Ce que vous me dites est inexact, puisque, moi, Américaine, je n'en ai jamais entendu parler de femme avocat."

LELIA JOSEPHINE ROBINSON.

LEGAL ANTIQUITIES.

AN amusing method of trial, common throughout Christian countries in early times, was called *judicium crucis*. Each party, or his champion, stretched out his arms before a crucifix; and the one soonest wearied dropped his

arms and lost the day. This method of trial was principally confined to disputes about property; and the most celebrated instance of its being resorted to occurred in France during the reign of Pepin, when the Archbishop of Paris and the Abbot of St. Denis disputing about the patronage of a monastery, the king ordered that their respective champions should resort to this method of deciding the question. Both appeared in the chapel attached to the monastery, and held out for an almost incredible time; the spectators, we are told, *betting* as to their respective abilities. The bishop's champion first gave in, and the Archbishop of Paris consequently won the day.

FOR some reason, altogether undiscoverable to us at the present day, indictments in the olden times were universally drawn out in abbreviated Latin, a misspelling in which, however unimportant in other respects, was deemed sufficient to destroy the instrument. It was indeed a rule with the lawyers of that time that no word which *could* be expressed in Latin should in an indictment be written in English; and we continually find such documents being set aside for breaches of this regulation. In one case the term "witchcraft" rendered the instrument void, "incantatio" being deemed the correct word; and in another "de la Fabre" was declared inadmissible in any other garb than a Latin one. So with misspelling, — a man was indicted in Elizabeth's reign for murder; some unfortunate clerk spelled the word "destructionem" "destrictionem," and the error being discovered, the prisoner was immediately acquitted. More recently "deodecim" occurring for "duodecem" invalidated the instrument; and "præsentant" for "præsentatum" had a similar effect.

The great danger which was thus continually encountered — on the one hand, of placing in indictments English words which might be expressed in Latin, and on the other, of introducing Latin words not of sufficiently general acceptation to be used in an instrument the meaning of which was to be patent to every one — led to the custom of using an *Anglicè* when any doubtful Latin word occurred. Thus in one old indictment we read of a man stealing certain "*ollas ærarias* — Anglicè, 'brass pots.'"

FACETIÆ.

A PRISONER who had been convicted at least a dozen times, was placed at the bar.

"Your Honor, I should like to have my case continued for a week; my lawyer is ill."

"But you were captured with your hand in this gentleman's pocket. What *can* your counsel say in your defence?"

"Precisely so, your Honor; that is what I am curious to know."

LEGAL annals could furnish many instances of quite as queer excuses pleaded by the accused as the following. The widow of a French chemist, famous for his researches in toxicology, was on trial for poisoning her husband. It was proved that arsenic was the medium employed.

"Why did you use that poison?" asked the presiding magistrate.

"Because," sobbed the fair culprit, "it was the one he liked best."

AN Irishman not long since was summoned before a bench of county magistrates for being drunk and disorderly.

"Do you know what brought you here?" was the question put to him.

"Faix, yer Honor, two policemen," replied the prisoner.

"Had not drink something to do with bringing you here?" said the magistrate, frowning.

"Sortinly," answered Pat, unabashed; "*they were both drunk.*"

AN elderly gentleman, who knew something of law, lived in an Irish village where no solicitor had ever penetrated, and was in the habit of arranging the disputes of his neighbors and making their wills. At an early hour one morning he was aroused from his slumbers by a loud knocking at the gate, and putting his head out of the window, he asked who was there.

"It 's me, yer Honor, — Paddy Flaherty. I could not get a wink of sleep thinking of the will I have made."

"What 's the matter with the will?" said the amateur lawyer.

"Matter indeed!" replied Pat; "sure I 've not left myself a three-legged stool to sit down upon!" — *Montreal Legal News.*

On one occasion Judge Porter, a popular Irish magistrate, in pronouncing the sentence of the court, said to a notorious drunkard: "You will be confined in jail for the longest period the law will allow, and I sincerely hope you will devote some portion of the time to cursing whiskey —"

"By the powers, I will!" was the answer; "and *Porter*, too!"

NOTES.

Fact is quite as funny as fiction. That is demonstrated by the performance of Judge Laidlaw, of Oakland, Cal., who imposed a fifty-dollar fine on himself for having been drunk. Douglas Jerrold told the same story about a Scotch magistrate long ago, and it has since been laughed at as a delicious bit of absurdity. The California occurrence only shows how fast we are approaching the humorist's ideal.

According to Rabelais, Judge Bridlegoose (supposed to mean a French Chancellor) admitted, when taxed with an outrageous judgment, that since he had become old he could not so easily distinguish the points on the dice as he used to do. And when pressed to explain how he came to resort to dice, he said he always, like their other worships, decided his cases by the throw of the dice, because chance and fortune were good, honest, profitable, and necessary to put a final stop to lawsuits. When pressed to explain why, if he used dice, he received so many pleadings and papers from the parties, he said he used to heap these heavy papers at opposite ends of the table, and when they were pretty evenly balanced he used his small dice; but when the papers of one party were larger than the others, he used his large dice. Being again pressed to say why he kept the papers so long, seeing that he never read them, but decided his cases by the dice, he gave three reasons. first, because it was decorous and seemly to keep them; secondly, he used to turn them over and bang and toss them about as a healthy bodily exercise; and thirdly, he kept them so long in order that the issue might ripen, and the parties might be more reconciled to bear their misfortune when it came to them.

These lucid reasons convinced his censors that he was about as efficient as his neighbors in his day and generation, which was about the year 1545.

The elegant sufficiency of legal language, to put it mildly, has long been the subject of ridicule on the part of those wanting in respect for the usages of the gentlemen of the law. It is doubtful if a small though highly useful idea was ever swathed in more words than the indictment presented by the Grand Jury recently in the case of the electric light homicide. It bears evidence of having been prepared by a lawyer of a great many years' standing. We cannot refrain from reprinting part of it. After various verbal gymnastics, it goes on like this: —

"And a current of electricity, of great and deadly power and intensity, through and into the body of the said Henry Harris, did put, place, and pass, and cause and procure to be put, placed, and to pass, and the said current of electricity through and into the body of him, the said Henry Harris, did wilfully and feloniously keep and continue and cause and procure to be kept and continued for a space of time, to wit: for the space of five seconds; thereby giving unto him, the said Henry Harris, with the electric current aforesaid, a mortal electric shock, of which mortal electric shock he, the said Henry Harris, then and there died."

That is, we suppose, Henry Harris was killed by electricity. It would seem to the casual reader that the man who wrote the indictment did put, place, insert, and pass, and cause and procure to be put, placed, inserted, and passed into or within said indictment, charge, arraignment, accusation, or other instrument or writing, and did keep and continue, and cause and procure to keep and continue and remain and stay, in and within and on the inside of, said indictment, charge, arraignment, accusation, or other instrument or writing, several, to wit: one or more superfluous, unnecessary, and useless words. And thus and thereby is attention once more called and directed to the pleasing little way or custom which lawyers have of raising or causing to be raised a great cloud of words around a small matter, and fostering the public in the belief that a mighty mystery hedges in the drawing up or preparing of even the simplest legal paper; whereas it should be, even if it is not, a thing possible to any one having a fair command of English. — *N. Y. Tribune.*

Recent Deaths.

JUDGE JOHN W. NORTH, who died at Fresno, Cal., February 22, at the age of seventy-five years, was born in eastern New York, was educated at Middletown, and early in life became an anti-slavery lecturer in New England. He studied and practised law at Syracuse until failing health led him to migrate to the then Territory of Minnesota. He was a member of the Constitutional Convention, and in 1860 a delegate to the Chicago Convention which nominated Mr. Lincoln, and one of the selected delegates who went to Springfield to announce to him his nomination. The financial crash of 1857 had been disastrous to him, and in 1861 he accepted the surveyor-generalship of the then Territory of Nevada. When Nevada became a State, he became a member of its Supreme Court. At the close of the war he removed with his family to Knoxville, Tenn., where he soon became conspicuous for his advocacy of common schools. His health obliged him after some years to return West, and he went to southern California. Here he became interested in the immigration question, and in 1871 founded the colony of Riverside in San Bernardino County. When the Riverside Colony, of which he was president, became an incorporated city, he, still animated by a roving and enterprising spirit, went to the San Joaquin Valley, and was one of the founders of the Fresno City colony.

MR. SAMUEL D. LORD, a well-known lawyer of Manchester, N. H., died February 23, aged sixty-three years. He had served at different times in the State Legislature, and had been clerk of National House and Senate committees.

HON. BENJAMIN FRANKLIN THURSTON, one of the brightest lights of the Rhode Island Bar, well known throughout New England and the country, died suddenly, on March 12, at the rooms of the University Club, Twenty-sixth Street and Madison Avenue, New York. He was in the sixty-first year of his age. He was the son of the Hon. Benjamin Babcock Thurston and Harriet E. (Deshon) Thurston, of Hopkinton, R. I. He received his early education in the public schools of the State and of Providence. He graduated at Brown University in 1849, and studied law with the late Thomas F. Carpenter. After his admission to the bar, he soon made a brilliant record in his profession, making a specialty of patent cases. He was also largely interested in the conduct of the celebrated Sprague cases. Soon after admission to the bar, he was retained in what was known as the "Corliss steam-engine cut-off case." His great ability as a lawyer and his perseverance were demonstrated in one of his earliest cases, — that of Mary Hannity against the administrator of the estate of the late Bishop O'Reilly, which was a suit brought to recover money which the plaintiff alleged she had loaned to the bishop. Mr. Thurston appeared for the defence, and the case was tried before the late Chief-Justice Ames, ending with a verdict for the plaintiff. He was satisfied that this verdict had been obtained on perjured testimony, but it was not generally thought that the verdict could ever be disturbed; but Mr. Thurston devoted his entire energies to a careful examination of the case, and occupied the greater part of the next summer in personally looking up testimony on a motion for a new trial. The result was that the plaintiff's principal witness, who lived in New York, and whose name was Astor, was brought on from New York on a requisition on the charge of perjury, tried, convicted, and sent to the Rhode Island State Prison. The Supreme Court promptly set the verdict aside. Mr. Thurston was appointed trustee of Brown University in 1888. In 1888 he received the degree of doctor of laws from his Alma Mater. In that same year he founded the Thurston scholarship of $1,000. He was to have delivered the next lecture in the law course of the University on "Patent Law," on the 17th of the month. Mr. Thurston was to have delivered his third course of lectures on law at Cornell University this spring. He was considered one of the ablest lecturers on that subject the institution ever had. He also lectured at Brown University on legal subjects. He was a member of the legal firm of Thurston & Ripley, of Providence.

MAJOR LUCIEN EATON, one of the editors and principal owners of the "American Law Review," died at Boerne, Texas, on the 7th of March, 1890. He was a prominent citizen of St. Louis. He was born in Massachusetts in 1831, and gradu-

ated at Iowa University in 1855. At the Harvard Law School he received the degree of LL.B. in 1857. He afterwards studied law at Boston in the office of Charles T. and Thomas H. Russell, Esqrs., and was admitted to the Massachusetts Bar in Boston in the autumn of 1857. He went to St. Louis in 1858; and when the war came on he entered the army as second lieutenant, and afterward rose to be major in the regular army, and was for some years Judge Advocate at St. Louis. Major Eaton was at various times U. S. Register of Bankruptcy at St. Louis, and City Counsellor. He was the man who first disclosed the workings of the St. Louis whiskey ring, and was employed as special counsel in the case by the Government. He was for some years the editor of the "Southern Law Review," and afterwards editor of the "American Law Review," Judge Seymour D. Thompson, of St. Louis, and Leonard A. Jones, Esq., of Boston, being associated with him. Mr. Eaton was a man of sterling integrity, and of great energy and skill in business management. When actively engaged in the practice of the law, his business was large. Several years ago he was obliged by reason of failing health to give up his professional work. He has been away from St. Louis, and has spent much time in travelling.

REVIEWS.

THE UNIVERSITY MAGAZINE for March is wonderfully attractive, both pictorially and in its reading matter. The editor is to be congratulated upon his successful work, and the college graduates throughout the country should be proud of such a representative journal. The portraits and biographical sketches are alone worth many times the price of the subscription, and the spicy gossip concerning college men and college affairs cannot fail to interest all those whose memories still cling fondly to their Alma Mater.

SCRIBNER'S MAGAZINE for March opens with an exceedingly interesting article by Benjamin Ellis Martin, "In the Footprints of Charles Lamb." A full-page portrait of Charles Lamb accompanies the sketch; and among the other illustrations is one which cannot fail to interest every lawyer, and that is, "The Temple Garden from Crown Office Row." "Expiation," by Octave Thanet, is continued. "A Forgotten Remnant," by Kirk Munroe, is an account of the little band of Seminoles still residing in Florida. The "Indian Question" is incidentally touched upon, and the author says (and who will not agree with him?): "The mere recognition by the Government of these Indians as human beings possessed of human rights as well as of human failings would be the taking of one step toward the creation of a century of honor that should in some measure efface the memory of the 'Century of Dishonor' just closed." The article is beautifully illustrated. Four more chapters are given of Harold Frederic's "In the Valley;" and the story of the life of "John Ericsson," the celebrated engineer and inventor, is concluded. Three short stories — "The Hidden Self," "The Blackfellow and his Boomerang," and "A Deedless Drama" — complete the contents of this most readable number.

IN the March number of the POLITICAL SCIENCE QUARTERLY, Prof. Anson D. Morse, of Amherst College, examines the political theories of Alexander Hamilton; Prof. Edwin Seligman, of Columbia College, traces the history of the "General Property Tax" in Europe and in the United States, and shows why all attempts to reach personal property have failed; J. P. Dunn, Jr., Indiana State Librarian, writes strongly on "The Mortgage Evil" in the West; Prof. Simon N. Patten, of the University of Pennsylvania, criticises David A. Wells's "Recent Economic Changes;" Irving B. Richman discusses "United States Citizenship;" and Prof. Frank J. Goodnow, of Columbia College, completes his description of the new Prussian system of local government, in which the ideas of Stein have obtained complete expression. The number also contains reviews of more than twenty recent political, economic, and legal publications.

HARPER'S MONTHLY MAGAZINE for March opens with an article on "The Army of the United States," by Gen. Wesley Merritt, which gives the reader a good idea of the organization of our little army of less than 25,000 men. The writer laments the disinclination of Con-

gress to increase the force to the strength thought necessary by those prepared to judge. A new serial by William D. Howells, "The Shadow of a Dream," is commenced in this number, and opens in an interesting manner. A suggestion from H. E. Krehbiel, "How to Listen to Wagner's Music," may prove useful to some whose musical ears are not yet educated up to the Wagnerian standard. "Venetian Boats," by Elizabeth Robbins Pennell, is fully illustrated; and the pictures include all varieties of boats from the poetic gondola to the matter-of-fact milk-boat. A full-page portrait of John Ruskin, and views of Brantwood and its surroundings, add to the attractiveness of Anne Thackeray Ritchie's charming essay on that great writer. The other contents are "The Najâ-Kallu, or Cobra Stone," by Prof. H. Hensoldt; "The Winged Victory of Samothrace," by Theodore Child; "On the South Shore," by Margaret Crosby; "An Ignoble Martyr," by Rebecca Harding Davis; "Our Invalid Wives," by Lizzie W. Champney; "Manilla and its Surroundings," by Dr. Samuel Kneeland; and "The Restored Head of Isis in the Parthenon Frieze," by Dr. Charles Waldstein. A very varied and appetizing bill of fare, which serves to make up a most interesting number.

THE MARCH CENTURY contains the most striking pictures which have appeared in the Joseph Jefferson Autobiography. The frontispiece is a full-length portrait of Jefferson as Dr. Pangloss, there are besides six large portraits, in various characters, including another view of Dr. Pangloss, a picture of Jefferson as Asa Trenchard, as Newman Noggs, as Caleb Plummer, and as Salem Scudder. A portrait of Sothern as Lord Dundreary, and one of Laura Keene are also given. Jefferson tells for the first time, from his point of view, of the great success of "Our American Cousin," in which he created the famous character of Asa Trenchard, and Mr. Sothern that of Lord Dundreary. Dr. Albert Shaw describes the workings of the local government of Glasgow. The subject of Irrigation is treated in the first of a series of three articles by Professor Powell, and Professor Fisher concludes his paper on "The Nature and Methods of Revelation." Professor Wood, of Philadelphia, contributes a curious study on "Memory." This number is also notable for the beginning of an authentic and original account of the "Prehistoric Remains in the Ohio Valley," by Professor Putnam, which is fully illustrated. The number contains, also, the artist La Farge's second group of illustrated "Letters from Japan;" an article on "Gloucester Cathedral" by Mrs. Van Rensselaer, with pictures by Joseph Pennell; and an article by Mr. Wilson, the photographer, depicting "Some Wayside Places in Palestine;" also a striking paper on "The Sun-Dance of the Sioux," by Frederick Schwatka, with pictures by Frederic Remington. The following are the contributions in fiction: Mrs. Barr's "Friend Olivia;" the conclusion of Mr. Stockton's "Merry Chanter;" a story by James Lane Allen called "Posthumous Fame; or a Legend of the Beautiful;" another by Richard Malcom Johnston, illustrated by Kemble, entitled "The Self-Protection of Mr. Littleberry Roach," and the "Last Marchbanks," by Miss Roseboro', with pictures by George Wharton Edwards.

BOOK NOTICES.

THE MODERN LAW OF CARRIERS; or the Limitation of the Common-Law Liability of Common Carriers, under the Law Merchant, Statutes, and Special Contracts. By EVERETT P. WHEELER, of the New York Bar. Baker, Voorhis, & Co., New York, 1890. $4.00 net.

So able and distinguished a member of the bar as Mr. Wheeler is certain to give to the profession a thorough and exhaustive treatise upon any subject which he undertakes to discuss; and this new work upon the Law of Carriers will, we predict, be at once recognized as a most valuable addition to our legal literature. In his treatment of this important subject, Mr. Wheeler displays rare judgment and discrimination; and the result is a book clear and concise in its language, and which sets forth the principles of the law distinctly and unmistakably, without any circumlocution or unnecessary verbiage. The work is the outgrowth of actual experience in the trial and argument of cases on the subjects of which it treats. This makes it eminently practical, and gives the reader the benefit of the conclusions arrived at by counsel after hearing both sides fully discussed and argued. The book is invaluable, and no lawyer interested in the Law of Carriers can afford to be without it.

A Treatise on the Law of Corporate Bonds and Mortgages. Being the second edition of "Railroad Securities," revised. By Leonard A. Jones. Houghton, Mifflin, & Co., Boston and New York, 1890. $6.00.

Since the publication of the first edition of this work, the growth and change in the law of the subject have rendered it necessary that a large portion of the book should be written anew, and a change has been made in the title in order the more accurately to indicate the scope of the work. The treatise is now, in fact, a continuation of Mr. Jones's well-known work on "Mortgages of Real Property," and applies the general principles of the law to all mortgages made by corporations.

It has been the purpose of the author not to include in the present treatise subjects elementary or general in the law of mortgages. The public nature of railroad and other like corporations having public duties to perform, in return for the franchises granted them, and the nature and extent of their property, have introduced into mortgages of their franchises and property new elements of law, which have now developed into a separate branch of jurisprudence. The securities considered in this book are of quite recent origin, and for the most part are the outgrowth of the recent extraordinary development of the railroad system of this country.

The amount of labor necessary to bring this new edition into a shape conformable to the author's purpose may be appreciated from the fact that of the seven hundred and more sections into which the present volume is divided, about one third are wholly new; and of the remaining sections the larger part have received important additions or alterations. The new cases cited are about two thirds in number of the cases cited in the original work.

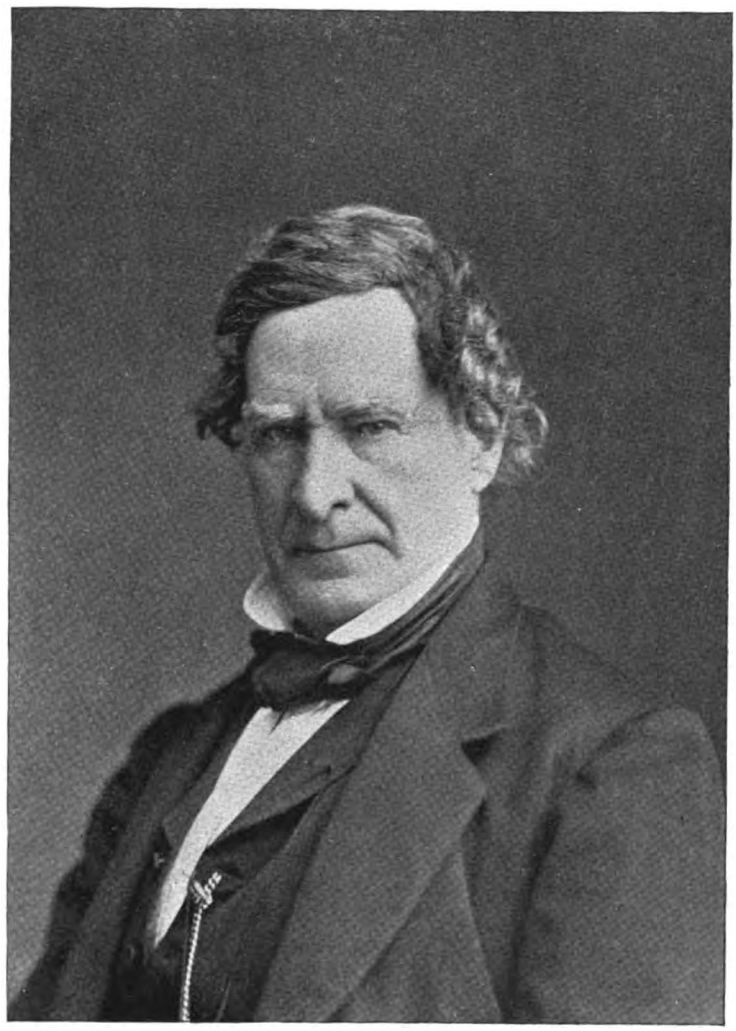
It is almost unnecessary to add that Mr. Jones has performed his task, as he always does, most satisfactorily, and this treatise is a really valuable addition to legal text-books.

American Probate Reports. Vol. VI. With notes and references by Charles Fisk Beach, Jr., of the New York Bar. Baker, Voorhis, & Co., New York, 1890. $5.50 net.

The plan of this admirable series of Reports is to give in an annual volume contemporaneous or recent decisions of the highest courts of the different States of the Union upon all matters cognizable in Probate Courts. The labor of lawyers will be much facilitated and lessened by thus having before them the most recent and valuable decisions drawn from the numerous State Reports upon subjects which have to be considered daily in the practice of the law. The notes and references by the editor form an important and valuable feature of these volumes, and in the present volume the annotations of Mr. Beach are fuller than usual. About eighty cases are reported, covering a broad field of Probate Law.

Foster's Federal Practice. Equity; Common Law; Removal of Causes. A Treatise on Pleading and Practice in Equity in the Courts of the United States, with chapters on Jurisdiction of the Federal Courts, Practice at Common Law, Removal of Causes from State to Federal Courts, and Writs of Error and Appeals, with special references to Patent Causes and the Foreclosure of Railway Mortgages. By Roger Foster, of the New York Bar. The Boston Book Company, Boston, 1890. Law sheep. $6.00 net.

There is already a voluminous literature pertaining to the Federal Courts. There are twenty-seven volumes of United States Statutes, five rival editions of the one hundred and thirty-two volumes of Supreme Court Reports, about two hundred volumes of reports of the Circuit and District Courts, and some fifteen volumes of Digests to contain and index the statutes and decisions coming from Federal authority. As commentaries on this mass of cases and statutes there are perhaps a dozen recent books, mainly convenient arrangements of the statutes, or digests thrown into the form or semblance of treatises. It is no injustice to these books to say that we have had of late years no thorough and satisfactory treatise upon the practice of the United States courts. That such a treatise would be useful, even the most experienced practitioner will confess. On the chancery side especially it is often difficult to find the procedure and forms which will satisfy the court and defy the criticism of opposing counsel. The note of Judge Bradley to the case of Thompson *v.* Wooster [114 U. S. 112] calls attention to the uselessness of the modern chancery treatises, English as well as American, when applied to the practice of the United States courts. To supply this deficiency in our law literature, Mr. Foster's volume, published as we go to press, comes very opportunely and satisfactorily. We have not had time to give it the crucial test of actual use, but from a somewhat thorough examination of advanced sheets, we feel warranted in saying that the author — known as yet to the profession at large only by two small monographs — has compiled a very excellent and very useful work. It bears evidence of having been worked out not by study alone, but by experience and practice in the courts; and without being "padded" with lengthy quotations from cases, it appears to contain about everything material to the topics treated.



L. S. Bush

The Green Bag.

VOL. II. No. 5. BOSTON. MAY, 1890.

JEREMIAH SULLIVAN BLACK,

CHIEF-JUSTICE OF PENNSYLVANIA AND ATTORNEY-GENERAL OF THE UNITED STATES.

BY W. U. HENSEL.

HON. JEREMIAH S. BLACK, of Pennsylvania, was known to the profession as Judge Black, jurist and lawyer; to the people he was more generally known as "Jerry" Black, Democrat and advocate. He was born in Somerset County, a rural region of the Keystone State, on the western slope of the Alleghanies. That range of mountains, in his youth, before the days of steam travel and electric news, actually marked the dividing-line for the whole country between the East and the West. In his ancestry were commingled the Pennsylvania German and the Scotch Irish strains of blood, the two principal elements in the early citizenship of Pennsylvania, west of Philadelphia and the few adjoining counties where the Quaker had largest influence.

James Black, the grandfather, was in his day a man of consequence, a landed proprietor, and justice of the peace. Patrick Sullivan, his mother's father, was a captain in the Pennsylvania line during the Revolutionary War, a member of the General Assembly of Pennsylvania; and in his latter days he was wont to carry a heavy cane with which to club liars when he met them in controversy. The father, Henry Black, was associate (lay) judge of the county, a member of the Legislature, and Representative in Congress. Neither his father's circumstances nor the educational facilities of that interior region in his day afforded to young Black advantages beyond those of the village schools and of an academic institution in Brownsville, which introduced him to the ancient classics. He devoured Pope and Dryden, Horace and Virgil, with like avidity. At the desk, in the furrow, or by the light of blazing pine-knots on the farm-house hearth, it was his favorite amusement to turn the Horatian Odes and the Æneid into English prose and rhyme of his own construction; he remembered to the time of his death every line of these rude versions of his boyhood. As he grew older, his appetite for English literature strengthened, and it was always directed by a sound discrimination and a refined taste for the masters. He read the plays of Shakspeare for the first time in the second year of his law studies, and became so perfectly familiar with them that he never again had occasion to refer to the text, though he garnished nearly every speech with most apt quotations from Shakspeare and Milton. "Paradise Lost" disappointed him at first, but afterwards it "took" him "like Niagara."

He loved the associations of rural life; he had great fondness for the "Pleasant Glades" in the lofty basin, two thousand feet above the sea-level, which had been the home of his fathers; he had profound admiration for, and genial fellowship with the sturdy yeomanry among whom his youth was spent, and who came to be known, in the annals of the Commonwealth as "the sons of frosty thunder." But he felt the weight of a mortgage on his father's farm; the purpose to lift it directed him to the choice of the

legal profession, and inspired him to seek its emoluments. His early success at the bar in a country town, whence his fame and practice soon spread, was due no more to the striking and original quality of his oratory, to his remarkable power of quaint and forcible illustration, and to his positive political opinions, than to his recognized probity of conduct, purity of character, his strict devotion to business, and his thorough mastery of the science of the law.

The judges in Pennsylvania were then appointed by the governor. Black had taken an active part in politics, devoting his abilities — which were especially marked in the direction of a free and fertile pen — to upholding the Jeffersonian principles and defending the administration of Jackson. A stormy State campaign in 1838 resulted in the choice for governor of David R. Porter. Black had been his effective supporter; and when a troublesome contention arose between numerous aspirants for the judicial appointment in the district composed of Somerset, Bedford, and Franklin counties, the Governor surmounted his difficulties by appointing Black President Judge. This was in 1842; so he began his judicial experience and intermitted his political career at the age of thirty-two.

For about the full judicial term of ten years, he rode the circuit of his district, holding courts at its several county-seats, mingling with the people, administering the law with all the uprightness, fidelity, and ripening ability of which his early success at the bar gave promise; his name and fame spread through the State, and he was discussed in connection with the highest honors at his party's command.

The elective judiciary was engrafted upon the Pennsylvania system by the Constitutional Amendment of 1850; a full Supreme Court — then composed of five judges — was elected in 1851. The elect were to draw lots for their respective terms, and the one whose commission expired first was to become Chief-Justice. Black was nominated by his party, and received the highest vote of all the candidates; with him were elected Gibson, Lewis, Lowrie, and Coulter, — illustrious names in the State Reports. Of the result of that election he modestly said: "Of the whole ten, Meredith[1] was, without doubt, the greatest and most distinguished man. Yet when the poll came, he received the lowest, while I got the highest. This shows how fallible a test the popular judgment is on the merits of a candidate for a judicial office." In the drawing for terms, he got the short term (three years) and the Chief-Justiceship. Writing home to his wife of the method and the result, he said: "So you see your husband is to be Chief-Justice. I don't like it. This whole business has been like our old woman's soap, — 'somehow I have no luck with it.'" In 1854 the wave of Know-Nothingism swept over the State, and caused temporary disaster to his party generally. His name rode high above the shipwreck. He was re-elected by a large majority, though the Democratic candidate for governor was beaten.

He served the Commonwealth and his profession as Associate-Justice — the Pennsylvania system sends even the Chief-Justice, re-elected, to the foot of the bench — until he was summoned into President Buchanan's Cabinet as Attorney-General in 1857. As a member of the Supreme Court, his decisions and opinions are to be found in the reports from 4 Harris (16 Penn.) to 5 Casey (29 Penn.). It is impossible to review them in this brief sketch. They and their influence upon the jurisprudence of the country are the property of the profession. Secretary Bayard said of them, in his eulogy before the United States Supreme Court, that they furnish "splendid and abundant evidence of his enlightened wisdom, his learning in the law, his lofty and sound morality, — all conveyed with a felicity of language and eloquence of expression that may even here in this court-

[1] William M. Meredith, Secretary of the Treasury under President Taylor, and Attorney-General of Pennsylvania, 1861–1867.

room be declared to be unsurpassed." Secretary Blaine, in his remarkable review of contemporary men and events, declares that Judge Black had "attained unto every excellence of mental discipline described by Lord Bacon. Reading had made him a full man, talking a ready man, writing an exact man. The judicial literature of the English tongue may be searched in vain for finer models than are found in the opinions of Judge Black when he sat, and was worthy to sit, as the associate of John Bannister Gibson on the Supreme bench of Pennsylvania." Something of his judicial temper and freedom of expression may be gleaned from a brief extract from his famous dissenting opinion in the case of Hole *v.* Rittenhouse. It was an action of ejectment, and was before the Supreme Court three times. On the first hearing Black, C.-J., delivered the opinion of the court. Justices Lowrie and Gibson concurred with him; Justices Lewis and Woodward dissented.[1] A *venire* being awarded, the case again came up, and was decided by a court the composition of which had somewhat changed. Judge Lewis had become Chief-Justice, and Gibson had been succeeded by Knox. The new Chief-Justice squarely reversed the old.[2] It was then Black filed his dissenting opinion, which has not been enshrined in the State Reports, but is to be found in 2 Philadelphia Reports, 417. Besides other things, he said: —

"The judgment now about to be given is one of 'death's doings.' No one can doubt that if Judge Gibson and Judge Coulter had lived, the plaintiff could not have been thus deprived of his property, and thousands of other men would have been saved from the imminent danger, to which they are now exposed, of losing the homes they have labored and paid for. But they are dead; and the law which should have protected those sacred rights has died with them. It is a melancholy reflection that the property of a citizen should be held by a tenure so frail. But 'new lords, new laws,' is the order of the day. Hereafter, if any man be offered a title which the Supreme Court has decided to be good, let him not buy if the judges who made the decision are dead; if they are living, let him get an insurance on their lives, for ye know not what a day or an hour may bring forth.

"The majority of this court changes on the average once every nine years, without counting the chances of death and resignation. If each new set of judges shall consider themselves at liberty to overthrow the doctrines of their predecessors, our system of jurisprudence (if system it may be called) would be the most fickle, uncertain, and vicious that the civilized world ever saw. A French constitution, or a South American republic, or a Mexican administration would be an immortal thing in comparison to the short-lived principles of Pennsylvania law. The rules of property, which ought to be as steadfast as the hills, will become as unstable as the waves. To avoid this great calamity, I know of no resource but that of *stare decisis*.

"I claim nothing for the great men who have gone before us on the score of their marked and manifest superiority; but I would stand by their decisions, because they have passed into the law and became a part of it, have been relied and acted on, and rights have grown up under them which it is unjust and cruel to take away."

It can easily be believed that so pronounced a dissenting opinion created some feeling among the members of the court, and a profound sensation throughout the Commonwealth. In the case of the Commonwealth *v.* Erie and Northeastern Railroad Co., 3 Casey (27 Penn.), 351, he tersely expressed the law of Pennsylvania in its limitation upon the exercise of corporate powers: —

"If you assert that a corporation has certain privileges, show us the words of the Legislature conferring them. Failing in this, you must give up your claim, for nothing else can possibly avail you. A doubtful charter does not exist, because

[1] 7 Harris (19 Penn.), 305.

[2] 1 Casey (25 Penn.), 491. This famous case, sent back for trial in the court below, came up on error the third time, after Judge Black had left the bench, and for the third time was reversed. No report of it appears after 1860. 1 Wright (37 Penn.), 116.

whatever is doubtful is decisively certain against the corporation. . . .

"The doctrine is maintained by the Supreme Court of the United States, and in many States of the Union. Even in England the justice and necessity of it are universally acknowledged and acted upon. The lawyer who is not already familiar with the numerous authorities upon it, to be found in every book of reports, will probably never become so; and the citizen who does not believe it to be a most salutary feature in our jurisprudence would hardly be convinced though one rose from the dead."

This has remained the law of Pennsylvania; and though some text-writers outside the State have impugned the steadfastness of the higher court in adhering to this principle, in so late a case as Groff *et al. v.* Bird in Hand Turnpike Co., 1889, 24 W. N. C. 424, the court — a divided court, however — denied the right of a turnpike company, chartered generally to build a toll-road between two points, to appropriate for its purposes the bed of an old free public highway running from one of these termini to the other.

To very few men, — such are the vicissitudes of the legal profession, — after having attained eminence on the bench is it given to achieve a later career in politics, in the active practice of law, and in controversial writing, such as attended Judge Black after he went into the Cabinet. Although always a devoted friend of Mr. Buchanan, a supporter of his leadership in the party, and conspicuously the fittest man in Pennsylvania for the head of the law department in the administration forming in 1857, it would have been no disappointment to Judge Black had he not been invited to a seat in it. Indeed, he had entirely dismissed all idea of it until again the irreconcilable differences of opposing factions induced the President to offer him the place of Attorney-General. He accepted it because it was strictly in the line of his profession. From the outset he took a leading place in the group of remarkably able men whom Mr. Buchanan called about him. The unhappy events which marked the opening of the Civil War have obscured to the superficial student much of the merit of that administration; but no one familiar with the history of the attorney-general's office at Washington will dispute that its incumbent never grappled with cases of so great magnitude and of more tremendous importance than those with which Attorney-General Black had to deal, known as the "California land claims." Pretended Mexican grants — nearly all fabrications and utterly bogus, covering tens of thousands of square miles of California territory, embracing most of the cities of San Francisco and Sacramento, and numerous important towns, and nearly all the sites then or subsequently occupied by government stations — had been confirmed by the Land Commissioners and passed the lower federal courts, to be finally defeated in the United States Supreme Court. Hundreds of millions of dollars' worth of property saved to the government and to the settlers under its grants fairly rank this with the most important litigation ever determined in any court of the world. Attorney-General Black's unremitting personal attention to it crowned his official career with the most signal success.

How the Buchanan Cabinet was disrupted; Judge Black's succession to Mr. Cass as Secretary of State; his own selection for Attorney-General of Stanton, whom he had associated with him as assistant, and for whom such a wide career subsequently opened; and the troubles of the three months immediately preceding Mr. Lincoln's inauguration, — all belong to the political history of the country, and in less degree concern this reference to Judge Black's career as a lawyer. But when the history of that period comes to be written in candor and fairness, and when Judge Black's counsel to his chief is studied in the light of constitutional law, it will be found there was no stauncher friend of the Union and no more aggressive defender of the just rights of the general government than Jeremiah S. Black.

When he left the Cabinet, Judge Black was poor. He had virtually to begin anew his career at the bar. He located his residence at York, Penn., because it was a point accessible to Washington, convenient to the capital of his own State, and not remote from the large cities of Baltimore, New York, and Philadelphia. He was glad for the time being to accept the position and salary of reporter for the United States Supreme Court (1 and 2 Black). His official assertion of the rights of the California settlers had, however, directed to him a special class of lucrative practice; it flowed in upon him so unexpectedly that to his surprise and satisfaction he suddenly found his time fully occupied and his labors able to command enormous fees. Clients with "retainers like a king's ransom" came to him unbidden. Out of the case of the New Idria Quicksilver Mine alone he realized $160,000 fees; and some of his finest forensic efforts were made in this line of cases. His daughter[1] relates that after the Supreme Court had decided the Osage Land case in his favor, by which the homes of the inhabitants of five counties in Kansas were saved to them, he sent this telegram: —

"Opinion by Davis. Miller affirmed. Lawrence sustained. Shannon honored. Peck glorified. Justice vindicated. Truth triumphant. Settlers protected. The Lord God Omnipotent reigneth."

Lawrence, Peck, and Shannon were his colleagues. Lithographs of that telegram were scattered broadcast among the people whose titles had been involved. Their gratitude was his chief compensation.

Relieved from all apprehensions of fortune by the profitable practice he soon acquired, he freely and fearlessly indulged his natural taste for disputation, for the vigorous defence of what he conceived to be endangered public rights, and for the aggressive denunciation of public wrongs. He abandoned in a measure — if indeed he ever pursued — the practice of the law for private gain. For nearly twenty years before his death he never had any office except in his hat. He practised in New York, Washington, Philadelphia, Baltimore, Harrisburg, in the highest State and Federal courts, and in some of the county courts of Pennsylvania, whenever large interests claimed his varied talents. He was not only regardless of the accumulation of money, losing large fees, his biographer tells us,[1] by some clients whom he indulged, and through others who swindled him; but he never kept a book or account of any kind, and made no charges. After his death some clients came forward and paid large fees, against whom he had left no trace of obligation. Often in the enjoyment of his splendid rural estate at Brockie — just outside the town of York — he refused for weeks to even break the seals of his correspondence, lest it might involve his withdrawal from the delight he took in the green fields, sparkling waters, wide-branching oaks, the vineyards and orchards with which his noble homestead was adorned.

All the while he was keenly alert to every question of public interest, and his services were freely and gratuitously given in the courts, in the public prints, in council, and on the hustings to the support of any cause that to his mind involved the rights of the public or jeopardized individual liberty. His famous "Galaxy" articles addressed to Judge Hoar, Henry Wilson, and Charles Francis Adams, Jr.; his stinging open letters to Garfield and to Stoughton, — take place in political polemics with the "Junius" papers. They are masterly specimens of a vigorous style. His famous eulogy on Chief-Justice Gibson, 7 Harris (19 Penn.) 10, who, "at the time of his death, had been longer in office than any contemporary judge in the world, and who in some points of character had not his

[1] Reminiscences of Jeremiah Sullivan Black. By Mary Black Clayton. St. Louis, 1887.

[1] Essays and Speeches of Jeremiah S. Black, with a Biographical Sketch by Chauncey F. Black. D. Appleton & Co., New York, 1885.

equal on earth;" his eulogy of President Jackson, certainly the most notable of all made on the occasion of his death, and especially forceful and original in its presentation of Jackson as a lawyer; and his tribute to the memory of Senator Matt H. Carpenter, — are specimens of pure diction, ranking among the best in American literature.

Judge Black fiercely and uncompromisingly opposed the encroachments of corporate power in his own Commonwealth. He made elaborate arguments before its legislative committees in behalf of the enforcement of the provisions of the new Constitution of 1873 against such usurpations of public rights, and he always commanded a hearing. He served without pay in the convention which framed that instrument, and earnestly but ineffectually pressed upon his colleagues the adoption of a provision to make legislators purge themselves by an official oath at the end of their term of service, as well to take a pledge of duty at the outset. In the course of his remarks on this subject, he used the following figure which has given to his address on this occasion the familiar name of "the bird speech:" —

"My friend from Dauphin (Mr. MacVeagh) spoke of legislation under the figure of a stream, which, he said, ought always to flow with crystal water. It is true that the legislature is the fountain from which the current of our social and political life must run, or we must bear no life; but as it now is, we keep it merely as 'a cistern for foul toads to knot and gender in.' He has described the tree of liberty, as his poetic fancy sees it, in the good time coming, when weary men shall rest under its shade, and singing-birds shall inhabit its branches and make most agreeable music. But what is the condition of that tree now? Weary men do indeed rest under it, but they rest in their unrest, and the longer they remain there the more weary they become. And the birds, — it is not the wood-lark, nor the thrush, nor the nightingale, nor any of the musical tribe, that inhabit the branches of our tree. The foulest birds that wing the air have made it their roosting-place, and their obscene droppings cover all the plains about them, — the kite, with his beak always sharpened for some cruel repast; the vulture, ever ready to swoop upon his prey; the buzzard, digesting his filthy meal and watching for the moment when he can gorge himself again upon the prostrate carcass of the Commonwealth. And the raven is hoarse that sits there croaking despair to all who approach for any clean or honest purpose."

He was, it will be easily recalled, of counsel for the Democrats in the Tilden-Hayes electoral controversy; he was in the Vanderbilt will case, in the cases involving the Goodyear rubber patents,[1] and in many of the issues growing out of the extreme legislation of the Reconstruction period. With Senator Carpenter and Hon. Montgomery Blair, he defended Secretary Belknap. In the later years of his life he was advisory counsel for the Mormon hierarchy in Utah, who had good reason to apprehend ruthless sequestration of the estates of their church. He was one of the arbitrators to settle the controversy over the Virginia-Maryland interstate line. Black's name is associated as judge or counsel with hundreds of leading cases that enrich the American reports; but none of them more admirably illustrates his relations to the public and to the profession than that of the U. S. *v.* Blyew *et al.* (13 Wallace, 581), involving the civil rights bill, — in which one of his successors, Attorney-General Garland, declared Judge Black's argument to have been the finest combination of law, logic, rhetoric, and eloquence he had ever listened to. In that, as in the still more important case of Milligan, Judge Black pleaded the cause of his client without fee or hope of reward, because he felt that he represented not only the principles of his political party, but the highest interests of his country. He was moved by his consistent consecration to the loftiest patriotism;

1 After his speech in the Goodyear case, Judge David Davis said: "It is useless to deny it. Judge Black is the most magnificent orator at the American bar."

for he earnestly believed, as he said in the close of his speech in the Kentucky case, —

"It is not from the exercise of despotic power, nor yet from the headlong passions of a raging people, that we will learn our duty to one another. When the Prophet Elijah stood on the mountain-side to look for some token of the divine will, he did not see it in the tempest or the earthquake or the fire, but he heard it in the 'still, small voice' which reached his ears after those had passed by. We have had the storm of political debate; we have felt the earthquake shock of civil war; we have seen the fire of legislative persecution. They are passed and gone; and now, if we do not hearken to the still small voice which speaks to our consciences in the articulate words of the Constitution from the graves of our fathers, then we are without a guide, without God, and without hope in the world."

The Milligan case (4 Wallace, 2) involved the right of trial by jury. The defendants, private citizens of the State of Indiana, had been condemned to death for treason, by a military commission, convened in Indianapolis, in October, 1864, by General Hovey. Nine days before the time fixed for their execution the petition of the prisoners for their discharge was heard by the Circuit Court; and that jurisdiction, being divided, certified it to the United States Supreme Court. With Judge Black, for the prisoners, were David Dudley Field, Joseph E. MacDonald, and James A. Garfield. For the Government appeared Attorney-General Speed, Mr. Stanberry, and Gen. Benjamin F. Butler. With little time for preparation, and arguing the case without note, memorandum, or reference to any authority before him, Judge Black made the great speech of his life. It was one that ranks with the best forensic efforts of any age. All the circumstances of the case, the most intense prejudices of the time, the political bias of the court, and even the worthlessness of the individuals involved were against the probable success of the cause. But this most powerful plea for the sacred right of trial by jury prevailed. It remains forever to the student of our law and politics "a most comprehensive exposition of the fundamental principles upon which the law of civil liberty depends." The decision of the court burns brightly as a lighthouse on a rocky coast.

Yet in his famous "open letter" to Garfield, Judge Black modestly referred to Mr. Garfield's speech in the Milligan case as the "eloquent and powerful" plea that demonstrated the supremacy of the Constitution, and said: "You closed with that grand peroration on the goddess of Liberty which if spoken at Athens in the best days of her fierce democratie, would have 'shook the arsenal and fulmined over Greece.'"

Of this most attractive personality, this picturesque figure and towering genius, in a Commonwealth that has had none of more striking originality, many characteristic stories are told, illustrating his ready wit, simplicity of character, versatility of resources, and withal, the gentleness of disposition that usually accompanies true greatness. Born and growing to manhood on a farm, he never lost his fondness for rural life. Several agricultural addresses, preserved among his papers, show a most exquisite taste for outdoor nature. With what force and beauty he recurs to a familiar figure when, referring to Senator Carpenter's felicity of diction, despite his Latin and Greek had all faded out of memory, he says: "A language (or any kind of literature) though forgotten enriches the mind as a crop of clover ploughed down fertilizes the soil." In his dying days, unable to look out upon the rich landscape that spread about his home, he bade those who watched by his bedside tell him of the green fields as the cloud shadows swept across the hillsides.

He was pronounced in his opinions about New England fanaticism and Puritan intolerance. He was wont to call it the "dirty stripe woven into the whole warp and woof of their history." I once heard him say,

"no such calamity had happened the human race since the fall of Adam, as the landing of the Pilgrim Fathers." But when a waggish and gifted young Pennsylvanian invented the famous Cotton Mather letter about kidnapping Penn's Quakers, Judge Black was the first man to discover the bogus character of the epistle, — which, by the way, occasionally reappears in the prints of the Interior as a genuine document. He pronounced Rufus Choate "that very great man;" he declared that Webster was the greatest orator if not the most distinguished man this country ever produced, "gifted with the most subtle and exquisitely organized intellect that was ever bestowed upon any of the children of men." Of Thaddeus Stevens he once said, in a private conversation: "When he died, as a lawyer, he had no equal in this country, and he said the smartest things that ever were said; but his mind, so far as a sense of obligation to his God was concerned, was a howling wilderness."

The stories of Judge Black leaving home without a cent of money and trusting to the indulgence of railway-conductors to pass him to his journey's end on credit; the equally familiar one of his going off to court with a good stock of linen and the injunction of his wife to put on a clean shirt daily, and of his return with the whole stock on his back, having every morning put on one over the other; how his colored valet carried a hat-box marked "The Honorable George Washington, care of J. S. Black;" his omnivorous reading of every kind of book that happened to fall into his hands; his chief concern on visiting England to see Runnymede, an English court of assizes, and the Derby race; how he enjoyed the big strawberries at the dinner of famous authors in London, and aided to erect an American monumental tribute to La Fayette in France; the many tales of his famous tobacco-box, which he constantly twirled in his left hand while he talked or spoke in court, — are well attested by those who were nearest to him. The more private family reminiscences teem with hundreds of the most charming anecdotes of his perennially interesting and many-sided character.

The unwritten history of the bar of Pennsylvania abounds with stories of him during the forty years of his association with it. One of the best of these is that inimitably told by Mr. Sellers, of Philadelphia, who relates in a manner that no other can equal, how he was persuaded one day to tarry several hours in Harrisburg upon the assurance of Judge Black that after a long talk they would have a delightful dinner at a most excellent restaurant he had recently discovered in the State Capital, then notoriously lacking in such accommodations. After hours of engaging conversation had whetted their appetites, they started for the restaurant, when Judge Black suddenly stopped, slapped his big hand on his companion's shoulder, and ruefully said, "By George, Sellers, I 'm mistaken; that restaurant is in Baltimore."

Ex-Governor Curtin, another most excellent *raconteur*, tells of a well-known lobbyist and speculator in Pennsylvania, who once engaged Judge Black's services in a matter in which the Supreme Court had decided against him. Judge Black, rather suspicious of his client, insisted upon his fee being paid in advance and received $15,000. He secured a reargument, and, to the agreeable surprise of his client, won his case. Mr. Boodle, almost incredulous that such a result could have been achieved, and mindful of his own methods of convincing and converting legislators, gazed at his counsel and said, "Well, Judge, I thought it was a —— of a big fee, but you did know where to put it to fetch the answer."

He died in the fulness of his powers, stricken while yet his eye was undimmed and his natural force unabated. All his life he had enjoyed good health. He was of vigorous frame, six feet in height, straight as an arrow, with ruddy complexion and shaggy eyebrows; he suffered injuries to his right

arm in a railroad accident in Kentucky in 1868, while on his way, in Judge Swayne's company, to attend a federal court in Texas. That injury disabled him in the use of one hand; but with characteristic fortitude and energy he soon acquired ready use of the other; the autographs attached to the frontispiece in this issue of the "Green Bag" show his signature before and after the accident.

When his time came to die, in 1883, the deep religious faith that had tinged his whole life, his utterances, and his writings, and which so irradiated his character, did not fail him. He knew he had kept his own affairs at loose ends here, but expressed his confidence that "my business on the other side is well settled." There is nothing more pleasing in this great man's character than that his papers in his family's possession show him to have preserved more carefully than contracts with clients for enormous fees such simple documents as this grave bargain entered into with his six-year-old grandson, —

Bargain. Wheat-straw and calf-feed bargain. Poddy [the grandfather] to give feed for my calf, and I to give straw to bed his dogs.

JERE CLAYTON.

Agreed to, 10 June, 1879. J. S. B.

Unless it be this dying prayer, which passed his unsullied lips in the hour of his supreme suffering, when with his wife's hand pressed in his own he uttered these words:

"O thou beloved and most merciful Father, from whom I had my being and in whom I ever trusted, grant, if it be thy will, that I no longer suffer this agony, and that I be speedily called home to thee. And, O God, bless and comfort this my Mary."

TONGUE-TAMING.

IT is not given to every man to possess the philosophical phlegm of Socrates, who, when Xantippe wound up one of her "little speeches" with a bucket of water over the poor, patient, hen-pecked man, would calmly observe that "after thunder rain generally fell;" and consequently poor puny man, who actually at one time considered himself the lord of creation, essayed to battle with the evil, instead of sitting down quietly and accepting scolding as inevitable, and a misfortune for which there was no remedy.

"A common scold, 'communis rixatrix' (for our Law Latin confines it to the feminine gender)," says Blackstone, "is a public nuisance to her neighborhood." In full accordance with the view of this great legal luminary, our English forefathers, who were men of mettle, grappled with this social evil, and they found a possible remedy handy in the cucking-stool, which certainly had come to them from Saxon times, as it is mentioned in Domesday Book, although it then seems to have been used to punish offenders of a different description, such as giving false measures, or selling bad beer. But it was a convenient and harmless punishment. It involved no physical hardship, and was applied to a scold in a very simple manner. She was only placed in it (being of course duly fastened in), and exposed outside her house, or in some other place, for a given time, and so left to the gibes and insolent remarks of the crowd. This was the first and gentlest treatment of the disease. It gave no physical pain, as did the stocks, and rather shows the wish of our ancestors to begin with moral suasion; but finding still that her "clam'rous tongue strikes pity deaf," they invented the tumbrel, on which she was drawn round the town, seated on the chair. For instance, in the Common Hall accounts of the Borough of Leicester, 1467, it was ordered "that scolds be punished by the mayor on a cuck-stool before their own door, and then carried to the four gates of the town." And this failing, the tumbrel was turned into the trebucket, or movable ducking-stool, and this, in its turn, yielded to the permanent ducking-stool, which, according to Gay, seems at all events to have had terrors for some.

"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," etc.

The ducking-stools proper were permanent affairs, and were erected by the side of some river or pond. They were numerous, but not so numerous as the stocks, which were in almost every village, and indeed the cause for their use seems to have been only too prevalent. As Poor Robin said, —

"Now, if one cucking-stool was for each scold,
Some towns, I fear, would not their numbers hold;
But should all women patient Grisels be,
Small use for cucking-stools they 'd have, I see."

But the ducking-stool was not the only remedy used to tame a scold's tongue. At Carrickfergus they tried another plan, as this extract from the town records will show, —

"October 1574 — Ordered and agreede by the hole Court, that all manners of Skoldes which shall be openly detected of Skolding, or Eville wordes in manner of skolding, and for the same shal be condemned before Mr. Maior and his brethren, shall be drawn at the sterne of a boate in the water from the ende of the Pearle round about the Queene's Majestie's Castell in manner of ducking, and after when a cage shall be made, the party so condemned for a skold Shal be therein punished at the discretion of the maior."

And a cage was made, and women were so punished, and a regular list kept of scolds.

A very curious punishment obtained at Sandwich, and in the mayoralty of Robert Mitchell, 1637: "A woman carries the

wooden mortar throughout the town, hanging on the handle of an old broom upon her shoulder, one going before her tinkling a small bell, for abusing Mrs. Mayoress, and saying she cared not a —— for her." Boyd, in his "History of Sandwich, 1792," says: "In the second story [of the Guildhall], the armour, offensive and defensive, of the trained-bands, and likewise the cucking-stool and wooden mortar for punishment of scolds, were preserved till lately, but they are now dispers'd;" but he gives engravings of both, and the wooden mortar certainly is a curiosity.

In the "Historical Description of the Tower of London, 1774," is the following: "Among the curiosities of the Tower is a collar of torment, which, say your conductors, used formerly to be put about the women's necks that scolded their husbands when they came home late; but that custom is left off nowadays, to prevent quarrelling for collars, there not being smiths enough to make them, as most married men are sure to want them at one time or other."

But our ancestors were beginning to find out that

> "A smoky house and a scolding wife
> Are two of the greatest plagues in life:
> The first may be cured; t' other ne'er can,
> For 't is past the power of mortal man."

And yet they did not despair. Men's wits were set to work, and a triumph of ingenuity was produced, — the brank, the scold's or gossip's bridle, which had the immense advantage over the cucking or ducking stools, of compelling the victim to be silent, — a punishment almost fiendish in its conception. Its inventor is unknown; but he probably hailed from the "North Countree," as "branks" is a northern name for a kind of bridle. It never seems to have been a legal punishment, as the ducking-stool was; but nevertheless it obtained, and there are many examples in existence. It was, in its simplest form, described by Waldron, in his "Description of the Isle of Man": "I know nothing in the many statutes or punishments in particular but this, which is, that if any person be convicted of uttering a scandalous report, and cannot make good the assertion, instead of being fined or imprisoned, they are sentenced to stand in the market-place on a sort of scaffold erected for that purpose, with their tongue in a noose of leather, and having been exposed to the view of the people for some time, on the taking off this machine, they are obliged to say three times, 'Tongue, thou hast lyed.'" It was commonly made as a sort of cage of hoop-iron going over and fitting fairly to the head, with a flat piece projecting inwards which was put in the mouth, thus preventing the tongue from moving. It was then padlocked, and the scold was either chained up or led through the town.

The earliest-dated brank is preserved at Walton-on-Thames, and bears the date 1633, with the inscription, —

> "Chester presents Walton with a bridle
> To curb women's tongues that talk to idle."

There is a very grotesque one at Doddington Park, in Lincolnshire, which is a mask having eye-holes and a long funnel-shaped peak projecting from the mouth; and there were some terribly cruel ones, with fearful gags; but these can scarcely come under scolds' or gossips' bridles. There was one at Forfar with a spiked gag which pierced the tongue, and an even more severe one is at Stockport; whilst those at Ludlow and Worcester are also instruments of torture.

We have seen men strive and fail to cure scolds, and we know the race is not extinct. Might not the old style of punishment be revived with a beneficial effect? No one can tell the amount of domestic unhappiness that might be avoided by a gentle pointing to the brank, kept hanging in a convenient place; or if the ducking-stool were again introduced, by a quiet remark as to the probable temperature of the water and the inconvenience of getting wet. — *English Magazine.*

MRS. DR. BUTCHER'S BIRDS.

FREESTONE *v.* BUTCHER. (9 Carr. & Payne, 643.)

By Irving Browne.

[*An expensive aviary is not a necessary for a poor curate's wife.*]

BUTCHER was not a man of blood, for he
Had cure of souls at Milton rectory;
Filled with deep love for every human sinner,
He 'd hardly kill a chicken for his dinner.
He took no interest in birds save those
Which he could put inside his cleric clothes.
Freestone, a woman, ransacked foreign lands,
And gave her time to meet the wild demands
Of female lunatics who make museums
Of living birds, and offer loud *Te Deums*
When they some fowl of feather strange acquire,
For gentry of the county to admire.
Now, Mrs. Butcher common parish work
As well as heathen missions liked to shirk;
She cared not much for charities and schools,
But left them to old maids and plodding fools
Who visited the aged and rheumatic,
And mothers lying-in, and most ecstatic
Delight in humble offices did find
Among the poor and sick and lame and blind.
She had a winged ambition, higher far
Than all such ugly, nauseous duties are.
She let the Lord look out for sparrows cheap,
But sentimentally would almost weep
Over her aviary full of fowl,
Which often made her pious husband growl.
I doubt that Mrs. Noah in the ark
Could more or queerer birds remark,—
Her lories, avadavats, bishop-bird,
Quakers, cut-throats, and manikins absurd,
With cardinals and love-birds; — strange to say,
Though curate's wife, she had no bird of prey.
So in one year she owed to Freestone's cages
Far more than all the good old Doctor's wages;

She "oh'd for wings" to such a large amount
That Freestone would not lengthen her account.
The birds were charged to Mrs. Dr. Butcher,
With little thought of trouble in the future;
But the bird-seller might congratulate
Herself that from her separate estate
She got two hundred pounds of thousand due,
Then for the balance did the Doctor sue.
The Doctor thereupon in due form pleaded
That such dear luxuries she had not needed:
They did not furnish eggs, nor quills for sonnets,
Nor even feathers for her showy bonnets;
In short, an aviary for his wife
Was not essential to a cultured life.
The Doctor sold some birds, upon advice,
And wrote a dunning letter for the price;
But on the trial there was evidence,
That burdened with the family expense,
The good man once, among his other prayers,
Had prayed the court of chancery his affairs
Pecuniarily to mitigate
With an allowance from his child's estate.
The barons thought, as he had sworn to this,
That Madam's avadavats were amiss;
That cardinals and bishop-birds are not
In keeping with a humble curate's lot,
And that a hen-house or a duck-pond would
Yield more "for human nature's daily food."
Chief-Baron Abinger much loved to vex
The tender feelings of the gentle sex,
As witness Ironmonger *versus* Lane,
And Atkins *versus* Curwood (Carr. & Payne);
(He in the latter case with manner rough
Cried, "Let the wedding dresses be struck off!")
He said this wife had purchased to excess,
For one whose husband was in such distress,
And spoke — perhaps his usual drink at luncheons —
"Of sugar and of rum, five hundred puncheons,"
As most excessive for a married woman;
But I do not believe him so inhuman
As, granting so much rum, to intimate
The sugar would n't be appropriate.

So Butcher bagged the birds; and when he read
"The birds of the air have nests," he raised his head,
And looked at Mrs. Butcher with a trace
Of satisfaction on his pious face.

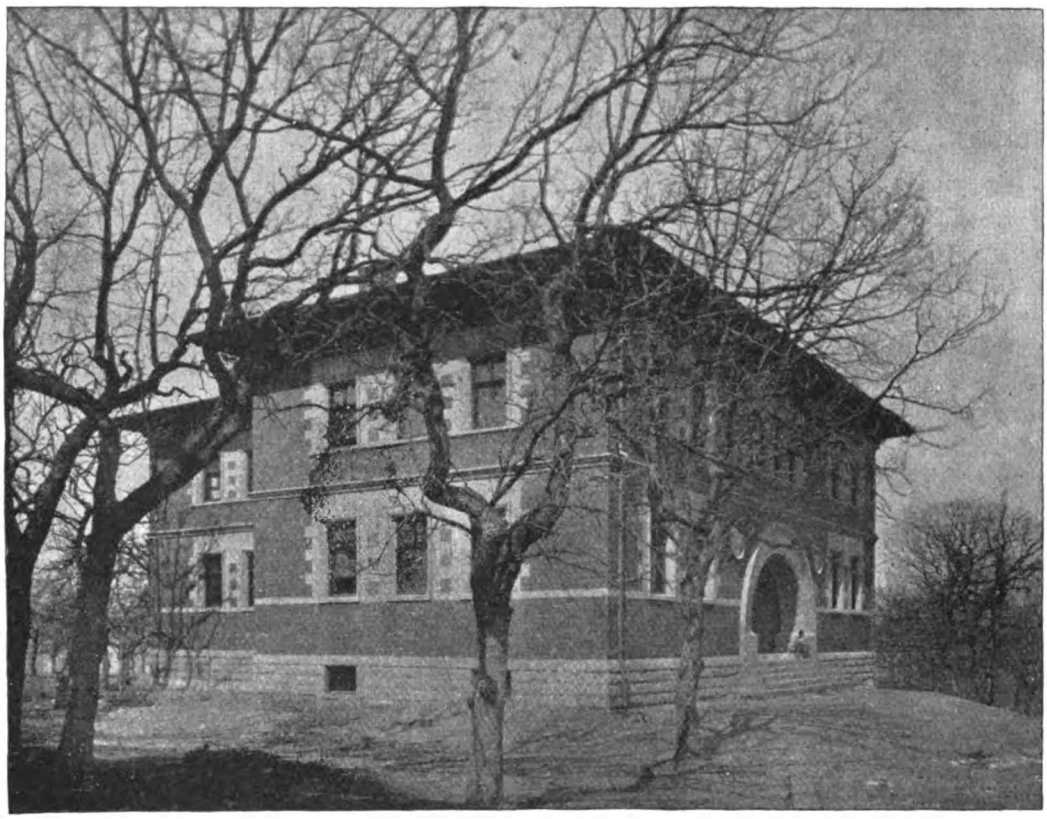
LAW AND POETRY.

A WRITER in the "Gentleman's Magazine," commenting on the fact that Boccaccio would have become a lawyer, according to his own account, had it not been for a sight of Virgil's tomb, enumerates the many poets and authors who have been in some way connected with the profession of the law:—

"Petrarch was a law-student — and an idle one — at Bologna; Goldini, till he turned strolling player, was an advocate at Venice; Metastasio was for many years a diligent law-student; Tasso and Ariosto both studied law at Padua; Politian was a doctor of law; Schiller was a law-student for two years before taking to medicine; Goethe was sent to Leipsic, and Heine to Bonn, to study jurisprudence. Uhland was a practising advocate, and held a post in the Ministry of Justice at Stuttgart. Rückert was a law-student at Jena. Mickiewicz, the greatest of Polish poets, belonged to a family of lawyers. Kacinczy, the Hungarian poet and creator of his country's literature, studied law at Kaschau. Corneille was an advocate, and the son of an advocate. Voltaire was for a time in the office of a *procureur*. Chaucer was a student of the Inner Temple. Gower is thought to have studied law; it has been alleged that he was Chief-Justice of the Common Pleas. Nicholas Rowe studied for the bar. Cowper was articled to an attorney, called to the bar, and appointed a commissioner of bankrupts. Butler was clerk to a justice of the peace. The profession of Scott need not be stated. Moore was a student of the Middle Temple. Gray, until he graduated, intended himself for the bar. Campbell was in the office of a lawyer at Edinburgh. Longfellow, a lawyer's son, spent some years in the office of his father.

"The pecularity of this list — which might be extended with little trouble — lies in the eminence of these six and twenty names it contains. If they were omitted from literary history, Italian and German poetry would be nowhere, France would be robbed of one of its greatest and most national poets, English poetry would lose its father, and in all respects be very appreciably poorer. If less classical names in poetical history are taken, such as Talfourd, Macaulay, Bryant, and Barry Cornwall, the list might be indefinitely extended; and if filial relationship to the legal profession be considered, as in the case of Wordsworth, the close connection between poetry and law will look such a matter of course that the few eminent exceptions will only tend to prove the rule. Milton was the son of a scrivener. There is no need to indorse the fancy that Shakspeare may have been a law-clerk, or to suggest that Dante might have been influenced by a residence at the great legal university of Bologna.

"But there is another list strikingly to the purpose,— the long roll of great lawyers who, like Cicero, Sir Thomas More, Lord Somers, Blackstone, and Sir William Jones, have found flirtation with the Muses no impediment to their marriage with the law. It may be that this close connection of two seemingly irreconcilable pursuits is due to some rule of contrast; or is it that fiction, romance, and verbiage afford to poetry and law a common standing-ground?"



LAW DEPARTMENT BUILDING.

LAW SCHOOL OF THE UNIVERSITY OF MINNESOTA.

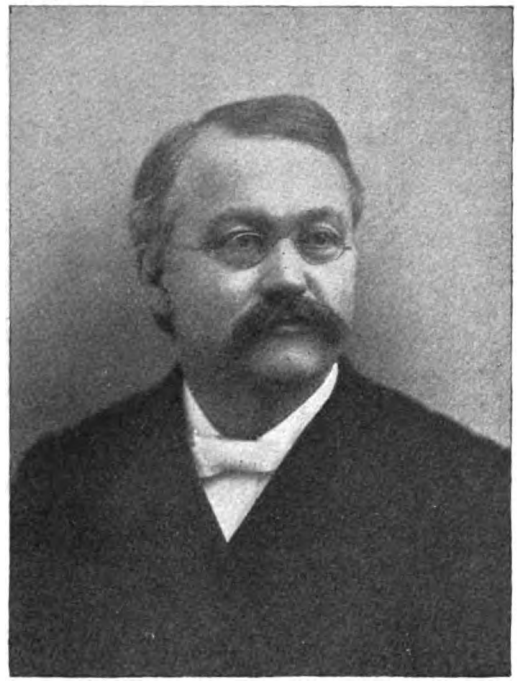
By William S. Pattee.

THE men of the West, especially those of New England extraction, cherish a just and abiding pride in the educational institutions of the eastern portion of our country. Those institutions possess a weight and dignity which age and its varied associations alone can give. Hovering around the ancient halls, and filling the groves and walks of these sacred homes of learning, abides a spirit that Americans do not meet with elsewhere.

As centuries have filled the Old World with institutions now hoary with age, whose antique appointments and solemn spirit of antiquity charm the thoughtful visitor from the New World, so the history of Harvard and Yale and of the other earlier institutions of our country invests them, in the eyes of the newer West, with a peculiar interest, and imparts to them a noticeable and acknowledged prestige and power. With their history is associated the names of our country's greatest statesmen and lawyers. The destiny of the nation has been largely mapped out and guided by the minds trained to think and inspired to action under the power of their invigorating influence.

Of what this admitted prestige may con-

sist, wherein its potency lies, it may be somewhat difficult to explain. Its ultimate analysis might disappoint us. Yet there is a transcendent power possessed by an ancient institution. Extensive libraries, works of art, the accumulations of generations, all suffused with the spirit of generous men, whose benefactions endowed, whose labors upbuilt, and whose wisdom directed their development, give to them a charm that younger institutions do not possess.



CYRUS NORTHROP.

But when we turn our eyes to the Western States, we behold colleges and universities which seem to have sprung into existence by some magic influence. In the extent of their buildings and appointments generally, in the number of their students, in the vigor of their management, and in the thoroughness and inspiration of their instruction, they demonstrate their power to meet the demands of a vigorous and earnest people, whose civilization and culture are but those of the East planted upon the broad prairies of the West, though intensified and broadened by the active and liberal spirit incident to a new country.

Among those educational powers which are producing a marked effect upon Western civilization, is the University of Minnesota, — a State institution endowed by the General Government, generously supported by the State, located near the Falls of St. Anthony upon a tract of nearly forty-five acres in extent, whose native trees and undulating surface and natural advantages of situation afford a most attractive site for a great and powerful institution of learning.

There are already over one thousand students enjoying the varied advantages which its different departments, including law and medicine, afford; and each year brings with it increased numbers of students and enlarged facilities for instruction.

Provision was made in the charter of the University for the establishment, at the proper time, of a college of law; and in the early part of 1888 the Regents, believing the proper time had arrived, established the department by electing a Dean, and providing a full corps of lecturers, selected from among the ablest attorneys of the Minnesota Bar.

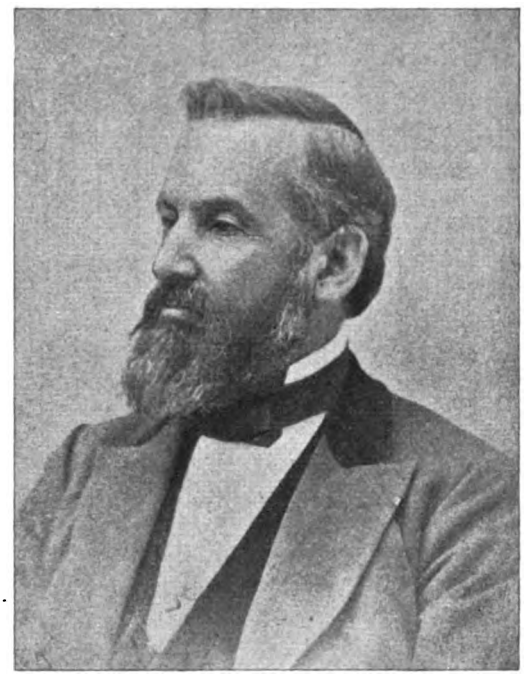
The College was formally opened on the 11th day of September, 1888, with an address by the Dean, before the Regents and members of the department, upon the "Science of Jurisprudence," accompanied by a statement of the general policy that would be pursued in the upbuilding of that branch of the institution.

From this it is seen that our history as a Law School is yet to be made. We cannot recount great works of the past; give biographies of renowned personages whose legal writings have blessed the whole continent; enumerate among our alumni distinguished statesmen, lawyers, and legal students whose wisdom has guided our national development, adorned

the bar, and enriched the libraries of legal learning.

The interest that attaches to our legal institution is that which always invests auspicious beginnings, — unusual development, and unmistakable promise of future possibilities.

The readers of the series of articles upon the various Law Schools of our country, now being published in the "Green Bag," recognize, with peculiar pleasure, the great benefits accruing to our country through these forces in our civilization. They have been not only agencies for disseminating legal knowledge; but within their walls, from vigorous minds and devoted spirits have come also, in many cases, the renowned and extensive works whose influence on the nation and its institutions is invaluable.



GORDON E. COLE.

No work has been done more silently and with less display than that accomplished at Harvard, Yale, Albany, Ann Arbor, and all the other legal institutions of our land, during the last generation or more. The greatest forces are the most silent. The effects of legal learning are too deep for public observation. The populace will never duly value the efforts and influence of the bar, and the bar itself is slow to estimate properly the work of the laborious Kents and Storys and Washburns and Marshalls and Cooleys, for our new and formative civilization, for the rights, the happiness, and the prosperity of the American people.

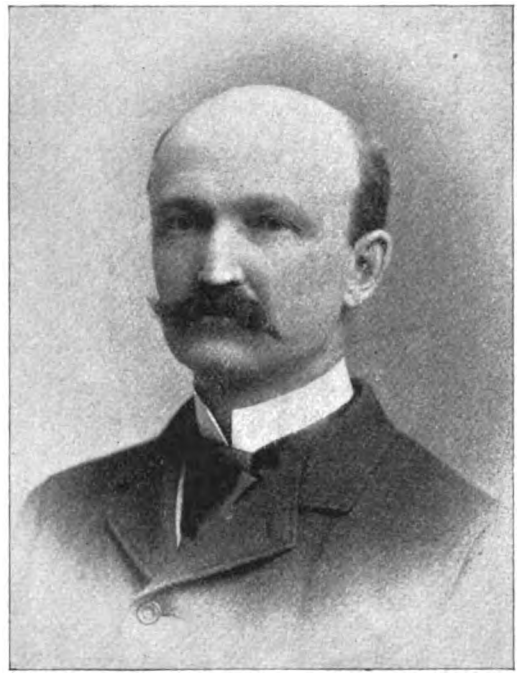
What has been done in the past is only a beginning of what is to be accomplished in the future. The newer schools of the West spring into vigorous activity, drawing to themselves large numbers of earnest and vigorous youth, furnishing able and devoted instructors; and already a work of enlightenment and inspiration has begun within them whose influence upon the present and future generations cannot be calculated nor overestimated.

Among these centres of power and legal enlightenment, and one of the very youngest, is the Law School of the University of Minnesota, which already has a magnificent building, excellent library facilities, and devoted instructors, sufficient to meet the most exacting demands of the State and territory adjacent thereto. Sixty-seven students registered in the department the first year. These were young gentlemen of zeal and promise. Graduates from Yale, Princeton, Wisconsin University, and other higher institutions of learning were among their number.

The earnestness with which they devoted themselves as a class to the work laid out for their accomplishment, was rewarded by a marked degree of advancement. The Dean devoted his entire time to instruction, and the various lecturers filled their appointments as the demands of the course required. Rooms were occupied during the year in the main University building; but the larger number of students anticipated

for the ensuing year convinced the Regents that a separate building should be provided for the department; and at the close of the spring term plans were prepared for such a structure as would not only meet the necessities of the department at the present time, but such as would supply ample room and excellent facilities for years to come.

During the summer and early autumn of 1889 the present Law Building was erected, furnished, and equipped for use; and in the month of October it was occupied by the department. It was constructed for the sole use of the Law School. It was designed, completed, and furnished with sole reference to the needs of such an institution. It is constructed of red brick and brown sandstone, and located in a grove of native trees within two hundred feet of the main University building.



CHARLES W. BUNN.

Upon the first floor is a large lecture-room, constructed upon the plan of an amphitheatre, copiously lighted, thoroughly ventilated, and furnished with comfortable chairs arranged with special reference to taking notes with ease and convenience.

Upon the same floor there is a society-room, devoted to the Literary Association of the department, and also a recitation-room for text-book work.

Upon the second floor there is a large and well-arranged library-room, a court-room, a lecture-room, and the offices of the Dean.

The building is heated throughout by steam, generated by a plant located at some distance therefrom, supplied with gas, water, and all the modern conveniences necessary to make the building complete and efficiently equipped for the work it was designed to accomplish.

A good working library of text-books and reports is already supplied; and the Bar Association Library of Minneapolis, most generously opened to the free use of the students, and the State Library at St. Paul within easy reach, supply all works of reference that a law school requires.

Being located between the Union Depots of St. Paul and Minneapolis (twenty minutes' ride from the former, and five from the latter), these libraries, the United States Courts, the State and the Municipal Courts of the cities are within easy access.

There have been registered in this department during the present year one hundred and thirty-four students, and the present prospects are that a very much larger number will be in attendance during the year to come. That there will be two hundred students present during the third year of our school's history, is not an immoderate estimate.

The teaching force of this school has been selected from the Bar of Minneapolis and St. Paul. Cyrus Northrop, President of the University, under whose efficient management and earnest spirit the institution has so rapidly developed, is President of the Faculty of Law; but while watchful

over all its interests, he is not actually engaged in the instruction of the department.

Hon. W. S. Pattee, a graduate of Bowdoin College, and for ten years prior to his election to his present position engaged in the practice of the law in the City of Northfield and of St. Paul, Minn., was selected by the Regents as the Dean of the Faculty at its organization, and devotes his entire time and energy to the department, giving instruction chiefly upon the subject of Contracts.

JAMES O. PIERCE.

Among the lecturers who have been so far connected with the school, the most distinguished, perhaps, for legal attainments and success at the bar is Hon. Gordon E. Cole.

Mr. Cole was born in Cheshire, Berkshire County, Mass., on June 18, 1833, and graduated from the Dane Law School of Harvard University in 1854. He came to Minnesota in 1856, and settled in Faribault, Rice County, in 1857. Since that time he has been one of the most prominent attorneys in the State. At an early age he was elected Attorney-General of Minnesota; and after his services as such ended, he became connected with all the larger and more important cases of litigation coming before the State and United States Courts in Minnesota. He is what may properly and fairly be called a great lawyer. His ability is acknowledged by all; and his success in his profession, both from a legal and financial standpoint, is such as is attained only now and then by some man especially endowed by nature and trained by practice to grapple with the great cases that come up for consideration.

He has been a member of both branches of the State Legislature, was a prominent candidate for the United States Senate at the session when S. J. R. McMillan was elected, and is at the present time and has been for many years connected with various institutions of learning as regent, trustee, or director.

His sound judgment is sought on all occasions when candor and accurate legal learning are needed. He is a man who inspires one with confidence in both his unyielding integrity and his profound knowledge of the law.

His connection with the Law School is a cause of congratulation upon the part of the school, and the authority with which he speaks upon the Law of Corporations makes him a most inspiring and helpful lecturer. Last year he treated the subject of Private, and this year of Public Corporations. His lectures are direct, clear, and full of sound and broad views of the topic he considers.

Another eminent practitioner from the St. Paul Bar, employed as lecturer before the department, is Charles E. Bunn. The first year he treated the subject of Suretyship and Mortgage, and gave a short course of instruction upon Practice in the United States Courts. The present year he has lectured upon Commercial Paper. He is a deliberate, clear, interesting, and most pleasing instructor. Graduating at the

Law School of the University of Wisconsin in 1874, Mr. Bunn's large practice in the United States courts, his varying practice in the general business of the firm, and his high ideal of what a lawyer should be, make him a most efficient and valuable teacher of the law.

The subject of Constitutional Law has been treated both years by Judge James O. Pierce, of the Minneapolis Bar. Judge Pierce was born in Oneida County, New York, in 1836, and removed to Wisconsin in 1857, where he was admitted to the bar in 1862. He enlisted there, and after the war began practice in Memphis, Tenn. There he was elected Judge of the Circuit Court, which position he held for eight years with distinguished honor to himself and to the eminent satisfaction of the bar. Judge Pierce has been a frequent contributor to the Southern Law Review, the American Law Review, and the Central Law Journal, and in 1884 published a treatise on "Fraudulent Mortgages of Merchandise." He has been connected with the Minnesota Law School from its very beginning, and is a scholarly and pleasant instructor. He is a student of Constitutional Law, and has a deep interest in its proper presentation to the young gentlemen of the department.

W. D. CORNISH.

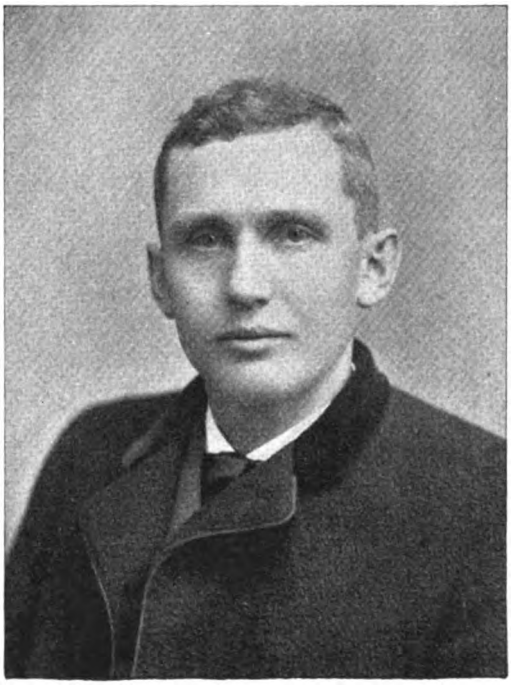
Hon. W. D. Cornish, of St. Paul, treats the subject of Insurance. Mr. Cornish is a gentleman of large practice a fine scholar, and an able lawyer,—a gentleman who knows the importance of thorough knowledge, and whose treatment of his subject is thorough and clear. His lectures are prepared with great care, and his discussion of cases is especially interesting and helpful. By a change in the order of the work, his valuable course of lectures has been omitted this year, but will be given to the Senior class of next year.

Charles E. Willard, of Minneapolis, who lectures upon Bailments, is a graduate of Dartmouth College and of the Law School of Boston University. He is at present of the firm of Gilfillan, Belden, & Willard, and is one of the very best lawyers among the younger members of the Minneapolis Bar. His accurate knowledge of the law, his clear statements, and his pleasant manner make him a most efficient and inspiring instructor. His course of lectures on Bailments is a clear and comprehensive presentation of the subject; and his care in the selection of cases exactly fitted to illustrate the points he makes, gives great value to his services as a teacher of the law.

Frank B. Kellogg, of the firm of Davis, Kellogg, & Severance, of St. Paul, was born in Potsdam, N. Y., and moved to Minnesota in 1865. He was admitted to the bar in Rochester, Minn., in 1887, when he became a member of the firm whose senior partner is the Hon. C. K. Davis, present United States Senator of Minnesota. Mr. Kellogg has always had a large and varying practice since his admission; and his enthusiasm, both as a student of the law and as a prac-

titioner, makes him a very effective and agreeable instructor. He has the subject of Equity, of which he is a thorough student, and uses Pomeroy's treatise upon the subject as a text-book. The subject is given a large place in our course of study; and the students, under Mr. Kellogg's guidance and instruction, have rare facilities for gaining a good knowledge of the subject.

Charles B. Elliott, of Minneapolis, whose contributions upon legal subjects are frequently seen in the Atlantic Monthly, Political Science Quarterly, American Law Review, Central Law Journal, and other periodicals, has this year supplemented the lectures of General Cole, upon Private Corporation, by conducting the Senior class, through Mr. Morawitz, upon that subject. Mr. Elliott is a graduate of the Iowa Law School, has received the degree of Ph. D., and is an able, scholarly, and successful lawyer. He also lectures upon the subject of Wills, and is a successful teacher as well as a thorough student of the law. He is attorney for the Minnesota Saving Fund and Investment Company, a corporation of large business in Minneapolis, and is held in high esteem as one of the most scholarly and able of the younger attorneys in the Northwest.



FRANK B. KELLOGG.

Hon. C. D. O'Brien, of St. Paul, who enjoys a wide reputation as a successful and able criminal lawyer, is engaged in a general practice of the profession, and stands among the brightest and most eloquent practitioners of the State. He has been mayor of the city of St. Paul, and is prominently known as a successful and vigorous advocate. He gave a course of lectures before the students of the present Senior class upon Criminal Law and Practice, and will continue the same subject with the Juniors during their connection with the department. While prosecuting attorney for Ramsey County, Mr. O'Brien achieved a wide reputation as an able and brilliant criminal lawyer; but perhaps the civil practice in which he is so extensively engaged would not warrant his being regarded as chiefly or particularly devoted to the practice of criminal law.

Selden Bacon, Esq., of Minneapolis, lecturer on Civil Procedure, is a native of New Haven, Conn.; and was admitted to the Minnesota Bar in 1883. He graduated from the Law School of the Wisconsin University in 1884, and has since been engaged in the practice of law in Minneapolis. Mr. Bacon has paid special attention to the subject of Civil Procedure, and while being an able and devoted student himself, he is also a most thorough and successful teacher of that subject. The Common Law, Equity, and Code Procedure extend throughout the Senior year, and special attention is given to the students upon these topics.

During the last weeks of the year Ralph Whelan, Esq., a thorough lawyer and fine instructor, is lecturing upon the law of Torts. Mr. Whelan is in active practice at the Minneapolis Bar, and is most thoroughly

equipped by large experience as a teacher, and by his extensive and classified knowledge of the law; and he makes himself felt by the students, who listen with deep interest to his carefully prepared, finely illustrated, and forcefully delivered lectures.

Judge George B. Young, formerly an associate Justice upon the Supreme Bench of this State, and now practising law in St. Paul, is, at this writing, about to begin a course of lectures upon the Conflict of Laws. From the gentleman's large experience at the bar, his universally conceded ability and learning, very great benefit is anticipated from his lectures, and no pains will be spared to retain his services each year among the lecturers of this department.

CHARLES B. ELLIOTT.

The Faculty of Law, as appearing in our last Catalogue, is as follows: Cyrus Northrop, LL.D., President; Hon. Wm. S. Pattee, M.A., Dean and Professor of the Law of Contracts; Hon. S. J. R. McMillan, Lecturer on International Law; Hon. Gordon E. Cole, Lecturer on Corporations; Frank B. Kellogg, Esq., Lecturer on Equity Jurisprudence and Procedure; Charles A. Willard, Lecturer on the Law of Bailments; Judge James O. Pierce, Lecturer on Constitutional and Statutory Law, and the Law of Domestic Relations; Hon. Charles E. Flandreau, Lecturer on the Law of Torts; Hon. George B. Young, Lecturer on the Conflict of Laws; John B. Atwater, B.A., Lecturer on the Law of Real Property; Hon. C. D. O'Brien, Lecturer on Criminal Law and Procedure; George N. Baxter, Lecturer on Common Law and Code Pleading; Hon. W. D. Cornish, Lecturer on Life and Fire Insurance; Judge John M. Shaw, Lecturer on Evidence; Judge P. M. Babcock, Lecturer on Wills and Administration; Charles H. Boardman, M.D., Professor of Medical Jurisprudence; Charles W. Bunn, Lecturer on Suretyship and Mortgages, Practice in United States Courts; Sumner Ladd, Lecturer on the Law of Taxation.

COURSE OF STUDY.

The course of study extends over a period of two years, and comprises the following subjects: —

JUNIOR YEAR.

Contracts; Torts; Criminal Law and Procedure; Real Property; Equity Jurisprudence and Procedure; Domestic Relations; Suretyship and Mortgage; Partnership; Common Law and Code Pleading; Evidence.

SENIOR YEAR.

Contracts; Corporations; Fire and Life Insurance; Wills and Administration; Law of Taxation; International Law; Medical Jurisprudence; Jurisdiction and Practice of United States Courts.

The course on Contracts extends through both the Junior and Senior years, and embraces, among other topics, Bills, Notes, and Commercial Law generally; Contract Liabilities of Infants, Incapables, and Married Women; Agency; Bailments; and Bankruptcy and Insolvency. These specific topics will

be considered during the two years, at such times and in connection with the treatment of such general subjects, as shall be most advantageous and convenient for students and instructors.

METHOD OF INSTRUCTION.

The method of instruction is not confined to either lectures or recitations; but such a combination of both is adopted as is best calculated to interest the student and secure for him a thorough, accurate, and comprehensive knowledge of the principles and rules of law. And in addition thereto, such a use of the reports is made as will familiarize the student with the leading cases upon the various subjects in which he receives instruction.

C. D. O'BRIEN.

The subject of International Law is assigned to ex-Senator S. J. R. McMillan; but owing to business engagements he has been unable to deliver the course during the year, and his place has been supplied by W. W. Folwell, Professor of Political Science and Literature in the University, who has given a thorough, interesting, and able course of lectures upon that subject to the present Senior class.

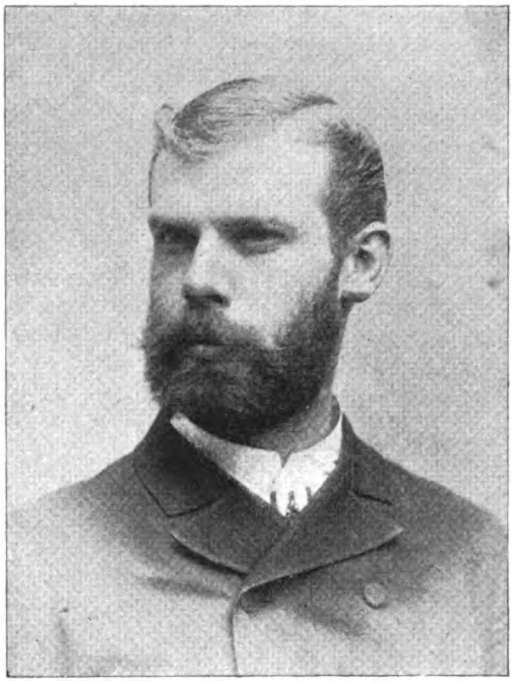
Constitutional History has also been very clearly presented to the students by H. P. Judson, Professor of History in the University, who is a most efficient and interesting lecturer.

It has been the aim of the Regents to bring to the Law Department men of learning and enthusiasm in the branches which they respectively teach, and to equip the institution with all that the exacting demands of the profession can make upon it.

Much is said in these days about methods of instruction. It is clear enough to attorneys who have admitted students to their offices for the purposes of study, that very little time can be found by the practitioner to devote to those under his tuition; and in a large majority of cases the student degenerates into a mere clerk, and often into a mere errand-boy to do the chores and the running of the office. The one thing needful the student does not possess, and can never thoroughly acquire in the average office, — discipline of mind. And a systematic knowledge of the law does not come by chance, nor by easy and unregulated efforts. The distractions of a *busy* office are utterly incompatible with the quiet required for study and contemplation on the part of the student; and the quiet of an *empty* office is equally incompatible with legal enthusiasm on the part of the practitioner. The busy office distracts the pupil; the empty office distracts the teacher.

The most that the pupil can acquire under such conditions is a fragmentary, disjointed, and confused collection of legal conceptions, unless he is one of those rare and exceptional persons whose mind conquers all difficulties by the sheer strength of its endowments.

Unsystematic knowledge, an acquaintance with isolated legal truths without any comprehensive system in which each may find its proper place in making up a well-digested conception of the whole subject, is of little practical value. The student who has only such a knowledge of the law is lame and halting in all his judgments. His conclusions are often vitiated by partial and one-sided views of the principle he is endeavoring to apply; and he enters upon the discharge of his duties as a practitioner with sure disappointment and perhaps utter failure awaiting him.



SELDEN BACON.

A subject so comprehensive, so complex and subtle, as that of Jurisprudence can be reduced to a systematic form only by the most learned, laborious, and patient investigator; and even after he has done his best he is confronted, as are men in every other branch of science, by an "unclassified residuum" that baffles his severest efforts.

At the present time there is no one complete systematic classification of the whole science of the law. The most that can be done is to gather up the classifications as they are scattered throughout the various text-books on the different subjects, adjust them, and with the aid of the reports harmonize them into a practical whole. To do this requires legal scholarship, methodical thinking, and the power of arrangement, such as the law student does not possess. For a student to accomplish such a task unaided, amid the confusions and interruptions of an office, is, in a great majority of cases, simply impossible.

But the task, even the smallest part of it, is not accomplished by the acquisition of a systematic knowledge of the law. The office is not the best place to acquire mental discipline, which is one of the essential parts of a student's preparation. Its importance cannot be overestimated. It cannot be attained by unregulated effort. The well-regulated law school has that as one of the first objects to attain.

MENTAL TRAINING.

It is a law of man's being that he enjoys doing that best which he can do easiest, and also that he does easiest what he has habituated himself to do.

The mathematician, the philosopher, the scientist, and the poet each thinks with ease and pleasure in the line of his particular pursuit. The poet would find it irksome and quite impossible to think in lines and curves and angles, but no more so than would the mathematician to think in the figures of speech and the symbols of Nature.

The philosopher's mind soars smoothly through the distant atmosphere of abstraction, but toils with difficulty amid the concrete phenomena of Nature; while the scientist delights in the latter, but finds no safety, ease, or pleasure in the former.

So in the science of the law, by habit, and by habit only, can the mind find its greatest ease and efficiency in analyzing human

rights and applying legal remedies in the practical concerns of life.

To train the mind to legal thought, to develop its reasoning power, to strengthen its memory, to energize and purify the imagination, to cultivate the art of statement in apt and legal phraseology, and to store the mind with legal conceptions is the work of time and the first essential for intellectual delight in the field of jurisprudence.

It is said that the diamond is the hardest of known substances, but the human mind is harder than the diamond. To ameliorate its rough asperities is alone the work of time and persistent effort.

The mind may be crowded with facts but not with discipline. The latter is a growth, an internal development, not a mere accretion, or a taking on of some external covering for the sole purpose of exhibition upon examination day.

WILLIAM S. PATTEE.

Moreover, this mental discipline is not imparted. It can only be acquired. It comes from the mind's own effort, not from efforts applied from without. Protracted effort of the mind in contemplation of legal truth is the only path to legal culture and mental power.

In two, three, or four years only a beginning can be made at best, and to thrust one's self into the ranks of the profession without even such time for actual study, is suicidal to the student and harmful to the clientage.

To secure this end of mental training, a regular and protracted course of careful study, under the guidance of thoughtful instructors having that object in view, is incomparably more efficient than the advantages of the best-equipped office can possibly be.

The supposed advantages of an office for gaining practical knowledge are also largely imaginary. The preparation of all legal papers can be just as well accomplished in the lecture-room as in the office, and with the additional benefit of having the forms studied, analyzed, and explained. If in time past too little attention has been bestowed upon the matter of practice, it is now holding a more important place in the courses of study in the law schools.

It is the object of the Legal Department of the University of Minnesota, to make the matter of Pleading and Practice generally very prominent. A thorough drill in "Stephen on Pleading" is required. The Common Law regarding the subject must be mastered; and every practising attorney well understands that a knowledge of primary rights, however extensive and accurate, is of little consequence if he cannot bring the matter of their violation properly before the attention of the court.

As before intimated, the method of instruction pursued by this institution is by combining text-book work with lectures upon certain subjects. There is something peculiarly definite in a distinct proposition, carefully worded, and afterward thoroughly

illustrated by the lecturer. It is often easier for students to remember what they hear, than it is to remember that which they read; and hence we believe the wisest method is to give the fundamental principles of law by lectures, supplementing them with reading from standard text-books, and also with a careful study of the Reports whence come the doctrines discussed.

It is no small part of the work of a law school to awaken in the student a sense of his responsibilities, to show him his place in civilized society, and to get clearly before him the fact that untiring energy, persevering industry, and scrupulous integrity are the indispensable elements in the character of a great and successful lawyer.

The business of the age demands accurate legal knowledge and good judgment. The complications of one's interests lead him to seek counsel. It is neither the orator nor the shyster that he wants. He is ignorant of his legal rights and liabilities in the situation. He needs help. It can only come from one who in addition to his legal knowledge possesses good judgment, and is inspired by honest and honorable purposes. The knowledge can be attained in but one way, and that is through the avenue of patient industry. The sound judgment, while largely constitutional, can be improved by conscientious thoughtfulness in tracing the line of justice as it runs through the complicated affairs of human life. The mind that can see the demands of justice need not err.

It is the object of the Law School of the University of Minnesota to do what it can to elevate the standard of legal education, to awaken the desire for excellence in all things that contribute to the character of a successful lawyer, to improve by experience the methods of instruction, to be a means of disseminating legal information by all proper and judicious methods, and to send forth its students prepared to enter upon the practice of their profession in any of the United States.

A diploma from this school entitles the graduate to admission to the bar under the Statutes of Minnesota.

THE REPORTER'S HEAD-NOTE.

By Seymour D. Thompson.

THE editor of the "Albany Law Journal," [1] himself experienced as a reporter, having expressed his unqualified approval of an article of mine in a previous number of the "Green Bag" [2] on the subject of "Common Errors and Defects in Law-Reporting," I am encouraged to draw from a dusty pigeon-hole the sequel to that article, — prepared at the same time, and rejected by one editor as not good enough for his publication, — and place it "where it will do the most good."

I know that there is here a difference of opinion, and a very wide difference of practice. My judgment is that the true office of a reporter's head-note is to state, in brief form, the propositions of law actually decided in the case, and that beyond that he ought not to go. In this respect the head-notes made by Mr. Irving Browne in the cases reported in the "Albany Law Journal" and in the "American Reports," of which he was formerly the editor, are as good models as any which I can now call to mind. The thing which is to be avoided here is the effort to put into the head-note everything which is recited in the opinion. Where this is attempted the head-note, instead of informing the reader what is decided in the case, presents a jumble of decision and *dicta*, from which no one can tell what is decided until he reads the entire report. My friend Mr. Freeman, reporter to the Supreme Court of Illinois, — one of the veteran reporters (perhaps the oldest and most experienced now living), a learned man and an admirable gentleman, — has always been in this regard, I must take leave to say, open to criticism. I understand that he justifies the practice of making very long head-notes on the ground that the judges and the members of the bar in that State prefer head-notes constructed on that plan.

In some of the States the law requires the judges who write the opinions to furnish head-notes for their decisions. If I am not mistaken, this is the law in Ohio, Georgia, and Kansas. Some of the decisions of those courts, notably some of those of the Kansas Court, show that this work could be better done by a skilful reporter than by an overworked judge, although the judge himself may have been the author of the opinion. Many of the head-notes of the decisions of the Supreme Court of the United States are known to have been made by the judge who wrote the particular opinion. It has been notably the practice of Justices Miller, Field, and Bradley to furnish to the reporter head-notes of their opinions in important cases. These head-notes very often contain, in a condensed and running form, an outline of the whole course of argument employed by the judge in the opinion, and do not confine themselves to a statement of the point decided by the court, as they should.

It is true that in many judicial decisions, especially in cases in equity and admiralty, the court decides no particular legal proposition, but applies to a complicated state of facts certain well-known principles or rules of decision. Such cases ought not to be reported at all. Neither the judge nor the practitioner is aided in any way by the reports of such decisions. All that mass of cases which involve the interpretation of particular contracts or the interpretation of particular forms of expression in wills, — which relate to mere *instances*, — ought to be consigned to oblivion. Nevertheless, where the law requires all judicial decisions to be published, such cases have to be reported in some way; and the reporters have to make the best head-note of such a decision which

[1] 40 Alb. L. J. 341.
[2] 1 G. B. 436.

they can, and they are not always to be blamed for not making a terse or seemingly skilful one.

Turning for an illustration of the kind of head-note I am here condemning, to a late volume of Missouri Reports, I find the case of the City of St. Louis *v.* Bell Telephone Company,[1] where the only question in judgment was whether the city of St. Louis had power, under its charter, to fix the maximum rate of charges of a telephone company. The court held that the city had no such power. The syllabus should, it seems, have been limited to the statement of this point; but it spreads out the reasoning and *dicta* of the court into no less than *eleven* paragraphs.

It must be confessed, however, that the opposite evil is still greater. The office of the syllabus is to apprise the reader of *all* the points of law which are distinctly presented by counsel in their assignment of error and ruled upon by the court in its opinion; and an omission in the head-note of any such point, upon the mere opinion of the reporter that it may not be of sufficient importance to present, is quite inexcusable. Some of the reporters exhibit in their head-notes as great an astringency as the others exhibit copiousness. I am moved to make this observation at this time by having before my eyes the opinion of the Supreme Court of Arkansas in Curtis *v.* State.[2] In this case ten distinct assignments of error are ruled upon in the opinion, only two of which are contained in the syllabus of the reporter. Again, I find in the case of Lea *v.* State,[3] that three distinct points were ruled, only one of which is given in the syllabus. There is no excuse for such work. Wherever a point is of sufficient importance for the court to rule upon it in a written opinion, it is of sufficient importance to be noted in the syllabus, — at least it is presumption in the reporter to decide otherwise.

[1] 96 Mo. 623.
[2] 36 Ark. 284.
[3] 1 South. Rep. 244.

Nor are some reporters content with once stating what are supposed to be the ruling propositions of the case, and then resting; but they must needs restate them in other language and ring changes upon them. As an example of this kind of head-note, I select at random from a late Missouri case the following: —

"In an action at law against a corporation for fraud and deceit in making false reports and resorting to fraudulent devices to sell its stock, it is necessary, in order to recover, to show that plaintiff acted upon the faith of such representations."[1]

Certainly this is a correct proposition, and it is correct where the action is against an individual; but if the reporter had searched the case for the purpose of discovering the real point in judgment, he would not have drawn his head-note in this way, for the action was against two natural persons, and not against a corporation at all. In the same volume I find two paragraphs of the syllabus thus: —

"1. [Omitting the catchwords.] Where the directors of a corporation have a right to and do fix the salary of the president and he accepts the office thereunder, he cannot, by his vote as a director, increase such salary.

"2. He cannot at the same time and in the same matter act for himself and the corporation of which he was agent and trustee, being both director and president."[2]

This is drawn from the following passage in the opinion: —

"But the directors had a right to and did fix the compensation, and he agreed to that, and the amount thus fixed, by the act of accepting the office. He could not at the same time and in the same matter act for himself and the corporation of which he was agent and trustee, being both a director and president. The attempted ratification thus brought about by his own vote was of no validity. It was a void act."[3]

[1] Priest *v.* White, 89 Mo. 609.
[2] Ward *v.* Davidson, 89 Mo. 445.
[3] Ibid, p. 454.

Further down in the syllabus is a more striking instance of this manner of constructing a head-note: —

"5. [Omitting the catchwords]. Directors and officers of a corporation occupy a position of trust, and must act in the utmost good faith. They will not be allowed to deal with the corporate funds and property for their private gain.

"6. They cannot deal with themselves and for the corporation at the same time, and must account for profits made by the use of the company's assets and for moneys made by a breach of trust." [1]

These two paragraphs are drawn from the following passage in the opinion of the court: —

"Directors and officers of corporations occupy a position of trust, and must act in the utmost good faith. They will not be allowed to deal with the corporate funds and property for their private gain. They have no right to deal with themselves and for the corporation at the same time, and they must account for the profits made by the use of the company's assets, and for moneys made by a breach of trust." [2]

There are cases, however, where the opinion of the court sums up the question decided in language so apt that the reporter cannot surpass it or safely depart from it. In such a case it is proper for him to state the decision in the language of the opinion. The vice lies, not in doing this, but in collecting into separate propositions in the head-note the principles of law appealed to in argument by the judge who writes the opinion, which in general are principles which every lawyer understands and which no one disputes. Jurisprudence is not advanced by the continuous repetition of these general principles. It is not necessary to repeat in a head-note such a proposition as that at common law the real estate descends to the heirs and the personalty goes to the next of kin.

[1] Ward *v.* Davidson, 89 Mo. 445, 446.
[2] Ibid., p. 458.

An apt instance of a proper use by the reporter of the language of the court in stating the question decided is found in the case of Attorney-General *v.* Tudor Ice Co.[1] The head-note of this case in the "American Reports" is as follows: —

"An information in equity, by the attorney-general, cannot be maintained against a private trading corporation, where the acts complained of are not shown to have injured or endangered any rights of the public, or of any individual or other corporation, and where the only objection to them is that they are not authorized by its act of incorporation, and are therefore against public policy."

This is really an apt summation of what the court decides, as stated in the concluding paragraph of the opinion, delivered by Mr. Justice Gray, as follows: —

"If there are any cases to which this form of remedy is appropriate, that of a private trading corporation, whose proceedings are not shown to have injured or endangered any public or private rights, and are objected to solely upon the ground that they are not authorized by its act of incorporation, and are therefore against public policy, is not one of them."

This summation of what the court really decides, as recast by the reporter in his head-note, seems to leave nothing to be stated. But a reporter of the sort whose work I venture to criticise would have made a syllabus of six or eight paragraphs, consisting entirely of the propositions stated by the learned justice in his argument. Such a syllabus would have buried the real point in judgment, and would have been scarcely better than no syllabus at all.

There is another kind of head-note, not so bad as the one here criticised, but, I venture to say, very bad, though in the opinion of many it is constructed on the proper and only admissible principle. It is the English form of stating a collection of facts and then telling the reader what the court "*held*." In

[1] 104 Mass. 239; s. c. 6 Am. Rep. 227.

tracing legal principles through the head-notes of the decisions, such a syllabus gives the searcher almost no aid at all. The law does not depend upon facts, though legal judgments consist in the application of the law to facts. The mind cannot easily grasp and retain a numerous collection of facts, and the law cannot be taught by teaching the conclusions of courts upon the peculiar collections of facts which have arisen in different cases. The so-called "case lawyer" is a lawyer who is made by this process. His professional work consists in endeavoring to find a case "on all fours" on its facts with the particular case which he has in hand; and when he finds such a case he cites it to the court with the confident assurance that, because some other court has decided upon precisely the same facts, according to his way of thinking, this court will do so. But it is rare indeed that two cases are ever precisely alike. When therefore the case lawyer fails to find a case on all fours with the one he has on hand, he is helpless, because he has not trained his mind to the discovery of legal principles and to their application to facts. He has not kept in mind the observation of Mr. Chief-Justice Best: —

"As no two cases are ever alike in all respects, the best way is, to *extract a principle* from the analogous decisions."[1]

In this regard the head-notes in Johnson's New York Reports are to be especially commended. The same may be said of the head-notes of Gray's Reports; and indeed this encomium is deserved by most of the Massachusetts reports, and by those of Wendell, Denio, and indeed of most of the early New York reporters. The reports of Mr. Freeman, of the Supreme Court of Illinois, are in this respect to be commended. I have already criticised his head-notes as furnishing too much in quantity, — that is, I blame them for giving the dicta as well as the decision; but the propositions of law as stated therein are almost uniformly well drawn. They are the work of a skilful hand; and although it is well known that Mr. Freeman has at times been obliged to employ assistants to aid him in getting out the rapidly multiplying volumes of decisions of that court, yet, like General Grant, he has been skilful in selecting his assistants, and has evidently kept them under a judicious supervision.

We should expect to find models of reportorial work in the decisions of the Federal Court of last resort; but unfortunately as much bad work has probably been done in reporting the decisions of that court, as in reporting those of any respectable court in the Union. Not to speak of his predecessors, the head-notes of the sixteen volumes of Peters were abominable. He seems to have been incapable of extracting from the decision the question decided, or even of formulating in his own language legal principles; but his head-notes often consist of a string of argument almost copied from the language of the judge who wrote the opinion. It is hard to understand how a court of that dignity, sensitive of its reputation, could have kept such a stick in such an office for so many years. His immediate successor, Howard, was not much better; but *his* successor, Jeremiah Black, was a lawyer of eminent ability, who had been Chief-Justice of the Supreme Court of Pennsylvania, and Attorney-General of the United States. His head-notes, though not always brief, are lawyer-like statements of what the court decided. His work as a reporter was unfortunately confined to two volumes. His successor, John William Wallace, had a very theatrical way of stating the facts of cases. In fact, it is scarcely out of the way to say that his mental tendency was toward gush and garrulousness. But unless I am mistaken, his head-notes, though possibly too full, never missed the point. I assume, however, that they were not liked by some of the judges, especially by Justices Field, Miller, and Bradley, who in important cases, as I

[1] Knight *v.* Hunt, 5 Bing. 432, 434.

have already stated, often furnished their own head-notes with the officially printed opinion. These head-notes were constructed on the plan of stating, in a sort of ascending scale, the various propositions or principles appealed to in argument by the judge who wrote the opinion, coming finally to the proposition in judgment, which constituted a sort of climax. I take leave to express the opinion that they were not the best style of head-notes, and that better head-notes would have been provided by Mr. Wallace, if he had been allowed to perform his function in the particular cases. In the republication of the reports of that court by Little, Brown & Co., under the editorship of Benjamin R. Curtis, who had been a justice of the court, we find an instance of good literary work, lopping off redundancies in the statement, and furnishing a new head-note limited to a statement of what was decided.

I cannot but think that the English reporters would serve the profession better if they should follow the same method, and first extract a principle from the case in judgment and state that principle, and then, if it is necessary, add, in the way which they now generally pursue, by way of illustration, what the court decided upon the collection of facts in judgment. This would make their head-notes consist of two parts: 1. The governing principle of law. 2. The application of that principle to the particular facts in judgment. It would resemble one of the propositions of "Stephen's Digest of the Law of Evidence," where a *rule* is stated, and then, in order that it may not be misunderstood, an *illustration* is given.

I ask those who uphold the English method of making a syllabus to tell me what they would think of a text-book constructed in this way. What would they think of a legal treatise whose text, instead of developing principles of the law in respect of the subject under discussion and illustrating them by apt instances, should confine itself to the instances, and leave the reader to infer the principles?

In regard to the manner of stating legal propositions in head-notes, very little can be said which will be of any practical benefit by way of a suggestion to reporters and editors. The homely saw of our English ancestors, that you cannot make a silk purse out of a sow's ear, and of our French neighbors, that you cannot make a whistle out of a pig's tail (*On ne peut pas faire un siflet d'un queue de cochon*), is here of the most pointed application. Unless a man has a good legal mind, possesses the easy power of grasping legal propositions, he never can be a good reporter. A man cannot clearly express a thing which he does not clearly understand. There are some men to whom the effort of stating a legal proposition is what Curran described it to be, in alluding to an adversary of his, — the effort of a fool to open an oyster-shell with a rolling-pin. It is idle to attempt to instruct such reporters. You cannot reconstruct their brains nor confer upon them a capacity with which Nature has not originally endowed them.

WAGER OF LAW.

THERE is a charm in antiquity, the force of which we all feel and acknowledge. It lends an additional value to many of those things that we esteem the highest. We love an old friend, a bottle of old wine, an old coin, an old picture, an old statue, an old manuscript, an old book. To the same latent virtue we are probably to attribute the strong attachment of the legal profession to old laws and institutions, and hence the zeal of our legal writers to trace back all that is valuable in both to the remotest period. We cling

with tenfold affection to the institutions that can boast the dignity of barbarian origin; and blessed is the man who can prove to our satisfaction that we are living under laws framed by the philosophy of our half-clad Saxon ancestors in the contemplative retirement of their bogs and fastnesses.

The persevering efforts of the learned to show that we are indebted to the wisdom of the dark ages for our trial by jury are well known. The attempt was laudable, although not quite successful. But if the pedigree of juries be involved in some doubt, there have been other judicial forms the claims of which to Teutonic origin may be established without even the aid of strained interpretation or far-fetched surmise. Of this number is Wager of Law, or Trial by Compurgation, — a species of trial which maintained its ground in the English courts until a comparatively recent date.

Our ancestors considering that there were many cases in which an innocent man of good credit might be overborne by a multitude of false witnesses, established this species of trial, by the oath of the defendant himself; for if he absolutely swore that he was not chargeable and appeared to be a person of reputation, he went free and forever acquitted of the debt or other cause of action.

The manner of waging and making law was this: The defendant having given security to make his law, — that is, take the benefit which the law has allowed him, — brought with him into the court-room eleven of his neighbors. The defendant, then standing at the end of the bar, was admonished by the judges of the nature and danger of a false oath. If he still persisted, he was made to repeat an oath in substance as follows: "Hear this, ye justices, that I do not owe unto Richard Jones the sum of ten pounds, nor any penny thereof, in manner and form as the said Richard hath declared against me. So help me, God!" And thereupon his eleven neighbors, or compurgators, were made to avow upon their oaths that they believed in their consciences that the defendant spoke the truth.

The result of wager of law was to perpetually bar the claim of the plaintiff, and it was never permitted except where the defendant bore a fair and unreproachable character; and it was also confined, in England, to such cases where a debt might be supposed to be discharged, or satisfaction made, in private without any witnesses to attest it.

Trial by compurgation was in general use among the northern tribes that overran the Roman Empire; it was one of many expedients for eliciting truth which prevailed in an age rather remarkable for active energy than for intellectual acuteness and subtle distinctions. In those days religion was not unfrequently called in aid of law; in modern times law is but too often called to the assistance of religion. Repeated mention is made of trial by compurgation in the codes of the northern nations, in old charters, and by the earlier historians.

In his valuable work on the "Origin of the Laws and Institutions of Modern Europe," Mr. Spence observes that the system of compurgation, *so far as putting the party himself to his oath*, evidently had its origin from the decisory oath of the Romans. In the same spirit we might assert that the system of trial by jury, *so far as regards judges and witnesses*, evidently had its origin in the proceedings before a Turkish cadi. The fact is, that scarcely a single instance occurs in the whole of the barbarian codes where the decision of any question was left to the unsupported oath of either of the parties. Besides, the decisory oath itself differed most materially from the oath of purgation: the former was tendered by one of the parties to the other, as the means of abridging a civil suit; the latter was prescribed by the law as a specific defence to a criminal charge or a civil claim.

The number of compurgators varied considerably, according to the importance of the subject, the character of the person, or the

customs of the particular people. In Wales there was a species of purgation, denominated Assath, existing at the beginning of the fifteenth century, in which the number of compurgators amounted to three hundred. Twelve, however, appears to have been the usual number, including the party himself.

Upon a superficial view of the subject it might seem that the custom of compurgation was calculated to prevent the perjury which would have ensued if the decision of a question had been left to the oath of the accused alone. But when we consider that at the period when it generally prevailed, the ties of consanguinity and clanship were regarded as superior to all other obligations, we shall find that the security was rather apparent than real. It cannot, therefore, surprise us that the complaints of the prevalence of false-swearing were universal.

Trial by compurgation, thus respectable in its origin, became the inheritance of the English; and they preserved it, as we have already said, to a comparatively recent period, with that jealous affection and filial reverence which have converted their code into a species of museum of antiques and legal curiosities. — *The Jurist.*

CAUSES CÉLÈBRES.

XVII.

MONTÉLY.

[1842.]

ON the 22d of November, 1842, a curious crowd was gathered in the court of the Messageries Générales, at Orleans. The Procureur du Roi, a commissary of police, several agents, and numerous gendarmes had just made a descent upon the building of that establishment devoted to the storage of baggage.

While the Procureur du Roi was examining the register of departures, a man named Bernard, who kept the Hôtel de l'Europe, in the Rue de la Hallebarde, approached the commissary of police, and pointing to an enormous trunk lying upon the ground, said, "That is it."

Upon forcing the lock of this trunk, a frightful discovery was made. Its contents were ghastly in the extreme. A human body, horribly mutilated, was disclosed to the eyes of the spectators. Upon a sign from the Procureur du Roi, a man who had up to this moment kept in the background approached, and at the sight of the garments which still remained upon the body, cried, "It is indeed our clerk at the bank, our poor Boisselier!"

Early on the morning of the 21st, Boisselier had departed from the bank to collect the amounts due upon certain accepted bills of exchange, of the value, in all, of 8,310 francs. Hours passed, night came, and Boisselier had not returned. Anxiety, and then alarm, prevailed on his account. What had become of him? In the absence of the manager of the bank, one of the directors, M. Chavannes, notified the Procureur du Roi of this strange disappearance. Inquiry disclosed the fact that the moneys the missing clerk should have collected had been received by a man who was certainly not Boisselier, but who had nevertheless presented the bills for payment. The description given of this man was that he was short, thick-set, of dark complexion, with black hair and mustache.

Boisselier was forty years of age; he had been married nine years, and lived in the banking-house with his wife. Upon being

questioned, she averred that she had not seen her husband since the morning of the 21st, and she was in great distress at his mysterious disappearance. From her it was ascertained that among his friends was one Montély, who was a clerk in the office of an insurance company at Saint-Germain-en-Laye. Her description of this man corresponded with that given of the individual who had collected the money in Boisselier's place. Evidence was also forthcoming that an interview had taken place in a café between Boisselier and this Montély, on the 21st of November.

While the investigation was in progress, one Bernard, the proprietor of the Hôtel de l'Europe, came to report to the Procureur du Roi a singular discovery which he had just made.

A traveller calling himself Morel had, he said, arrived at his house, and had a large trunk taken to his room. He had afterwards caused this trunk to be transported to the Messageries, whence it was to be forwarded to Toulouse. From that moment nothing had been seen of the traveller. As he did not appear the next morning, Bernard's wife went to his chamber and knocked on the door. Receiving no response, she introduced a match into a crack under the door of the room; and when she withdrew it, it was covered with blood.

The innkeeper and his wife believed that the stranger had committed suicide; the magistrate felt sure that he was on the track of the murderer. He made Bernard describe the traveller Morel, and the description given was exactly that of Montély.

The Procureur du Roi repaired at once to the Hôtel de l'Europe. The chamber, which bore the number 2, was opened by a locksmith. The room was apparently in perfect order; but the walls, the woodwork, and the floor showed signs of recent washing, and a towel was found on which were spots of blood. Near the door a little pool of blood had escaped the washing. Spots of blood were also discovered upon the curtains, and an armchair also presented marks of the same nature. Finally, a package, tied with the greatest care and containing bloody linen, was found concealed under the mattress of the bed, and a hat was discovered which was identified as belonging to Boisselier.

Doubt was no longer possible; it was in this chamber that the missing bank-clerk had been murdered. The trunk must contain the body. After this discovery the magistrates proceeded to the Messageries. The reader knows what they found in the trunk.

One of the commissaries of police of Orleans departed for Saint-Germain-en-Laye with a warrant for the arrest of Montély, and on the 23d of November, in the morning, he was arrested in his own house. He wore the same costume which had been described by those who saw him in Orleans. His mustache had been cut off the evening before. In his bed they found a bank-note for 1,000 francs and 2,000 francs in gold. It was also ascertained that Montély had paid several important debts the night before, and had redeemed a number of articles from the Mont-de-Piété.

On being taken to the prison at Orleans, he was recognized by all the witnesses. Notwithstanding the proofs which were accumulated against him, Montély denied all knowledge of the crime and affirmed that he was not at Orleans on the 21st of November.

An investigation of his past life showed that, without being absolutely bad, he was almost always in financial difficulties, and not over-scrupulous as to where he obtained the necessary funds to meet his wants. He had served in the army. Boisselier had been his fellow-soldier in Africa. Montély left the service in 1839, and lived for a while with his father at Bordeaux, working in a porcelain factory. He afterwards married and set up a grocer's shop in a small way at Noranfonte. He did not prosper, however, and soon resumed his former occupation in a porcelain factory at Ile-Adam. About this time he

was suspected of the crime of forgery, but there was not sufficient evidence against him to warrant a prosecution. In 1842, having become a widower, he married again at Bordeaux. Being out of work, he proceeded to Orleans to seek employment.

Late in October Montély obtained a situation in the office of an insurance company. His having been without employment of any kind for so long a time had reduced him to pecuniary straits. He was largely in debt, and had even been obliged to pawn his clothes.

Besides the active inquiry instituted as to the past life of Montély, the police were none the less indefatigable in their endeavors to obtain information as to his movements about the time of the crime. It was ascertained that after taking the room No. 2 at the Hôtel de l'Europe, he sent a message by one Lanvray, a lamplighter, to Boisselier, expressing a wish to see him. Meantime Montély waited at the corner of the Rue Meslée. It was then half-past seven. Lanvray witnessed the meeting of Boisselier and Montély. Boisselier expressed surprise, saying, "What! is it you? You are still here then?"

Between seven and eight o'clock Boisselier and Montély entered a café kept by one Cointepas. There they had a bottle of wine. Presently they left the café, and Boisselier was not afterwards seen alive.

Between eight and nine, Montély, alone, entered a cutler's shop and purchased a dozen table-knives. He then asked for a carving-knife. The cutler declined to sell the knife without a carving-fork; so Montély bought both knife and fork, saying, "Make haste, I am keeping a coach waiting." The cutler was certain that this was before nine o'clock; he had not yet breakfasted. He was also certain about the day; it was the day before he heard of the murder of Boisselier.

Notwithstanding all these overwhelming proofs, Montély persisted in denying everything. On the 26th of February, 1843, he appeared before the Court of Assizes of Loiret charged with wilful murder. An immense crowd was attracted to the trial. Every one wished to see this wretch who had murdered his friend in cold blood. It was said that since his arrest he had been affected by two things only, — the irons which they had placed upon his feet and hands; and his separation from his wife, for whom he seemed to feel a most profound love.

Upon the walls of his cell he had traced inscriptions which revealed the constant preoccupation of his mind, and of which the following is an example: —

> Oh, Cœlina, my dear wife, you possess the most miserable and unfortunate of men, — confined in a cell in the prison of Orleans, where he lives only for you, alone in this place of suffering.
>
> MONTÉLY.

It was also said that for a week he had obstinately refused any kind of food, and that it was not the fear of death but the influence of religion which had made him abandon his resolution.

The accused was introduced. He was a man twenty-six years of age, low of stature, thick-set, of dark complexion, — "le front déprimé, l'œil dur et oblique." He was dressed in black and wore a mustache. He was calm and collected, and professed a perfect innocence, meeting the statements of the witnesses with a positive denial.

In the course of the trial, however, he declared that he would confess the whole truth.

"I had," he said, "loaned three hundred francs to Boisselier, who begged me to say nothing to his wife. I came to Orleans on the 20th of November to collect my money. I went to the Hôtel de l'Europe, and sent a messenger to the bank to tell Boisselier that I wished to speak to him. He came in response to my message, but he brought no money. I had been shaving, and had accidentally cut myself with the razor. Boisselier, who had his bills for collection in his hand,

said, 'I have no money, but I have a cousin who is a bookbinder who perhaps will lend me some.' I said to him, 'You wish to put me off again as you have done before.' I snatched the bills from his hand, and threatened to tell his wife and the manager of the bank. Then seizing my razor, he exclaimed, 'If you do, I will kill myself.' I moved away toward my bed. He uttered a cry. I turned and saw that he had cut his throat. I endeavored to take the razor from him, but he held it so firmly that I broke the handle."

Montély then stated that after this frightful occurrence he lost his senses and knew not what he did when he found that Boisselier had killed himself. He then took possession of the dead man's bills of exchange, and purchased a knife, — not to commit a murder, for Boisselier was already dead, but to cut up the body, so that it might be packed in the trunk. He persisted that the cutler was mistaken. The carving-knife had not been purchased between eight and nine in the morning, but at noon; not before, but after the death of Boisselier.

This statement the advocate for the accused insisted was reasonable and credible enough; but the medical testimony introduced to controvert it tended strongly to show that this theory was, to say the least, highly improbable. Many witnesses also testified as to the character of Boisselier, his happy home life and his sunny disposition. He was not a man, they said, who would commit suicide simply because he feared that he might lose his position.

Montély was eloquently defended by M. Johannet, who laid great stress upon Montély's good character as a soldier. He had always conducted himself with great gallantry, and at the risk of his own life he had once courageously avenged the death of a comrade. He was a man of an affectionate nature. He was fondly loved by his second wife; he was tenderly regarded and highly esteemed by the relations of his first wife. Letters abounding in the kindest expressions, addressed to him in prison by various members of his family, were openly read in court in order to demonstrate his amiability and gentleness of character.

But eloquence and pleading were of no avail. After a deliberation of three hours the jury returned a verdict of guilty without extenuating circumstances. Montély was condemned to death, and the court ordered that the execution should take place on one of the public squares of Orleans.

Montély listened to the sentence in a state of evident prostration. "I am innocent," he said feebly; "I have told the truth. I shall welcome death gladly!"

An appeal to the Court of Cassation was rejected, and Montély was executed at Orleans, on the 8th of April, 1843, in the presence of an enormous crowd. His courage had completely given way, and he was in a most abject condition of body and mind when he appeared upon the scaffold. He made no confession of his guilt, but constantly protested his innocence.

The murder of Boisselier had greatly excited not merely Orleans, but the whole of France. "It was," as Southey said of a great crime committed many years since in London, "one of those few domestic events which, by the depth and the expansion of horror attending them, had risen to the dignity of a national interest." As a means of attracting visitors to a café at Limoges, the murderer's widow was drawn from her miserable seclusion and induced to exhibit herself publicly, presiding at a counter and dispensing drinks to the morbidly curious who came to gape and stare at her.

The Green Bag.

PUBLISHED MONTHLY, AT $3.00 PER ANNUM. SINGLE NUMBERS, 35 CENTS.

Communications in regard to the contents of the Magazine should be addressed to the Editor, HORACE W. FULLER, 15½ Beacon Street, 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.

THE GREEN BAG.

WE clip the following from the "London Law Journal": —

"The following extract from Peter Pindar's 'Birthday Ode' is for despatch across the Atlantic into the capacious mouth of the 'Green Bag': —

I always would advise folks to ask questions,
For truly questions are the keys of knowledge
Soldiers who forage for the mind's digestion,
Cut figures at th' Old Bailey and at college,
Make Chancellors, Chief-Justices, and Judges,
E'en of the lowest green-bag drudges.

Dr. John Wolcot flourished nearly all the time of George III., and knew the green-bag carriers as drudges. Might the motto of the modern 'Green Bag' be 'Soldiers who forage for the mind's digestion'?"

IF our esteemed contemporary cites the above to sustain the position it has assumed that the green bag was never the badge of a lawyer, we have nothing to say; but it would then appear that chancellors, chief-justices, and judges are made in England, not from *lawyers*, but from "green-bag drudges." In this country "lawyers and green-bag drudges" have for a long time been synonymous terms. We accept with pleasure the motto so kindly provided for us, "Soldiers who forage for the mind's digestion," and we believe we furnish a pretty good quality of mental pabulum.

IN our June number we shall publish an extremely interesting article on the Supreme Court of Canada, by Robert Cassels, Esq. The illustrations will include a view of the Supreme Court-room, and portraits of prominent judges.

A growl from a thoroughly disgusted layman.

Editor of the "Green Bag":

SIR, — Did it ever occur to you lawyers what justification the layman has for cussing law and particularly lawyers?

Yet I want no better reason for utterly damning (I use the word in no profane sense) law and lawyers, than is afforded by the memoir of Lord Eldon, given in your March number. He is praised very highly, yet it is said that he earnestly opposed Sir Samuel Romilly's reform of the criminal law. Now, the story is that Romilly was led into his great work by the case of a woman being hanged for stealing a loaf of bread; her husband had been impressed into the navy, she was left starving, and she stole to relieve the pangs of hunger of her children. I would not like to say that Lord Eldon was the judge who sentenced this woman with the horrible statement that "the protection of society demands the rigorous execution of the wholesome provisions of the law," but those were the words of the criminal *on the bench*. Now, will you say just what amount of virtue would be required before the last great bar, to atone for such horrible wickedness? Don't go off about men becoming devoted to precedent, wrapped up in devotion to the law as they have been brought up to see it, etc.; the Devil wants no choicer weapon than the justification of self-deceivers. Now don't you, as a lawyer, see wherein the root of this trouble is? It is in the lawyer considering the law as an abstract science, a thing to be revered not for what it is or what it does, but for what it *has been*; he looks on it as an end, not a means, and as specially constructed for *his* edification, not as a means of furthering human progress and happiness, forgetting that the law should be for us unfortunate laymen, not for his professional self. See how judges have erected a fortress in which they intrench themselves against all enactments of legislatures, and hoist the flag of "the common law"!

You know that all efforts of legislatures to construct a law of special or limited liability partnerships have failed, owing to the cussedness of judges in falling back on their "strict construction," which seems incited by the reverence for their pet fetich.

Now Heaven forbid that I should attempt to comprehend what, who, or where this Juggernaut is.

Lawyers say that it is built up of the decisions of the ablest judges and lawyers since the year one; so I naturally conclude it is one of those things past finding out. But as a common every-day observer of human progress, it strikes me that what might have been the best thing for my Lord Bracton to decide may hardly fit into this age; yet unless a legislature constantly shapes its acts in view of what His Mustiness has announced, everything it does is defeated by the wisdom of the bench. One county judge and a bare minority of the Supreme Court of Pennsylvania held that if a dealer shipped whiskey into a prohibition county without the C. O. D. provision, he sold in his own county; but that if he collected his bill C. O. D. he sold in the prohibition county, and must go to jail for six months for it. Mind you, it was not that he was evading the law, etc.; it was all on the construction of where he sold. The distinguished counsel for the defendant said before the Supreme Court that this was one of the decisions that brought the law into disrepute. I told him it was one of the decisions that convinced the layman that Mr. Bumble was sound in his decision that the law was an ass, and further that we might as well have the Devil as Chief-Justice as have such fine, metaphysical distinctions as *that* imperil a man's liberty. Now, I am not going to suggest any remedies; any proposed or enacted by a layman would be burked by "strict construction," "not conforming to the common law," or some other such rubbish; but as the layman cannot help himself, why should he be denied the satisfaction of consigning the law and lawyers to the aforesaid Chief-Justice?

LEGAL ANTIQUITIES.

THE following is a correct transcript of the most memorable judicial sentence which has ever been uttered by human lips in the annals of the world. This curious document was discovered in A. D. 1280, in the city of Aquill in the kingdom of Naples, in the course of a search made for the discovery of Roman antiquities, and it remained there until it was found by the Commissaries of Art in the French army of Italy. Up to the time of the campaign in southern Italy, it was preserved in the sacristy of the Carthusians, near Naples, where it was kept in a box of ebony. Since then the relic has been kept in the Chapelo Caserta. The Carthusians obtained, by petition, leave that the plate might be kept by them as an acknowledgment of the sacrifices which they had made for the French army. The French translation was made literally by members of the Commission of Art. Denon had a fac-simile of the plate engraved, which was bought by Lord Howard, on the sale of his cabinet, for twenty-eight hundred and ninety francs.

There seems to be no historical doubt as to the authenticity of this document, and it is obvious to remark that the reasons of the sentence correspond exactly with those recorded in the Gospels. The sentence itself runs as follows: —

"Sentence pronounced by Pontius Pilate, Intendant of Lower Galilee, that Jesus of Nazareth shall suffer death by the cross. In the seventeenth year of the reign of the Emperor Tiberius, and on the 25th of March, in the most holy city of Jerusalem, during the Pontificate of Annas and Caiaphas. Pontius Pilate, Intendant of the Province of Lower Galilee, sitting in judgment in the presidential chair of the prætor, sentences Jesus of Nazareth to death on a cross, between two robbers, as the numerous testimonies of the people prove that — 1. Jesus is a misleader. 2. He has excited the people to sedition. 3. He is an enemy to the laws. 4. He calls himself the Son of God. 5. He calls himself falsely the King of Israel. 6. He went to the Temple followed by a multitude carrying palms in their hands."

It likewise orders the first Centurion, Quirilius Cornelius, to bring him to the place of execution, and forbids all persons, rich or poor, to prevent the execution of Jesus. The witnesses who have signed the execution against Jesus are, 1. Daniel Robani, a Pharisee; 2. John Zorobabel; 3. Raphael Robani; 4. Capet. Finally, it orders that the said Jesus be taken out of Jerusalem through the gate of Tournea. — *Kölnische Zeitung.*

FACETIÆ.

A YOUNG thief who was charged the other day with picking pockets, demurred to the indictment, "for that, whereas he had never picked pockets, but had always taken them just as they came."

IT is a doubtful point whether a blind man could be made liable for his note payable at sight.

LORD BROUGHAM once, in giving judgment in a case in the Privy Council, made use of the following language: "As to the witness Jones, I believe him to be a depraved scoundrel, and I am satisfied that he has perjured himself up to his ears. Had he said more, I would give him my opinion of him."

"So you were not satisfied to eat a dinner at the man's restaurant without paying for it, but you went off with the caster and the spoons besides?"

"That 's so, your Honor; but I took the caster and the spoons from honest motives."

"Honest motives?"

"Yes, I wanted to pawn them, so I could raise money to pay for the dinner."

A STRUGGLE FOR A VERDICT. — A German had got into a row with a quarrelsome Irishman, who had long been a terror in his neighborhood, and the Irishman had been left stone-dead on the field. A young and inexperienced lawyer undertook the defence of the German; and just before the case was to be tried he found to his dismay that the jury was composed of eleven combative-looking countrymen of the murdered man, the twelfth being a German. This of course would never do. A "defence fund" was immediately raised, and the German was approached with all due caution, and the promise if he managed to get the accused off with a verdict of manslaughter it would be worth $1,000 to him; all he had to do was to stick to that one word "manslaughter." Well, the verdict came in "manslaughter" in great shape, and the joyful attorney for the defence could n't get the $1,000 into the German's hands too quickly. Shaking hands with him after the money was placed, he slapped him on the back and said: "You did nobly; you must have had an awful time making those Irishmen agree to simple manslaughter." "Vell, I should say so," replied Schmidt, "dey was all for acquittal." — *Central Law Journal.*

AT a trial in France the foreman of the jury, placing his hand on his heart, with a voice choked with emotion, gave in the following verdict: "The accused is guilty, but we have our doubts as to his identity."

NOTES.

IT is related of a Bangor lawyer that he was made very unhappy, once upon a time, by hearing that two of his clients had gone to law over a debt. The lawyer did not care to appear against either of his clients, nor did he enjoy the thought that he could not get a fee from at least one of them. Finally by an ingenious trick he managed to collect fees from both. He drew up the complaint for the plaintiff, charged a good round sum for his services, and referred him to another lawyer, who would appear for him. The next day he devoted to the defendant in this case, drawing up the answer. When the case was tried the lawyer sat in court and enjoyed the fight.

AT the last annual meeting of the Victoria Institute of London, a paper was read describing the recent discovery of Assyrian archives thirty-five hundred years old in the palace of Amenophis III. These venerable chronicles, according to Professor Sayce, show that in the fifteenth century before our era — a century before the Exodus — "active literary intercourse was going on throughout the civilized world of western Asia, between Babylon and Egypt, and the smaller States of Palestine, of Syria, of Mesopotamia, and even of eastern Kappadokia. And this intercourse was carried on by means of the Babylonian language and the complicated Babylonian script. This implies that all over the civilized East there were libraries and schools where the Babylonian language and literature were taught and learned. Babylonian appeared to have been as much the language of diplomacy and cultivated society as French has become in modern times, with the difference that whereas it does not take long to learn to read French, the cuneiform syllabary required years of hard labor and attention before it could be acquired. . . . Kirjath-Sepher, or 'Book-town,' must have been the seat of a famous library, consisting mainly, if not altogether, as the Tel el-Amarna tablets inform us, of clay tablets inscribed with cuneiform characters. As the city also bore the name of Debir, or 'Sanctuary,' we may conclude that the tablets were stored in its chief temple, like the libraries of Assyria and Babylonia. It may be that they are still lying under the soil, awaiting the day when the spade of the

excavator shall restore them to the light." The Lord Chancellor, who was present at the meeting, said that there was nothing more interesting in the literary history of mankind than such discoveries as those alluded to in the address, which he considered a perfect mine of wealth. — *London Law Times.*

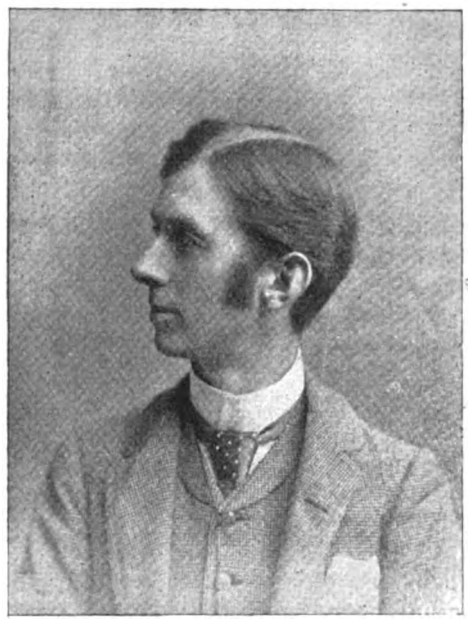
Recent Deaths.

HON. JAMES V. CAMPBELL, a Justice of the Supreme Court of Michigan, died in Detroit, March 26. He was born Feb. 25, 1823, at Buffalo, N. Y., and was a little over sixty-seven years of age at the time of his death. He accompanied his parents to Detroit in 1826, where he resided up to the time of his death. His early education was received in the public schools of Detroit. He afterwards attended St. Paul's College at Flushing, L. I., where he was graduated in 1841. The college was then under the patronage of the Protestant Episcopal Church, but it has long since passed out of existence.

Upon his return to Detroit, Judge Campbell studied law in the office of Douglas & Walker, was admitted to practice in October, 1844, and was immediately taken into partnership with his preceptors. Upon the creation of the Michigan Supreme Court in 1857, Mr. Campbell was among the justices chosen at the first election. He ascended the bench on Jan. 1, 1858, where he remained continuously from that time until his death.

In our June number we shall publish a short sketch of Mr. Campbell, written by Hon. Henry B. Brown.

HON. CHARLES DANFORTH, Justice of the Maine Supreme Court, died at Gardiner, March 30. Judge Danforth was born in Norridgewock, Me., August 1, 1815. He was admitted to the bar in the summer term of 1838 in Norridgewock, and began practice at Gorham, Me., in September of that year. In 1841 he removed to Gardiner, and opened an office in company with Noah Woods. This association continued until 1854, when Mr. Woods retired. Mr. Danforth served as member of the Superintending School Committee of Gardiner, Selectman, member of the Common Council, and member of the Legislature during the sessions of 1850, 1851, and 1852. In 1853 he was a member of Governor Morrill's Executive Council, and in 1857 he again represented Gardiner in the Legislature. In 1858 he was elected county attorney, and served two terms. Jan. 5, 1844, he was appointed a Justice of the Supreme Court, and since then he has been three times reappointed, the last time in 1884.



GEORGE W. WALES.

GEORGE WORCESTER WALES, of Burlington, Vt., died January 16 last. He was born in that city July 10, 1855, and was the only surviving son of Torrey E. Wales, now serving his twenty-eighth year as Judge of the Probate Court in the District of Chittenden. He graduated with honor at the University of Vermont in 1876. He pursued the study of the law in the office of Wales & Taft, spending the winters of 1876–1880 in Washington, as clerk of the Senate committee on public buildings. In September, 1880, he entered the Harvard Law School intending to pursue the full course; but the retirement from practice of Mr. Taft, who was elected Judge of the Supreme Court, left his father alone, and young Wales returned home and continued his studies in the office of his father until his ad-

mission to the bar in April, 1882; although qualified for admission a year earlier, such was his conscientiousness that he delayed his application for admission until he deemed himself better fitted to take upon himself the degree of counsellor. In partnership with his father, he entered at once upon the practice of his profession; and no clients were ever served with more fidelity than his. Of a keen intellect, and as unerring a judgment as is seldom vouchsafed to mortal man, he was in all respects a safe counsellor, an able, prudent, and discreet attorney. He held many positions of public and private trust; and the fidelity and care exercised by him in their management increased the esteem and confidence of the community, which he enjoyed from the beginning. He was counsel for many of the leading business institutions in Burlington; and the fact that in the short term of his practice he accumulated a larger sum than the average earnings of the younger part of the profession was a sure test of his capacity as a lawyer. Accidentally wounded when young by a pistol-shot, he never enjoyed robust health, and a disease of the bowels finally terminated fatally as he was nearing his thirty-fifth birthday. Of his age, he was probably the best educated lawyer in the State; and while perhaps shrinking from contests in jury trials, he never made an argument in the Supreme Court without impressing the judges that he thoroughly understood and was master of his case.

AUSTIN AGNEW MARTIN, one of the brightest and most promising of the younger lawyers of the Suffolk Bar, died at his home in Boston on April 1. He was a son of the late Dr. Henry A. Martin, and was born in Roxbury, Mass., Nov. 3, 1851. He entered the Roxbury Latin School in 1860, and graduated at Harvard College with the class of 1873. He then entered upon the study of the law in the office of his maternal grandfather, the late Judge Crosby of Lowell, and attended the regular course of lectures, and instruction at the Boston Law School. He was for a time a student in the office of Messrs. Jewell, Field & Shepard of this city, and was admitted to the bar in 1876. He was a prominent member of the Union, Athletic, and Country Clubs of Boston.

At an early age Mr. Martin developed a rare

AUSTIN A. MARTIN.

literary taste, inherited largely from his father; and his keen appreciation of what is best in literature, and his thorough acquaintance with the works of the most eminent writers made him a most delightful companion and conversationalist. He was himself a writer of uncommon ability, and his clever paraphrases of some of the reported legal decisions are unsurpassed. The readers of the "Green Bag" can bear witness to his remarkable talent in this direction. An enthusiastic lover of Nature and of all out-door sports, he found his greatest pleasure in long rambles about the country, in fishing, shooting, riding, and boating; and during the last six years of his life, when he bore constantly the burden of a certain knowledge of an incurable disease, he still found a keen delight in these out-door expeditions. High-spirited, sensitive, and with the nicest sense of honor in every thought and act, he was true and loyal in his friendships, and in every act whether public or private. Those who knew him best found out his sterling worth. At the age of thirty-eight, young, courageous, and hopeful, his life here is ended; but his memory will long be warmly cherished by all those who were fortunate enough to know him.

REVIEWS.

THE LAW QUARTERLY REVIEW for April contains its usual quota of interesting legal matter. The leading article is written by Kenelm E. Digby, on "The Law of Criminal Conspiracy in England and Ireland." H. Greenwood contributes a paper on "Registration — or Simplification — of Title." And the other contents are: "The Compulsory Registration of Titles," by H. W. Challis; "The Law of Maintenance and Champerty," by A. H. Dennis; "Statutory Changes in the Doctrine of Co-Service in the United States," by W. M. McKinney; "The Rio Tinto Case in Paris," by Malcolm McIlwraith; "The Antiquities of Dartmoor," by C. Elton.

THE HARVARD LAW REVIEW for March contains the third of Prof. J. B. Ames's valuable papers on "The Disseisin of Chattels." Charles F. Chamberlayne contributes an exhaustive article on "State Jurisdiction in Tide-Waters."

THE only article in the COLUMBIA LAW TIMES for March is written by Ernst Freund, on "Record and Notice under the Revised Statutes." The other contents are made up of "Lecture Notes" and "Moot Court Decisions."

CURRENT COMMENT AND LEGAL MISCELLANY for March is bright and entertaining as ever. We know of no more readable legal periodical than this publication of the D. B. Canfield Company.

WITH its April number, THE CENTURY completes another volume, and the contents of this issue are of unusual interest. Two of Mr. Cole's artistic engravings accompany a paper on Giovanni Bellini, by Mr. W. J. Stillman; one of them being printed as a frontispiece.

Mr. Jefferson's Autobiography reaches the Rip Van Winkle stage of his career, and tells the reader exactly what he wishes to know, — how Mr. Jefferson came to play the character. Three striking engravings of Jefferson as "Rip" accompany the paper, which also contains a disquisition on guying by actors, with humorous incidents.

Three timely articles are "The Latest Siberian Tragedy," by George Kennan, in which is given a new account of the outrage at Yakutsk; "Suggestions for the Next World's Fair," a practical and helpful paper, by Georges Berger, Director of the French Exposition; and "The Slave-Trade in the Congo Basin," by E. J. Glave, one of Stanley's pioneer officers, with text and pictures from life during Mr. Glave's residence of twenty months among the natives.

Three articles of special interest and authoritativeness are "An Artist's Letters from Japan," by John La Farge, with illustrations beautifully engraved by Marsh, Kingsley, and Whitney; "The Serpent Mound of Ohio," by Prof. F. W. Putnam, of the Peabody Museum, Cambridge, Mass., an exhaustive treatment of the facts and archæological significance of these curious remains; and "The Old Poetic Guild in Ireland," a special study by Charles de Kay, with illustrations by Alexander and Bacher.

There are three short stories, giving altogether much variety in subject matter and treatment: "The Herr Maestro," by Elizabeth Robins Pennell, with pictures by Joseph Pennell, a story about Venice; "That Yank from New York," a story of Mexico, by John Heard, Jr., with pictures by Allen C. Redwood; and "A Dusky Genius," a story of the South, by Maurice Thompson, illustrated by Kemble. Mrs. Barr's novel, "Friend Olivia," reaches the sixth part.

THE second in the series of Shakspearian revivals conducted by Edwin A. Abbey and Andrew Lang, is one of the chief attractions in HARPER'S MAGAZINE for April. The play selected is the "Merchant of Venice." One of the ten illustrations from drawings by Mr. Abbey forms the frontispiece, and represents the moment (in scene iii. act 1) when Shylock exclaims, "And for these courtesies I 'll lend you thus much monies." Gen. Wesley Merritt, of the United States army, contributes an article entitled "Three Indian Campaigns," accompanied with maps and illustrations. The campaigns against the Cheyenne, Apache, and Ute Indians are vividly described. The series of comprehensive articles on "Great American Industries" is continued with a richly illustrated paper on "A Suit of Clothes." The article presents the complete history of a piece of wool from the time of its growth on a sheep to that of its transformation into the manufactured product; and this involves a thorough analysis of the development

of the wool industry within the past one hundred years. Henry Clay Lukens contributes a most readable article on "American Literary Comedians," illustrated with portraits of humorous writers. Short stories by Annie Trumbull Slosson, Mary G. McClelland, and Geraldine Bonner furnish a good supply of lighter reading. The number as a whole is fully up to the standard of this most excellent magazine.

SCRIBNER'S MAGAZINE for April is unusually attractive in its illustrations. The frontispiece, "Now Chaplets bring," is an exquisite drawing by J. R. Weguelin. "Tadmor in the Wilderness," by Frederick Jones Bliss, is profusely supplied with interesting views; and the second and concluding part of "In the Footprints of Charles Lamb," by Benjamin Ellis Martin, gives the reader some charming English scenes connected with the life of that delightful writer. "The Electric Railway of To-day," by Joseph Wetzler, gives an exceedingly interesting account of the development of electricity as a motive power, with drawings of the different systems of electric railways. The first of a series of papers by Frederick W. Whitridge on "The Rights of a Citizen," is given in this number, and discusses a question of general interest; namely, his rights as a householder. Octave Thanet's "Expiation" is concluded; and two more chapters are given of Harold Frederic's "In the Valley." For shorter stories, E. C. Martin contributes one entitled "Javan Hackett's Ill-Mended Fortunes;" and Sarah Orne Jewett an amusing sketch, which she calls "The New Methuselah."

AN article which will attract the attention of the legal profession, and which will well repay a careful perusal, is contributed to the April number of the ATLANTIC MONTHLY by Prof. James B. Thayer, and is entitled "Trial by Jury of Things Supernatural." Mr. Thayer gives an account of two famous witchcraft trials in the seventeenth century, the first being the so-called "Suffolk Witches," tried before Sir Matthew Hale; the second, a celebrated Scotch case, in which a girl of eleven, named Christian Shaw, accused numerous persons of bewitching her. Oliver T. Morton cites "Some Popular Objections to Civil Service Reform;" Albert Shaw gives an interesting account of "Belgium and the Belgians;" and H. C. Merwin, in an article on "Road Horses," imparts a great deal of valuable information concerning the "noble steed." "The Tragic Muse," by Henry James, is continued, as is also "The Begum's Daughter," by Edwin Lassetter Bynner. Margaret Deland's "Sidney" increases in interest, and is equal to anything this gifted author has yet produced. Dr. Holmes is as delightful as ever in "Over the Teacups."

BOOK NOTICES.

RIGHTS, REMEDIES, AND PRACTICE AT LAW, IN EQUITY, AND UNDER THE CODES. By JOHN D. LAWSON. Vol. IV. Bancroft Whitney Company, San Francisco, $6.00 net.

This third volume of the series continues the third division of Mr. Lawson's work, — namely, Property Rights and Remedies, — and includes the titles Negotiable Instruments, Copyrights, Trade-Marks, Patents, Bailments, and Trusts. Under the title Bailments will be found the important topics of Common Carriers, Pledges, Innkeepers, and Telegraph Companies. We cannot speak too highly of the merits of this admirable work of Mr. Lawson's, which is sure to add to his already well-earned reputation as a legal writer. The design was a stupendous one, but it is being carried out in a manner which must excite the admiration of the profession.

A TREATISE ON THE LAW OF INJUNCTIONS. By JAMES L. HIGH. Third edition. Callaghan & Company, Chicago, 1890. Two volumes, law sheep. $12.00 net.

Mr. High has won a well deserved reputation as a law writer, and the present work has contributed more largely than any other to the great esteem with which he is regarded by the profession. The first edition of this valuable treatise was published in 1873, and was at once recognized as a standard work upon the subject of which it treats. A second edition followed in 1880, which was received with marked favor by the bar, and we now have the work brought down to the present year. More than fourteen hundred new cases are embodied in the present edition, and more than two hundred pages have been added to the text.

The subject of injunctions is one of exceptional interest to the profession, and a treatise fully covering the nature and mode of application of this rem-

edy is of inestimable value. That Mr. High is a complete master of his subject cannot be doubted on a thorough perusal of his work. The book is carefully prepared, well digested, and almost every sentence is accompanied by the citation of an authority to sustain it. Thoroughly conversant with his subject-matter, Mr. High, when occasion requires, does not hesitate to express his individual opinion, even if it conflicts, as it does in some instances, with judicial decisions. Such independence in a legal writer is truly refreshing in these days, when the authors of our law books seem content to simply cite decisions and pass on without a word of comment. While decisions, right or wrong, undoubtedly establish precedents, it by no means follows that they settle questions of law; and independent thought and criticism by an author qualified to exercise them, must be of great value, and add much to the merits of his work.

We predict for this new edition a reception as flattering as that accorded to its predecessors. The book is one of the comparatively few really valuable works in legal literature, and no lawyer can afford to be without it.

REPORTS OF CASES ADJUDGED AND DETERMINED IN THE COURTS OF CHANCERY IN THE STATE OF NEW YORK. Complete edition, copiously annotated by embodying all Equity Jurisprudence with Tables of Cases reported and cited, by ROBERT DESTY. Book VII. Lawyer's Co-operative Publishing Company, Rochester, N. Y. 1889.

This volume of New York Chancery Reports, covering Clark and Sanford, completes this valuable series of Reports. While nominally reports of New York decisions, the admirable notes of Mr. Desty make the series of great value to the profession at large, covering as they do almost the entire field of Equity Jurisprudence. This work has been received with marked favor, and the publishers ought to reap a substantial reward for the important aid they have rendered the legal profession in its publication.

LAWYERS' REPORTS ANNOTATED. Book V. With full Annotations by ROBERT DESTY. The Lawyer's Co-operative Publishing Company, Rochester, 1889. $5.00 net.

In entering upon the second year of this series, the publishers have much to congratulate themselves upon. The publication has met with a most gratifying success, and has received the unqualified commendation of the bench and bar throughout the country. All promises made have been fulfilled, and the execution of the work has left but little to be desired. The selection of cases has been admirable, and the annotations all that might be expected from so efficient an editor as Mr. Desty.

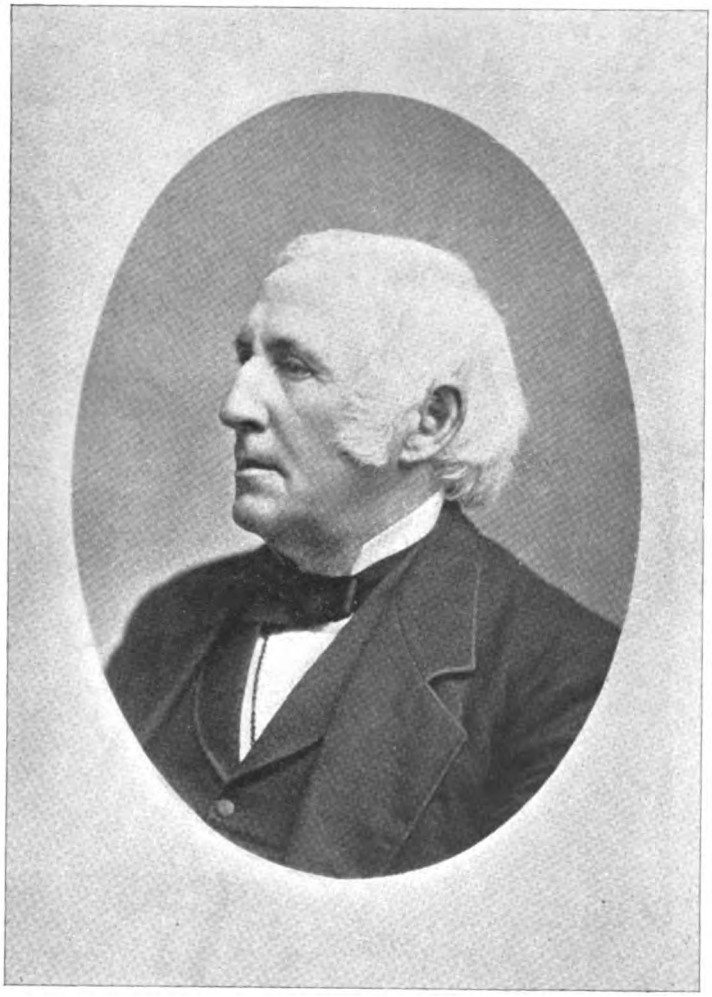
TRIAL BY COMBAT. By GEORGE NEILSON. William Hodge & Co., Glasgow, Scotland, 1890. 7*s.* 6*d.* net.

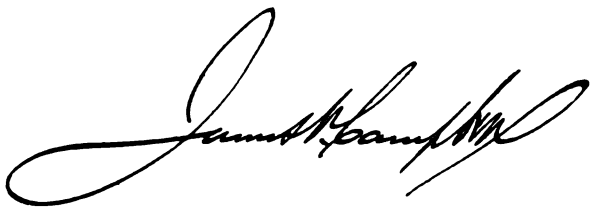
This book has been prepared by its author with the greatest care, and is the result of a thorough and exhaustive research into everything bearing upon the subject. Much of its matter is new to all but antiquarian students, and cannot fail to deeply interest the legal profession. Starting with the revival of this ancient barbarism by Gundobald, King of Burgundy, in A. D. 501, Mr. Neilson traces its history down through thirteen hundred years to 1819, when trial by combat was abolished in England by an Act of Parliament. The book is of great value historically, and is as fascinating to a lawyer as a fairy-tale is to a child.

RECOLLECTIONS OF MISSISSIPPI AND MISSISSIPPIANS. By REUBEN DAVIS. Houghton, Mifflin, & Co., Boston and New York, 1890.

Reminiscences by one who has taken a prominent part in public affairs are always interesting, and we do not know when we have read a more remarkable or entertaining book than this volume of Mr. Davis's. The author, a typical Southerner of the old school, tells us in a most graphic manner about the men and women who formed the society of which he was a part, and describes the scenes and incidents of life in Mississippi in the *ante-bellum* days. He writes in such a charmingly simple, easy, conversational manner, recalling with such evident delight the story of his earlier days, that the reader is at once taken as it were into the very midst of the people whom he describes, personally introduced, and made to feel at home in their delightful society. While possessed of a most kindly, generous disposition, Mr. Davis seems to have been imbued with a liberal allowance of Southern "fire," and some of the descriptions of his encounters (not strictly legal) with the court are most amazing. Think of a judge and counsel, after an altercation on some point of law, meeting outside and having it out, the one armed with a hammer and the other with a knife, and then making it up and living in perfect friendship ever after.

In the closing chapters Mr. Davis gives an interesting and valuable account of the Secession of the South and the gloomy scenes which followed. It is to be regretted that the book ends with the war of the Rebellion, for the author's views upon the reconstructed South would have proved a welcome addition to the volume.





The Green Bag.

VOL. II. No. 6. BOSTON. JUNE, 1890.

MR. JUSTICE CAMPBELL.

BY HON. HENRY B. BROWN.

THE sudden and wholly unexpected death of Mr. Justice James V. Campbell, of the Supreme Court of Michigan, removes from that bench its oldest member, both in years and length of service, and one who has contributed as much as any other to establish its fame as the leading judicial tribunal of the West.

Judge Campbell was born in Buffalo, N. Y., Feb. 25, 1823, and consequently had completed his sixty-seventh year. His father removed to Detroit when he was but three years of age, and from that time until his death he was thoroughly identified with the history and growth of the State. He was admitted to the bar in 1844, was immediately taken into one of the leading firms, and soon established a successful and lucrative practice. Upon the reorganization of the Supreme Court in 1857, — an act which was virtually the creation of a new court, — he was, at the early age of thirty-four, elected one of its justices, and was by successive re-elections continued upon the bench until his death.

He brought to the discharge of his new duties a complete equipment of judicial qualifications, as masterful a knowledge of the law as was possible in one of his years, a fixed habit of industry, an amiable temper, unblemished integrity, an innate love of justice, and that delicate appreciation of what justice demands, known as the judicial temperament, which is of more value upon the bench than brilliant parts or profound learning. He was conservative in his nature, a champion of whatever the experience of ages had shown to be safe and wise, and looked with distrust upon any change which savored of an encroachment upon time-honored principles of justice.

He loved the common law of England, the law as administered by Coke and Mansfield and Kenyon. He loved its principles, its pleadings, its practice, its juries, its judgments. He had a tender side even for its technicalities, especially when put forward in defence of the liberty of the citizen. He was a stanch defender of the sanctity of the person and domicil, and was never so happy in his opinions as when vindicating his immunity from arrest without warrant, and his right to a trial according to the ancient forms of the law. He was even accused of an undue leaning toward the criminal, although his opinions went no further than to insure him fair treatment and the unbiased judgment of his peers. Upon these points he was inflexible, and in one of his latest official utterances (People *v.* McCord, 76 Mich. 200), he criticised with unexampled severity the unfair methods used in the detection of a crime. He had no sympathy with crime or criminals; his sole desire was to see that justice was done them.

He loved the rights of the people secured to them by the Constitution, and was quick to resent an invasion of its immunities. He loved its spirit as well as its letter, — what it implied as well as what it expressed. He believed that back of all constitutions there were immutable principles of justice, which legislatures as well as individuals were bound

to respect, and that enactments in violation of such principles were void.

He adhered firmly to the doctrine of local self-government. While he was attached to the Constitution of the United States and acknowledged its supremacy, he was a State-rights man in the best sense of the word, and jealous of any interference of the Federal government, its congress or its courts. Indeed he was equally zealous in asserting the rights of the State against the general government, the rights of the municipality against the State, and the individual against them all. In every conflict between a superior and an inferior power his sympathies instinctively went out to the weaker side.

His manner upon the bench was the perfection of judicial courtesy. He was a patient and attentive listener, deferential even to the youngest members of the bar, deliberate in his judgments, but inflexible in his opinions. Beneath his placid face and gracious demeanor lay an iron will, a resolution that knew no variableness or shadow of turning. But it is not alone as a jurist that Judge Campbell was known to the people of his State. He was both a student and a teacher He was a discriminating reader of the polite literature of the day. He was versed in the law of Continental Europe and particularly in that of France. He was more familiar with the pioneer life of the Northwest and with the early history of the State of Michigan than any man within its borders. Some of the fruits of his researches he gathered in book form, under the modest title of the "Outlines of the Political History of Michigan." He wrote with extraordinary ease, and graceful emanations from his pen occasionally found their way to the public prints. He was one of the founders of the Law School of the University, and for twenty-five years lectured to its students upon Equity, Criminal Law, and Federal Jurisprudence. His lectures were replete with learning and beauty of style; while his kindly face and benignant smile won their way to the hearts of his hearers.

His private life was a model of purity; in short he was a gentleman in every sense of the word, — dignified in bearing, refined in language, genial and happy in disposition, faithful to his church, generous to charity, devoted to his family and friends, and punctual in the discharge of his pecuniary obligations. No untoward action ever marred the harmony of his character; no coarse or unseemly expression ever escaped his lips. His walk and conversation were known and observed of all men, and to no one was ever more applicable the familiar line of Horace:

"Integer vitæ, scelerisque purus."

When not engaged in court or in the preparation of opinions, his life was largely devoted to literary pursuits. He was attached to his home, and seemed to take but little interest in ordinary social entertainments. He rarely left the State even for a summer vacation. He was delightfully entertaining and instructive in conversation, but appeared rather to shun than seek for opportunities of social intercourse.

His death seemed rather like the completion than the extinguishment of a noble life. A domestic bereavement in the loss of his wife had preyed upon his vitality as well as his spirits. He had aged perceptibly during the last year, and when the final summons came it found him seated peacefully in his chair, already prepared for the last great change which sooner or later comes to us all.

REMINISCENCES OF THE FRENCH BAR.

IN 1839 there was published an extremely amusing and interesting book entitled "Souvenirs de M. Berryer, Doyen des Avocats de Paris de 1774 à 1838." The author, M. Berryer, the father of the celebrated orator of that name, entered the profession of the law in 1774, and continued in active practice upwards of sixty years.

He was the first advocate who condescended to plead before the revolutionary tribunals, and he was concerned more or less in almost all the causes of consequence which came before them. His reminiscences consequently comprise the ancient régime, the transition period, and the established order of things; and they are narrated fully and frankly, in clear, easy, familiar language, with some of the caution taught by experience, but with none of the garrulity of age. They have, moreover, a merit which few French contemporary memoirs possess, — that of authenticity.

M. Berryer begins his work by describing the courts of law as they existed when he first entered on his novitiate. At the head stood the Parliament of Paris, — an august and erudite body, justly venerated for the fearlessness with which, on many trying occasions, they had refused to register the arbitrary edicts of the Crown. This body was divided into chambers, which held their sittings in the Palais de Justice, — a building which rivalled Westminster Hall in the richness and variety of its associations, though far inferior in architectural magnificence. Around the Parliament of Paris were clustered a number of inferior jurisdictions, closely resembling those of which the ancient judicial system of England, and indeed of every country with feudal institutions, was made up. There existed provincial parliaments and other local tribunals, it is true, — for the administration of justice in France was never centralized; but what with appellate and exceptional jurisdiction, the concourse of suitors to the capital was immense. A countryman inquired of a lawyer whom he saw about to ascend the grand staircase of the Palais de Justice with his bag of papers, what that great building was for. He was told it was a mill. "So I see now," was the reply; "and I might have guessed as much from the asses loaded with bags."

It is a remarkable circumstance that a great majority of the public buildings of London are of comparatively recent date, those which they replaced having been destroyed by fire. The same fate has befallen the public buildings of Paris; and M. Berryer states that the immense vaulted galleries which, from the shops established in them, had procured the Temple of Justice the name of the Palais Marchand, were swept away by a conflagration in 1774.

He also duly commemorates the Grand Châtelet, the seat of sundry metropolitan jurisdictions, and relates some curious circumstances regarding the ancient debtors' prisons, — the Fort-l'Evêque and the Conciergerie.

In the former was confined no less a person than Maximilian, the reigning Duke of Deux Ponts, afterwards King of Bavaria. In the latter, M. Berryer tells us, a rich Englishman, Lord Mazareen, was detained during many years for a large sum due on bills of exchange, which, though possessed of ample means, he obstinately refused to pay, on the ground of his having been cheated out of them at play. He lived at the rate of more than a hundred thousand francs a year, kept open table, and had his servants and carriages.

A second edition of Lord Mazareen appeared more recently in the person of an American, Mr. Swan, who was confined twenty-two years in Saint-Pelagie. This gentleman was in the habit of publishing memorials against his detaining creditors,

which he invariably commenced by stating that he possessed more than five millions (francs) in the United States; that it would be easy for him to pay twenty times the amount of the claim, but that it was unjust, and his conscience did not permit him to purchase his liberty by a dastardly sacrifice. Swan was nearly fifty-two years of age when he was arrested; he was seventy-four at the period of his release, which he owed to the Revolution of July. He died two months afterwards.

But to return to M. Berryer. After describing the mode of becoming an advocate, which in those days was much the same as at the present day, the author tells the following anecdotes: —

"Le Maitre, a celebrated advocate of the age preceding, used to amuse himself during the vacation by going into the country, *incognito*, and pleading causes for the peasantry. On one occasion he made such an impression that the provincial magistrate told him he did wrong to waste his splendid abilities on trifling matters in the provinces. 'Go to Paris, you will there find a fitting field for them; you will become the rival of the famous Le Maitre.'"

On another occasion Le Maitre, having introduced several Latin quotations with the view of embarrassing the judge, provoked a curious addition to the judgment. "We fine the advocate a crown for having addressed us in a language which we do not understand."

An advocate, by way of accompaniment to his speech, was flourishing about his hand in such a manner as to show off a magnificent diamond ring. He was young, good-looking, and pleading for a lady of quality who had demanded a separation from her liege lord. The husband, who happened to be present, interrupted him in the midst of his appeal, and turning to the magistrates, said: "My lords, you will appreciate the zeal which M—— is displaying against me, and above all the purity of the grounds on which he relies, when you are informed that the diamond ring he wears is the very one which I placed on my wife's finger on the day of that union she is so anxious to dissolve." The court, says M. Berryer, rose immediately; the cause was lost, and the advocate never had another. What adds to the point of the catastrophe is the fact that it does not appear that the husband's statement had the slightest foundation, or that he entertained any suspicion of the sort.

Clever graphic sketches of the leading lawyers of the day are given by M. Berryer; but these possess little interest for American readers, to whom the very names of most of them must necessarily be unknown. Some specific facts, however, are communicated regarding Gerbier, the Erskine of the French bar, when M. Berryer first joined it.

Gerbier had a fine Roman head, with a voice of great compass, and his action was peculiarly impressive. He consequently excelled in passages where a dramatic effect was to be produced; and these may almost always be introduced with little risk of failure in France. Thus, in his defence of the brothers Du Queyssat, tried for a cowardly murder, he introduced the chapel of the Palatinate, in which the sword of one of them, a gallant soldier, had been suspended by the express command of his general, and demanded if this could be the same sword which had been basely turned against the murdered man.

The peroration of his speech for the Bishop of Noyon, prosecuted by his own chapter, affords another example of his style: —

"It once fell to the lot of Constantine the Great to receive at his imperial levee several deputies from the clergy, who came to denounce the shamefully irreligious conduct of the primate, their chief. To these virulent accusations, the prince, after having listened to them with the most conscientious attention, made answer: "My duty and yours are to place no faith in suspicions, which the impious may be anxious to raise against the sacred character of the primate; so that — to suppose an impossibility — if I sur-

prised him in the very act of sin, I would cover him with my purple! It is now for you, my lords, to cover by your decree the sacred person of the Bishop of Noyon."

Gerbier, aware probably of his weak point, was wont to get two of the best lawyers to discuss the merits of his great causes in his presence. He then chose his topics and formed his plan, but trusted to the inspiration of the moment for the language and the imagery. That the required aid might be constantly at hand, he had always an advocate or two content to play the part of crammers in his cabinet. It was said that Gerbier, in a single cause, had received a fee of three hundred thousand francs.

M. Duvaudier—an able advocate, though of inferior celebrity, whom the high society of Paris received on a footing of equality—had an aged client, a woman of quality, who, in the intoxication of success at the happy termination of a suit, conceived the idea of presenting a fee in a novel manner. She repaired first to a notary, by whom she caused the grant of an annuity of four thousand francs a year to be prepared; then to a coachmaker's, where she ordered a handsome carriage; to a horse-dealer, of whom she purchased two superb horses; lastly, to a tailor, who, by a day named, was to make complete liveries for coachman, footman, and porter.

On the day chosen by the lady, M. Duvaudier was summoned to the Palais for another suit. At its termination he was accosted by his servant, attired in livery, who informed him that Madame Duvaudier had given orders for the carriage to come for him. M. Duvaudier, a little surprised at the dress of his servant, decided, notwithstanding, to follow him, expecting to learn the key to this enigma from his wife. On reaching the carriage, his surprise increased at finding the coachman similarly arrayed. The footman, on opening the door, begged, in Madame Duvaudier's name, that he would look at a paper which he would find under the cushion. This was the deed for the annuity destined to maintain the equipage.

Toward the close of 1789 the principal tribunals were broken up, and the order of advocates was suppressed. New courts were established, and suitors were permitted to appear by deputy, so that the public gained nothing beyond the substitution of a set of ignorant adventurers for a body of men distinguished by learning and integrity. A small proportion of the ancient bar continued the practice of their profession under its new titles, and amongst the most conspicuous was M. Berryer.

A remarkable suit was instituted by the journeymen carriers against their masters for the amount of a certain percentage on their wages, retained during many years, as the masters alleged, to form a fund in case of sickness. The journeymen were represented by M. Berryer, who seems to have entertained no very exalted opinion of the justice of their claim. But at the time in question it was a crime of the deepest dye to be a proprietor or a capitalist. Equal rights required unequal judgments; and Le Roy-Sermaise, a judge of the genuine democratic school, decided almost without hesitation for the journeymen.

This worthy was once trying a cause between two peasants regarding the property in a field. The claimant produced a deed which had nothing to do with the question. The defendant relied on long possession exclusively. "How long?" inquired the judge. "Why, citizen president, from father to son, eighty or ninety years at least." "In that case, my friend, you ought to be satisfied: each in his turn; it is now your adversary's." He ordered the claimant to be put into possession without delay.

We might go on indefinitely quoting from this interesting book, but time and space alike forbid any further extracts.

BOOKSELLER CARLILE'S IMAGES.

[*One is indictable for nuisance in making his shop-windows so amusing as to draw a crowd, to the obstruction of the public way. Rex* v. *Carlile*, 6 *Carr. & Payne*, 636.]

IN Fleet Street, London, many years ago,
A merry wight contrived a curious show.
He kept a book-shop; sceptical and cynic,
Carlile his honorable patronymic.
Three images he set in windows wide,
To draw the public from the way aside.
One was a bishop of the established church; —
With sign of "Spiritual Broker" he did smirch
The cleric figure with its shovel hat,
Its black silk apron, gaiters, and all that.
Then in a neighboring place did he expose
A dummy man in ordinary clothes,
And "Temporal Broker" he did label him.
And then, in jest satirical and grim,
He added, with the bishop arm in arm,
The figure of the author of all harm,
Upon the model orthodox contrived,
With pitchfork, horns, and hoofs and tail supplied;
But who was leading — or to church or — well,
The other way — the tradesman did not tell.
This show attracted quick a gaping crowd
Of idle, curious people, who with loud,
Profane, and silly comments stood and jeered, —
Such ones as neither God nor mortal feared;
Pickpockets, drunkards, courtesans and bruisers,
Workmen on spree, and wild, freebooting cruisers,
Made up a struggling mass, which all day long
Forced others in the carriage-way to throng.
The cops could hardly make the crowd move on;
And when they did, another had begun,
And crack of locust club and broken pate,
And shrieks and oaths were heard from morn till late.
At length complaints came in so thick and fast,
The matter could no more be overpast;
So Rex obtained for formidable surprise a
Prolix indictment for the advertiser,

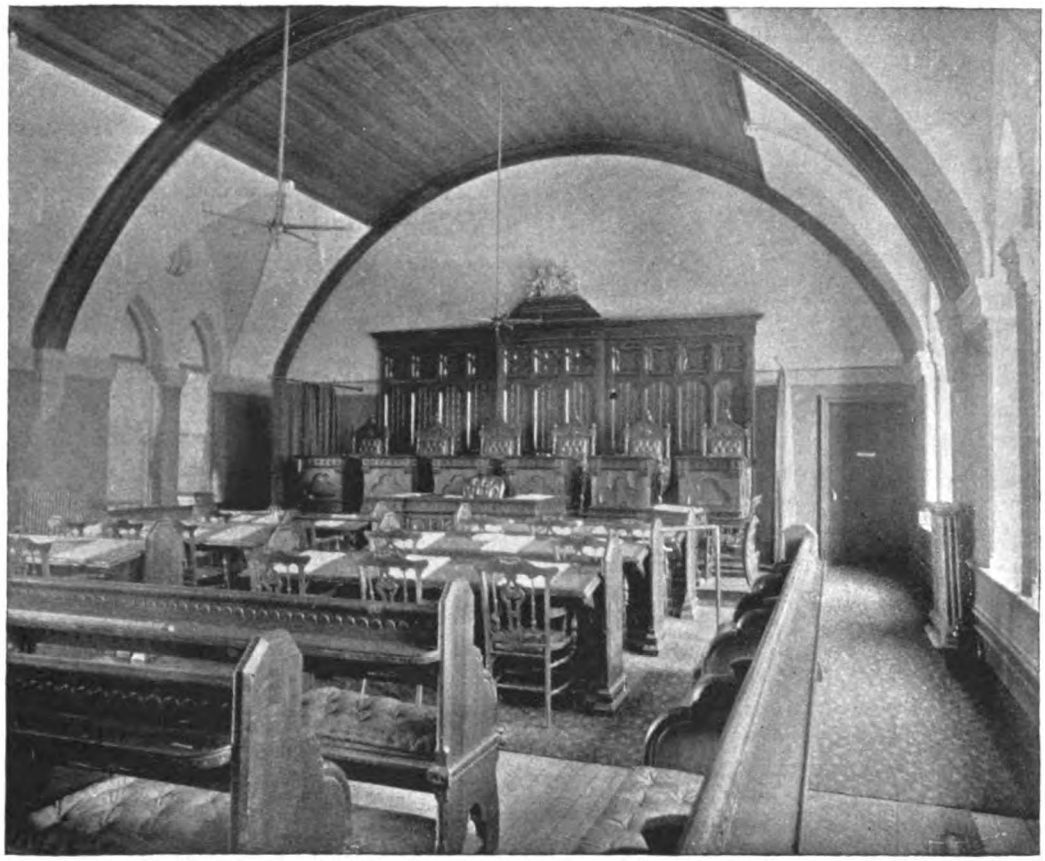
For that the king's good subjects he affrayed,
And travel on the king's highway delayed.
The crowd's bad character was clearly proved,
And it was shown that purses were removed
From owners' pockets and were not returned;
A neighboring tavern-keeper swore he burned
His candles all the livelong foggy day,
Because the crowd obscured his "airy" way;
A tradesman by his oath did clearly show
The crowd was of the "lowest of the low,"—
So low, in fact, that as his shop was nigh 'em,
They lowered his receipts three pound *per diem.*
Carlile, of ancient adages defiant,
Though his own lawyer, had no fool for client,
And on the trial made a cunning speech
Whose merits skilful counsel scarce could reach.
He said the law should never stop
One's drawing custom to his shop;
When rentals are so high in Fleet,
One must contrive to make ends meet;
This concourse was not near so great
As when the king proceeds in state
To theatre or parliament,
Or judges to the Hall are sent;
If he was wrong, much more was Gray,
Who with his coaches stops the way;
The images on Dunstan's church,
Which strike the quarters from their perch,
And call together such a crowd,
Were ever unrestrained allowed;
So the Lord Mayor's civic show
Is suffered through the streets to go,
And bear along the effigies
Of Gog and Magog, giant size;
And ne'er forbid was Bartly Fair,
Though noise and rioting reigned there;
So Very, the confectioner,
Had handsome daughter, and set her
In window, filling Regent Street
With folk who flocked his wares to eat.

His images did indicate
The Church supported by the rate,
Imposed by broker of the State.
We may be sure the prisoner's head was level,
For he had naught to say about the Devil.
But old Judge Park, unmoved by this display
Of wit and tact, merely vouchsafed to say:
I think, as do my learned brothers,
One nuisance does not sanction others;
Lord Mayor's Day is once a year,
And not three months, like this one here;
The crowds which king and judges throng
Do not stand still, but move along;
And Bartly Fair, we are afraid,
Is more and more a nuisance made.
(Perhaps his Honor was not then aware
That this so much derided Bartly Fair
Had been attended by the wise John Locke,
And Lady Russell, who at prisoner's dock
Took notes for her indicted husband when
Counsel was not allowed to such poor men.)
The jury to convict were not unwilling.
The prisoner was mulcted forty shilling,
And had to take his naughty figures down;
So quiet reigned in that part of the town.

Of cases similar the number few is,—
In Q. B. Div., Regina *versus* Lewis,
Where in shop-window comic photograph
Of statesmen and of bishops raised a laugh;
And in this country, Fairbanks *versus* Kerr,[1]
Where a street preacher made a lively stir,
And gathered quite a crowd upon the walk,
Who broke the flags in strife to hear him talk;
Then there 's the case of Jacques the melancholy,[2]
Who prayed injunction 'gainst the puppet folly
Of dancing soldier, skeleton and clown,
Because it drew the curious of the town
To crowd the street where Wisdom vainly cries,
And yields the way to things of smaller price.

[1] 70 Penn. St. 86; 10 Am. Rep. 664.

[2] 15 Abb. New Cas., 250.



THE SUPREME COURT ROOM.

THE SUPREME COURT OF CANADA.

By Robert Cassels.

ON the 8th of April, 1875, the Parliament of Canada passed an Act establishing the Supreme Court of Canada. On the 17th of September following, by proclamation, that Act was brought into force as respected the appointment of judges, registrar, clerks, and servants of the court. On the 8th of October following, the judges and registrar were appointed, and on the 11th of January, 1876, a proclamation issued declaring that from and after that day the judicial functions of the court would take effect and be exercised. It was then felt that another and a most important step had been taken towards the consolidation of the New Dominion.

At this time Canada was composed of the seven Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick (the only four Provinces originally united under the British North American Act, 1867), Manitoba (carved out of the Northwest and formed into a Province in 1870), British Columbia (admitted a member of the Federal compact on the 16th of May, 1871), and Prince Edward Island (admitted on the 26th of June,

1873), and of the great territory of the Northwest, but little diminished in size by the creation of Manitoba, and then and still subject to the paternal supervision and control of the Government and Parliament of the Dominion. All the Provinces, except Quebec, enjoyed a legal system based upon the common law of England. Quebec had derived its laws relating to property and civil rights from the civil law and the old customary law of Paris; but in common with the other Provinces its criminal and mercantile codes were based upon the law of England. In all the Provinces there existed a statutory law of a varied and diversified character. In only two did there exist a court of appeal; in all there was an appeal to the Privy Council in England, regulated in Ontario and Quebec by provincial statute, in the other Provinces, with the exception of Manitoba, by imperial orders in council; and in Manitoba, there being neither statute nor imperial orders in council on the subject, the appeal existed by virtue of the royal prerogative.

THE HON. SIR WILLIAM BUELL RICHARDS (deceased).

The judicial system, throughout the Dominion, was and is regulated by the provisions of the British North America Act, 1867. That Act requires that all the judges of the Superior, District, and County Courts of the Provinces, with the exception of the judges of the Courts of Probate of New Brunswick and Nova Scotia, shall be appointed by the Governor-General. The tenure is during good behavior, subject to removal by the Governor-General, as respects the judges of the Superior Courts on an address of the Senate and House of Commons, and as respects the County Court Judges on a report of a judge of the Supreme Court of Canada or of a judge of a Superior Court of any Province commissioned to inquire into the necessity for such removal. The Parliament of Canada votes the salaries of all these judges, and the Dominion Government pays them. The judges of the Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick are taken from the bars of the Provinces in which they are to administer justice. The Crown is not limited in the same way with respect to judges of the other Provinces, but of late years a similar rule with regard to them has been adopted.

The provincial governments appoint and pay the police magistrates. To the provincial legislatures belongs also the exclusive legislative power over the administration of justice in the Provinces, including the constitution, maintenance, and organization of provincial courts, both of civil and criminal jurisdiction, and including the procedure in civil matters in those courts. The Parliament of Canada, on the other hand, enjoys legislative control over the criminal law, including the procedure in criminal matters.

From the highest to the lowest the judges under this system become the servants neither of the Dominion nor of the Province to the courts of which they are assigned, but

servants of the Crown, the fountain of justice, sworn to administer the law without fear, favor, or partiality to all citizens, to all classes, to all sections and divisions of the Confederation. It is their duty to interpret and apply all laws including the statutory law, whether of the Imperial Parliament, the Parliament of Canada, or the legislatures of the Provinces; and if in the performance of judicial functions any question may arise as to the validity of a law of the Parliament of Canada or of any legislature of a Province, if either the Parliament or a legislature be shown to have overstepped the limits fixed by the constitution as laid down in the British North America Act, then the judge is bound to decide such question. As Professor Dicey points out, in his "History of the Law of the Constitution," in Canada as in the United States the judges necessarily become the interpreters of the constitution.

THE HON. SIR WILLIAM JOHNSTON RITCHIE.

This being the position of confederation and its judiciary, the creation of a Supreme Court of Appeal was a necessary complement of the system. But it was not thought desirable to imitate the example of the United States and to create a Federal Court of Appeal which should deal only with questions arising under federal as distinct from provincial laws. Indeed, the terms of the provision under which the court was established were construed to mean something much wider than this. That provision is as follows: "The Parliament of Canada may, notwithstanding anything in this Act, from time to time provide for the constitution, maintenance, and organization of a General Court of Appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada." The Supreme Court of Canada lives and moves and nas its being in the creative and sustaining power contained in this section. It was contended, at the time of the organization of the court, by some constitutional authorities, and it must be admitted with much force, that this clause did not authorize the constitution of a Court of Appeal, except for the better administration of the laws of Canada; that is, laws applicable to the Dominion at large and to the rights and relations of Canadians as citizens of the Dominion, as distinguished from the laws applicable only to the Provinces and to Canadians as residents of a particular Province. But this construction was not that which was considered by the Parliament of Canada the correct one, and the court was instituted as a general Court of Appeal for Canada for the better administration of all laws in force in Canada and with a very wide appellate jurisdiction.

The Supreme Court is composed of six judges, two of whom must be appointed from the Appellate or Superior Court, or the bar of the Province of Quebec. Five form a quorum for the hearing of appeals; but any judge promoted from any of the inferior courts cannot sit in any case he may

have heard in the court below, and in such a case four make a quorum. All the judges who have been present at the hearing need not be present at the rendering of judgment. Any judge may send his reasons for judgment to the Chief-Justice or another judge present at the delivery of judgment, to be read or announced in open court and then to be left with the registrar or reporter of the court. The salary of the Chief-Justice is $8,000 per annum, and of each of the puisne judges $7,000. There has been much discussion of late in the legislature and the press on the subject generally of judges' salaries, which it must be conceded are far too low, and quite out of proportion to the arduous and important duties which the judges have to perform. As originally established, the court consisted of two judges from Ontario, two from Quebec, one from New Brunswick, and one from Nova Scotia. Now changes caused by resignation or death have resulted in the court being composed of three judges from Ontario, two from Quebec, and one from New Brunswick.

THE HON. SAMUEL HENRY STRONG.

The judges originally appointed were Sir William Buell Richards, Chief-Justice, and Judges Ritchie, Strong, J. T. Taschereau, Fournier, and Henry; now the personnel of the court consists of Sir William Johnston Ritchie, Chief-Justice, and Judges Strong, Fournier, H. E. Taschereau, Gwynne, and Patterson.

The first Chief-Justice, the Hon. William Buell Richards, was, subsequent to his appointment, knighted by the Queen for his distinguished judicial services. He had taken an active part in the politics of Old Canada, and had for many years performed the most arduous judicial work with entire acceptance to the bar and public of his native Province. At the time of his appointment in 1875 to the Chief-Justiceship of the Supreme Court, he was Chief-Justice of Ontario, and for twenty-two years had held various judicial positions on the bench of that Province, before confederation known as Upper Canada. Born at Brockville in Upper Canada on the 2d May, 1815, he acquired his education at the Johnstown Grammar School and the Potsdam Academy, New York; studied law at Brockville, was called to the bar in 1837, and rapidly rose to distinction. In 1848 he was elected to Parliament, and became Attorney-General, succeeding the Hon. Robert Baldwin. He occupied that position until June, 1853, when he was appointed to the bench as a judge of the Court of Common Pleas. In 1863 he was made Chief-Justice of that court, and on the 12th of November, 1868, was created Chief-Justice of Ontario, succeeding Chief-Justice Draper, who was appointed Chief-Justice of the Court of Error and Appeal of the Province. When appointed Chief-Justice of the Supreme Court of Canada, it was universally acknowledged that no better selection could have been made. Unfortunately his health prevented him from enjoying any extended tenure of that high office, and he

felt compelled to resign in 1879, but not before the thorough organization of the court and many judgments remained to testify to his eminent fitness for the duties of his position. He died on the 26th of January, 1889, leaving behind him an enviable and distinguished record.

The hold Sir William Richards had upon the confidence of all classes of the community was remarkable. Every one spoke of and believed in his great common-sense; this was his strong characteristic, but he had also, as a lawyer and judge, a thorough knowledge of the principles and practice of the laws which he administered. To a casual observer Sir William Richards in face and figure suggested rugged strength. He resembled greatly, both in characteristics and appearance, the late Chief-Justice Waite of the Supreme Court of the United States. It was only on a closer acquaintance that the symptoms of the asthmatic trouble from which he so long suffered became apparent. His countenance was kindly, open, sensible, and thoughtful, most indicative of the qualities of his mind. He had no enemies and very many friends, and few judges have acquired so entirely the respect and love of their fellow-citizens. "We have in Chief-Justice Richards," said the "Canada Law Journal" at the time of his appointment, "a man of powerful intellect, taking a wide grasp of a subject and looking at it 'all round,' so to speak, discussing it, not only with reference to the abstract law therein involved, but also with reference to its relation to the wants and habits of a new country. No judge on the bench has shown a more thorough and appreciative knowledge of the instincts and necessities of Canadian life; and few more liberal-minded men or far-seeing minds have been called upon to express judicial opinions in Canada."

THE HON. TELESPHORE FOURNIER.

Upon the resignation of Chief-Justice Richards in 1879, the Hon. William Johnston Ritchie, who had been appointed senior puisne judge on the organization of the court in 1875, was made Chief-Justice. For twenty years prior to his appointment he had occupied a seat on the bench of the Province of New Brunswick, and for ten years was Chief-Justice. Thus he brought to the Supreme Court of Canada a ripened judicial experience. Born in 1813, he was then sixty-two years of age, and endowed with a splendid physique, tall, well built, and athletic in frame, his energetic manner and bearing indicated the great reserve of nervous power which has assisted a fine mind to do its work to the best advantage. Both in mind and body he has been well equipped by nature and training for the heavy judicial labors which have fallen to his lot; and still vigorous and active there is every reason to hope that he will be spared for many years more of honorable and useful work.

In 1881 the Chief-Justice received the well-deserved honor of knighthood. The following reference recently made to him in one of our journals is strictly accurate.

"Throughout his career, both in public life and on the bench, Sir William Ritchie has been regarded as a thoroughly conscientious and upright gentleman, as well as an eminent jurist. To a great knowledge of the principles of jurisprudence he adds indefatigable industry; and the amount of research and labor which he devotes to the preparation of his judgments is astonishing. While other judges may occasionally consider it sufficient to say that they concur in the views of the majority, the Chief-Justice seems to make it a rule to go thoroughly into the merits of each case, and to give lucid and elaborate reasons for his conclusions. In those instances where appeals have been taken from the decision of our Supreme Court to the judicial committee of the Privy Council the opinions of the Chief-Justice have almost invariably been concurred in."

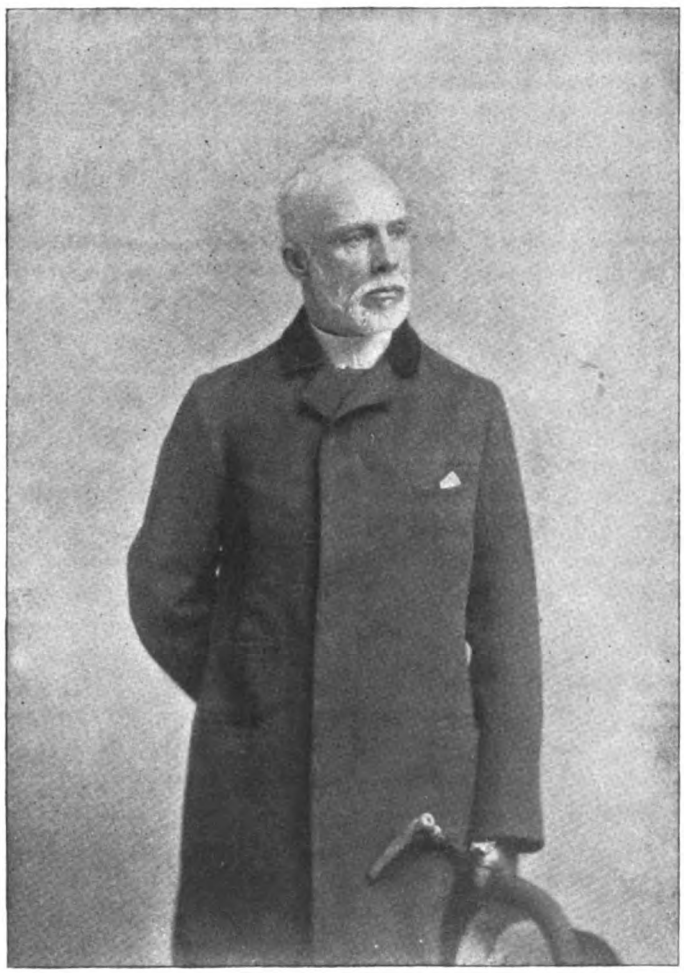
Sir William Ritchie presides over his court with firmness and dignity, and is remarkable for the soundness of his legal perception and the quickness with which he apprehends the true issue of any case argued before him. He detects a fallacy or sophistry in argument with unerring certainty, and the most complicated questions when submitted to his clear working mind soon assume their true value and bearing.

The present senior puisne judge, the Hon. Samuel Henry Strong, was also appointed to a seat on the Supreme Court bench in 1875. This brilliant judge was born in 1825, and in early life was for a time a student in the city in which he now resides and fills one of the most important positions in the gift of his country. After practising his profession for some years in Toronto, where he soon became one of the leaders of the equity bar, in 1869 he was raised to the bench as senior Vice-Chancellor of the Province, at the comparatively early age of forty-four. After serving in that capacity for five years he was promoted to the Court of Error and Appeal of the Province. When the creation of a Supreme Court of Appeal for the Dominion was being mooted, Judge Strong by general consent was coupled with Chief-Justice Richards as most eminently qualified for a seat on the bench of that court. The "Canada Law Journal," writing on the subject some time before the appointments were made by the Government, after discussing the acknowledged fitness of Chief-Justice Richards for the position of chief of the proposed court, said: "With regard to his coadjutors in this Province one name immediately presents itself, that of Mr. Justice Strong. Admittedly a man of great talent and learning and a scientific lawyer, he is undoubtedly one of the best civil-law jurists in Canada, and thoroughly familiar with the French language. The great advantages of these qualifications in such a position are obvious." And upon his appointment the same journal remarked that "as a lawyer pure and simple and in intellectual capacity he has no superior on the bench."

As might be expected, Judge Strong's judgments are models of judicial style; clear, logical, and expressed in the purest and most correct English, they are deserving of the closest study for their beauty of diction, their close reasoning, and profound legal research. In appearance Judge Strong is strikingly handsome. On any bench he would be remarked for his fine intellectual face and judicial bearing.

The Hon. Telesphore Fournier, the senior judge at present on the Supreme Court Bench from the Province of Quebec, was born on the 5th of August, 1823, at St. François, in the County of Montmagny, in the Province of Quebec. A peculiar interest attaches to him in relation to the subject-matter of this article, because, while Minister of Justice of the Dominion, he introduced into the House of Commons the Bill for the establishment of the court, and took charge of the measure through the various stages of its progress in the House, explaining, and when necessary, defending its provisions with great clearness

and force. After graduating from the College of Nicolet, Mr. Fournier went through the usual course of legal preparation for the bar, having the advantage of being a student in the office of the late Judge Caron, one of the best-known jurists in the Province. He



THE HON. HENRI ELZÉAR TASCHEREAU.

commenced the practice of his profession in the historic city of Quebec in the year 1846. His success as a lawyer was rapid. In 1863 he was appointed one of her Majesty's Counsel, and in 1867 was elected Batonnier of the bar of the District of Quebec, and was subsequently elected to the still more honorable position of President of the General Council of the Province. The writer can well remember that when Mr. Fournier was expected to address the Court of Appeals, the students would attend in numbers to enjoy the great treat afforded by listening to his beautiful French and eloquent and learned arguments. At that time the tribunals of the Province, always renowned for judicial talent, were unusually strong. With such men on the bench as Sir L. H. Lafontaine, Caron, Duval, Aylwin, Meredith, Badgeley, Bowen, Vanfellson, and Morin, and with such contemporaries of Mr. Fournier at the bar as the late François Réal

Angers, Dunkin, Drummond, Loranger, Andrew Stuart, Okill Stuart, Tessier, Gugy, and others *ejusdem generis* (nearly all in later times holding prominent positions on the bench), attendance on the courts was a liberal education for a student. To say that Mr. Fournier could more than hold his own with such rivals would seem extravagant praise, if it were not literally true.

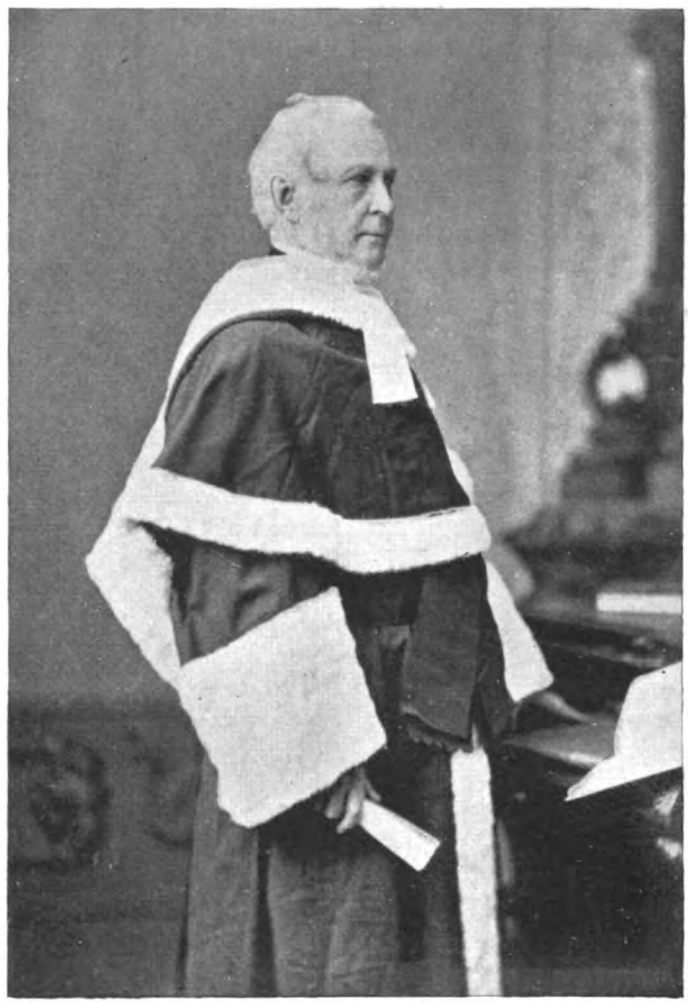
Mr. Fournier always took a warm interest in the political issues of his Province, and for several years, as a joint editor of one of the leading journals, promoted the interests of the liberal party. In 1870 he was elected to represent Bellechase in the House of Commons of Canada, and in 1871 to represent the county of Montmagny in the Legislature of the Province of Quebec. The latter seat he resigned when dual representation was abolished in 1873. In that year, when the liberal party came into power, Mr. Fournier, being one of their acknowledged leaders, became Minister of Inland Revenue, and in 1874 Minister of Justice, and still later, in 1875, Postmaster-General, which position he relinquished upon being appointed a Judge of the Supreme Court.

Unlike most of the appointees, Mr. Justice Fournier had no previous judicial experience to assist him when called to the highest court of the Dominion, but he soon showed himself possessed of all the essentials which go to make a fine judge. A man of great reserved force, equable in temper, invariably courteous to all; a master of legal principles, especially of the system in which he has been trained; reading and speaking English as well as his native tongue, and writing it with a skill and a charm of style which most Englishmen would envy, — he has been a source of great strength to the bench, and a worthy representative of the Province which has produced so many great judges.

Judge Fournier is ably seconded in sustaining the credit of the Province of Quebec by the Hon. Mr. Justice Henri Elzéar Taschereau. He succeeded his cousin the Hon. Mr. Justice Jean Thomas Taschereau, who was, with Judge Fournier, appointed from the Province of Quebec in 1875, but who, owing to ill-health, was obliged to resign in 1878, after taking an active share in the organization of the court. This learned judge, who is still living in a well-earned retirement, had for many years prior to his appointment to the Supreme Court graced the bench of the Province of Quebec, and was well known as a judge of great attainments. That upon his resignation his place on the bench should be filled by a near relative, also a judge of decided ability and force of character, need not surprise any one acquainted with the prominent part which the distinguished family to which Judge Taschereau belongs, fills in the judicial annals of the Province of Quebec. To give a biographical account of the judges of the name of Taschereau would necessitate writing the history of Canada for nearly two hundred years. During that period no less than seven members of the family have occupied seats on the bench. Judge Taschereau has therefore a prescriptive hereditary right to the judicial qualities which he possesses. The name of late years has acquired a world-wide fame by the elevation of Cardinal Taschereau to the illustrious position of Prince of the Church. The Cardinal is a brother of Mr. Justice Jean Thomas Taschereau, and a first cousin of the subject of the present sketch.

Born on the 7th of October, 1836, Judge Taschereau is in the prime of life. After a number of years of active practice, he was in 1871 appointed a puisne judge of the Superior Court of the Province of Quebec, from which position he was promoted in 1878 to the Supreme Court Bench. He is a very handsome man, of aristocratic address and manners. He thinks, speaks, and writes, in both English and French, with equal readiness. When speaking English, so perfect is his accent and so complete his command of that tongue, it is quite impossible to detect his French origin. And he writes English in a vigorous, forcible, clear

style, his judgments being most frequently in that language. Not only is he an able jurist but he is also an author of high repute, having published several important works, among others a valuable annotated edition



THE HON. JOHN WELLINGTON GWYNNE.

of the Code of Civil Procedure of the Province of Quebec, and also a very useful book on the Criminal Law of Canada.

The Hon. Mr. Justice Gwynne was appointed to the Supreme Court upon the resignation of Sir William Richards in January, 1879. For over ten years he had been one of the judges of the Court of Common Pleas of the Province of Ontario, and had there acquired the very highest judicial reputation. The descendant of an old Irish family, born at Castle Knock in the County of Dublin in the year 1814, educated at Trinity College, Dublin, in early life he came to Upper Canada, and studied law in the office of the late Thomas Kirkpatrick of Kingston, in his day one of the most prominent lawyers of the Province. Possessed of the highest culture, a vigorous and well-stored mind, and the eloquence and wit for which his countrymen have ever been celebrated, Mr.

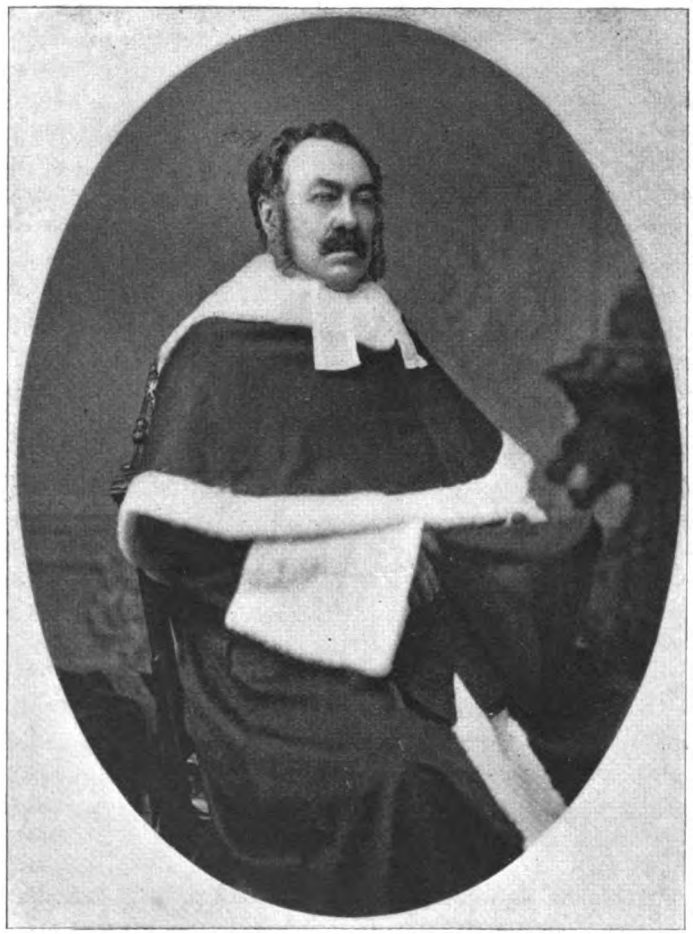
Gwynne rapidly took a foremost place at the bar of the Province. Although he has now been in active service as judge for over twenty years, and has reached an age at which he might be considered entitled to enjoy a well-earned leisure, his eye has not grown dim, nor has his natural force abated. With the polished manners of a true Irish gentleman of the best school, both in his private and public capacity, Judge Gwynne is greatly respected and beloved. On the bench and in the performance of his judicial duties generally, he is a model judge; and his elaborate and keenly analytical judgments are evidence of his wonderful industry, acute intellect, and extensive and accurate legal acquirements.

The sixth judge appointed to the Supreme Court Bench in 1875 was the Hon. William Alexander Henry, a member of the bar of the Province of Nova Scotia, and for many years a leader of one of the political parties in that Province, having been three times Solicitor-General and once Attorney-General. While in public life he promoted, with all the force at his command, the great national event of the consolidation of the Confederation. It was a fitting reward for many years of great and most valuable public service when Mr. Henry was selected to occupy a seat on the Supreme Court bench, — a position which by his talents he adorned for thirteen years.

Mr. Justice Henry died on the 5th of May, 1888; and on the 27th of October following, the Hon. Christopher Salmon Patterson, then and for fourteen years a judge of the Court of Appeal of the Province of Ontario, was appointed to succeed him. Judge Patterson thus brought to the Supreme Court Bench extensive judicial experience as well as great attainments. Like Mr. Justice Gwynne, he is of Irish parentage, although born in London, England, in the year 1823. He was educated at the Royal Academical Institute, Belfast, and came to Canada in 1845, studied law and began the practice of his profession in Ontario, then Upper Canada, in 1851. For many years prior to his elevation to the bench, in 1874, Mr. Patterson was looked upon as one of the leaders of the bar of the Province. An accomplished lawyer, he has made an able, upright, and no less accomplished judge. He has always inspired the greatest confidence by his persevering industry, his great common-sense, and his sound judgment. The public felt that the Supreme Court Bench had not suffered any diminution of strength when Judge Patterson was appointed.

Since the statute of 1875 was passed, there have been many alterations more or less important in the jurisdiction of the court; but to trace the subject in detail would be quite impossible in an article of this description. It may be said generally that an appeal lies to the Supreme Court of Canada from the Appellate Court, or, where no appellate court exists, from the highest court of final resort, in any Province. None but final judgments are appealable, except in equity cases coming from any Province other than the Province of Quebec, in which an appeal will lie from any judgment, decree, decretal order, or order. The cause must originate in a superior court of original jurisdiction, or in a court having concurrent jurisdiction with a superior court of original jurisdiction; in which latter case the amount in controversy must not be under two hundred and fifty dollars. This latter provision was made in favor of those Provinces which have not the advantage of a separate court of appeal, and is intended to cover certain county court cases and probate cases which may come by appeal before the highest court of a Province. Appeals lie also to the court in criminal cases, in Dominion controverted election cases, in exchequer cases, in cases decided by the Maritime Court of Ontario. This last court was established by the Parliament of Canada in 1877 for the purpose of deciding causes arising on any river, lake, canal, or inland water in whole or part in the Province of Ontario, and with the exception of the Exchequer Court was the only

federal court created under the provision of the British North America Act before cited, unless we include, as perhaps ought to be done, the court for the trial of controverted elections for the House of Commons of Canada, the Parliament of Canada by



THE LATE HON. WILLIAM ALEXANDER HENRY.

statute having imposed this duty upon the existing provincial judges, thereby creating them, as was held by the Judicial Committee of the Privy Council, a Dominion Court for such purposes. The case referred to determined the important principle that the Dominion has a right to impose upon judges of Provincial Courts — that is, the judges appointed originally in connection with the provincial courts — the duty of administering laws passed by the Dominion, although relating solely, as did the election law, to Dominion matters. This principle would seem to extend to the jurisdiction conferred on the provincial courts in bankruptcy and insolvency and other matters over which the Parliament of Canada has exclusive legislative authority. For the Maritime Court of Ontario the Dominion has utilized in this way the county-court judges in the districts bordering on the lakes.

When a case originates in a Superior

Court, no pecuniary limit has been placed on the right of appeal except (1) in cases from the Province of Quebec; (2) in cases arising out of proceedings taken to wind up a bank or an incorporated company; and (3) in cases decided by the Exchequer Court of Canada. In appeals from the Province of Quebec, the matter in controversy must amount to the sum or value of $2,000, unless such matter, if less than that amount, (a) involves the question of the validity of an Act of the Parliament of Canada or of a legislature of a province, or an ordinance or act of one of the territories; or (b) relates to any fee of office, duty, rent, revenue, or any sum of money payable to her Majesty, or to any title to lands or tenements, annual rents or such-like matters or things where rights in future might be bound.

THE HON. CHRISTOPHER SALMON PATTERSON.

With respect to cases coming from the Exchequer Court the limit has been placed at $500, with similar excepting clauses; even in the excepted cases, however, the appeal being discretionary with a judge of the Supreme Court.

In cases under the Winding-up Act there is a pecuniary limit of $2,000.

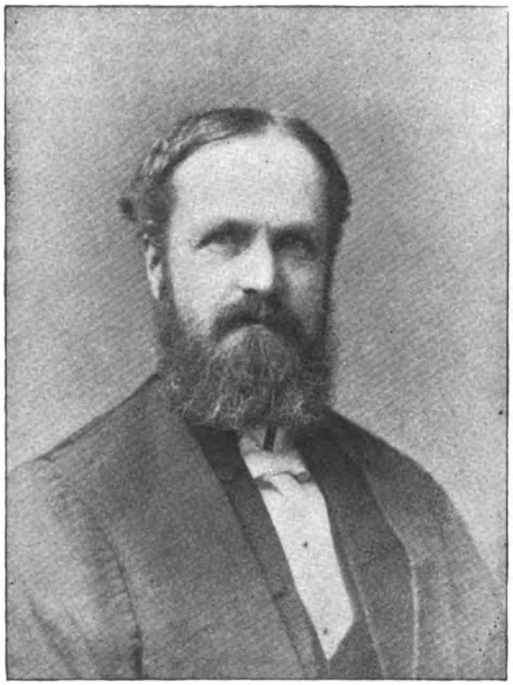
With reference to cases from the Province of Quebec, the court has decided, since the case of Allan *v.* Pratt (13 Appeal Cases, 780) was determined by the Judicial Committee of the Privy Council, that the judgment appealed from is conclusive as to amount when the defendant appeals.

The legislature of the Province of Ontario some years ago passed a statute fixing a pecuniary limit of $500 on appeals from that Province; but the Supreme Court has held the Act *ultra vires*.

No original jurisdiction was ever vested in the Supreme Court of Canada as a court, but it is given an advisory jurisdiction in matters which may be referred to it by the Governor-General in Council, or it may be called upon to examine and report upon any private bill or petition for a private bill presented to the Senate or House of Commons, and referred to the court by the Senate or the House of Commons. This is merely for the purpose of obtaining the opinion of the court for the guidance of the Government or of either House of Parliament. The Supreme Court Judges, however, were individually given a concurrent jurisdiction with the courts and judges of the several Provinces in matters of habeas corpus in criminal cases. This they still retain. By the original Act, this jurisdiction extended to habeas corpus in cases of extradition. This was subsequently altered, and the jurisdiction in these cases taken away. The statute, moreover, which established the Supreme Court, created at the same time a court called the Exchequer Court of Canada, to deal with revenue cases, and other suits in which the Crown in the interest of the Dominion, or its officers, might be concerned; and the judges of the Supreme Court were made judges of the Court of Exchequer, each judge sitting alone, exercising the juris-

diction given to that court. This jurisdiction the judges retained until 1886, when a separate judge was appointed for the Exchequer Court, which is now presided over by the Hon. George Wheelock Burbidge, who for five or six years preceding his elevation to the bench filled with unusual ability the important position of Deputy of the Minister of Justice of Canada.

No writ is required for bringing any appeal to the Supreme Court. In ordinary appeals security to the extent of $500 must be given by the appellant within sixty days after the judgment it is desired to appeal from has been pronounced or entered. The security may be given to the satisfaction either of a judge of the court below or a judge of the Supreme Court of Canada. But if the appellant fails to give the security within the sixty days he must apply to a judge of the court below for an extension of time, setting out the special circumstances upon which he relies.



ROBERT CASSELS, Q. C. REGISTRAR.

In some cases no security is required; e. g. criminal appeals and appeals by the Crown in Exchequer appeals. In election appeals the security to be given is only $100, and must be by deposit in the court below. In Exchequer appeals by parties other than the Crown, the security to be given is only $50. In all appeals under the Winding-up Act, and in appeals from the Exchequer Court when the amount in dispute does not exceed $500, special leave must be obtained from a judge of the Supreme Court of Canada. All applications for special leave, as well as all other applications in appeals which the various statutes or rules of practice assign to a judge of the Supreme Court of Canada, are made to the registrar, who has been given by statute and rules all the powers of a judge of the court sitting in chambers, except in matters of habeas corpus and certiorari, and who sits every juridical day for the transaction of such business. Parties dissatisfied with his decision may appeal to a judge, and thence to the full court.

The practice is simple. The appeal is upon a case stated by the parties, or in the event of difference settled by the court appealed from or a judge thereof. The case sets forth the judgment objected to, and so much of the pleadings, evidence, affidavits, and documents as is necessary to raise the question for the decision of the court. The case must also contain the reasons given by the judges of the court below for their judgments. After being settled, the case is printed in small pica type, in the form of a pamphlet eleven inches long by eight and a half inches wide, and on one side of the page only, with each tenth line numbered in the margin, and a full index. This is certified and transmitted by the clerk of the court appealed from to the registrar of the Supreme Court of Canada, and must be filed in that court within thirty days after the security has been allowed, and twenty days at least before the first day of the session at

which the appeal is to be heard. Fifteen days before such session each party files a factum, or points for argument in appeal, printed in the same style as the case; and fourteen days before the session the appellant inscribes the appeal for hearing, — that is, requests the registrar to place the appeal on the list of appeals for hearing. If the appellant has neglected to deposit his factum within the prescribed time, the appeal is inscribed for hearing *ex parte*. The Statute provides for three sessions of the court yearly, beginning respectively on the third Tuesday in February, the first Tuesday in May, and the fourth Tuesday in October; and the court sits until the business before it is disposed of. After the judgment is rendered, the solicitors for both parties attend on a day fixed by previous appointment before the registrar, who settles the minutes of the order in appeal, and taxes the costs. A word or two may be said here on the interesting subject of costs. The tariff of fees is a combination of a detailed and a block tariff. The appellant is entitled to a fee of $25 on settling the case, a fee in the discretion of the registrar up to $50 on preparing his factum, and a counsel fee on the hearing of the appeal may be taxed in the discretion of the registrar to $200. There is also a fee of $6 for settling the security, and a fee of 15 cents per folio on printing the case and factum. The fees to counsel on the preparation of the factum and on the hearing may be increased by order of the judge in chambers. Only in cases of special importance is such an increase given. The bill of costs on the whole may range from $150 to $500, or over; but the average would be, for a respondent, $250, and for an appellant $350, — about one fourth of the costs of an appeal to the Privy Council.

After the final judgment is entered it is transmitted to the proper officer of the court of original jurisdiction, to be there enforced as if it were a judgment of that court. The process of the Supreme Court of Canada runs throughout the Dominion, and is tested in the name of the Chief-Justice; but writs of execution, except to enforce the payment of interlocutory costs, have never been issued, owing to the provision just mentioned which throws upon the court below the duty of seeing to the carrying into effect of the final judgment in the cause.

By the Act it is provided that the judgment of the Supreme Court shall in all cases be final and conclusive, saving any right which her Majesty may be graciously pleased to exercise by virtue of her royal prerogative. The royal prerogative has been not seldom exercised. The right of appeal to the Privy Council from the provincial courts was left untouched by the creation of the Supreme Court of Canada, and a party has the alternative right of appealing either to the Supreme Court or the Privy Council. In the event of adopting the second alternative his appeal, as has been already stated, is regulated by provisions of a special statute or imperial order in council; but an appeal from the Supreme Court is entirely in the discretion of their lordships of the judicial committee, and no definite rule has been laid down as to the cases in which this discretion will be exercised. In one of the earlier appeals brought before their lordships, they held that leave to appeal would be confined to matters involving some important question of law or of public interest, or affecting property of considerable amount. In the last case in which this subject was dealt with, their lordships held that even when these features occur, leave may not be granted if the judgment from which an appeal is sought appear to be plainly right, or at least to be unattended with a sufficient doubt to justify the granting of leave. The whole question of the right of appeal to the Privy Council in England remains one for careful consideration in the near future. While not underrating the important advantages to be derived from the right to apply to that great tribunal, it seems an anomaly that Canadians, who have full power of legislating with respect to their

property and civil rights, and who have ever been justly proud of their judges, should be denied the privilege of finally interpreting, through their own judiciary, the laws under which they live. In criminal appeals, however, the judgment of the Supreme Court is final; the right of appeal in such cases, even by virtue of the royal prerogative, having been taken away by statute. And in cases of controverted elections for the House of Commons, the court may also be considered a final court, the judicial committee of the Privy Council having intimated that in any such case no appeal will be entertained.

The building in which the court meets is at the extreme westerly end of the Government grounds. It is built of the beautiful Nepean sandstone, but without architectural ornament of any kind, having been originally erected for use as government workshops, and since altered to suit the temporary requirements of the judges and the court. The accommodation is quite inadequate to the needs of the court, with the exception of the court-room, which with its arched roof

MR. SHERIFF SWEETLAND.

and fittings of natural colored pine and large gothic windows is bright and cheerful; it is also easily ventilated and heated, and possesses excellent acoustic properties. The chairs for the judges are placed on a dais raised about three feet from the floor. Behind the judges the wall is panelled with carved and ornamented pine work to a height of about ten or twelve feet, the panelling being surmounted by the royal coat of arms. In front of each judge is a small desk. The registrar's desk is placed immediately in front, and below the dais upon which the judges sit. There are a chair and a table to the right of the registrar's desk for the use of the sheriff, and to the left of the registrar's desk are a chair and desk for the use of the reporter or assistant reporter. On the first day of a session, or when giving judgments, the judges are arrayed in scarlet cloth gowns with ermine hoods, capes trimmed with ermine, broad bands of ermine on the sleeves, and a black silk sash round the waist. Sometimes the regulation three-cornered hat is used, but no wigs are worn. On ordinary occasions the judges wear black cloth gowns with the ermine hood and ermine-trimmed cape and sleeves. The registrar and reporter are habited in the official costume and silk gown usually worn by her Majesty's Counsel, and the sheriff is also dressed in official costume, and carries his sword and cocked hat. So far his services have never been required for other purposes than those of ornament, his mere presence being sufficient to enforce order in the court. By statute the sheriffs of the respective counties or divisions into which any province is divided, although provincial officers, are made *ex officio* officers of the Supreme Court, and perform the duties and functions of sheriffs in connection with the court; but the sheriff of the county of Carleton, the judicial division in which the Supreme Court sits, is the only one who personally attends all the sittings of the court, in his official capacity.

The proceedings in court are dignified and formal. On one occasion their decorum was much upset by a well-known Canadian statesman calling out "Hear! hear!" Holding a brief in an important case, he had become greatly interested in the eloquence of his associated counsel, and forgot his whereabouts and the solemnity of his surroundings. Counsel must be robed. They occupy benches immediately in front of the registrar's desk, the Queen's counsel sitting in the front row, a short brass rod between this row and the seats behind indicating the superior advantages enjoyed by virtue of this office. Counsel come from all parts of the Dominion,—from the Atlantic coast, from the Pacific coast, and from the north. Once an application was made by a celebrated counsel living in one of the States to the south, for leave to act as counsel in an appeal before the court, but the court felt obliged to refuse the permission sought. No more than two counsel can be heard on either side, and one counsel in reply. A party cannot appear both in person and by counsel, and if foolish enough to argue his own cause, even if successful cannot tax a counsel fee. Counsel are not limited as to time, and the court listens with the greatest patience and courtesy.

During the first eleven years of its existence the Supreme Court of the United States disposed of one hundred cases. The Supreme Court of Canada, since its organization, has determined about a thousand cases, many involving important questions of constitutional law; and its business has been steadily increasing. It has already a record of which it may be justly proud; and constituted as it is, this great court is well qualified to continue to do its share in promoting the development of the national life of the Dominion.[1]

[1] The illustrations in this article are from photographs taken by Mr. Topley, of Ottawa.

SHORT STUDIES IN THE EARLY COMMON LAW.

I.

By Prof. William G. Hammond.

I. PREFATORY.

WHEN the writer first took an interest in the study of early English law, it was hardly safe for a practising lawyer to own that he spent much time on authorities older than Blackstone. To acknowledge the reading of the Year Books would stamp him as recreant to the real work of the profession, and amusing himself only with its obsolete and therefore useless parts. The legal periodicals of that day had no place for the results of such vagaries. Even if the "Green Bag" had then existed, with the same noble prospectus as now, admission would have been difficult. That half of its broad double portals marked "useless" might have swung open at once; but the other, intended only for the "entertaining," would surely have "grated hoarse thunder" first, lest its readers should do so afterward!

In the ——— years since that remote period there has been a great change. Many of the best minds of the profession are occupied in studying the history of the Common Law. Those who have done so most thoroughly, know best its practical value. Its literature has largely increased. Twenty years ago the student whose abnormal tastes made him inquire for Reeve's History must wait months before a second-hand copy of the dingy five volumes could be found on the upper shelves; now there are several American reprints of it,— unfortunately all with Mr. Finlason's notes. The legal journals teem with historical essays of greater or less value. Best of all, the manuscript treasures of England are becoming accessible to us, as in Mr. Maitland's excellent edition of Bracton's Note Book. Still, in the great body of the profession the improvement is less felt than it should be. The busy lawyer and the inexperienced student alike are almost unaffected by it. To all arguments in favor of historical study their joint answer is that they have no time for it. The one has too many conflicting cases to master before his next argument in the Court of Appeals; the other has too much trouble in committing to memory the difference between sections 1199 and 1199 *a* of his text-book, and in satisfying himself which section the examiners are most likely to follow. Overtasked as both are with conflicts of the day, how *can* they waste time on opinions held in the Long Quint, 5 Edw. IV.? To such a question it is useless to reply with the most elaborate and convincing statement of the true value of the historical method, — though it were one that would have carried conviction to Austin or Thibaut! Only the student who has himself tested the value of these studies upon practical questions of modern law, and has seen how large a portion of these modern dissensions vanish when the primitive doctrine is distinctly stated can answer such objections. The dissensions have arisen because some judge in the interval has overlooked the principle or made a false application of it. Thus he has not changed the law, for his decision is *not law* (1 Bl. Comm. 70), but he has started a doubt that would disappear at once if his successors went back to the early law. Sometimes it is necessary to go back very far before the first fallacy is reached; as in "the gift made by the law to the husband of the wife's property," which will be the first illustration. But if a few attempts to trace the common law back to its primitive form are not always convincing, they may entertain readers and encourage them to follow the same method with more success.

II. JUS MARITI.

The common-law conception of marriage and its effects upon the status and rights of husband and wife can hardly be better expressed than by saying that husband and wife are one person, and that the husband is that person. The last clause indeed is usually added as a witticism, or as a reproach, as if it contained a disgraceful refusal of rights to the wife; but in early times it was differently regarded. The whole phrase is almost identical with that by which the gravest continental writers describe the relation in early Germanic law: —

"In the conception of marriage as an intimate union of life and person (*unum corpus unamque vitam*, as Tacitus expresses it, Germ. c. 19), it appears as a consociation or juridical unity, *of which the husband is the legal representative.*" (Renaud, Deutsches Privatrecht, § 157.)

If it were correct to say that the law gave to the husband the property of the wife upon marriage (as has been said very often at least from the time of Shelley, J., Y. B. 26 Hen. VIII. pl. i. fo. 7. See also, 2 Ventris, 341; 34 Me. 573; 22 N. H. 124, 125; 2 Conn. 145, 556; 7 ib. 426), it would of course imply that there was a time when that property was not so given, but was vested in the wife, at least before marriage. But it would be difficult to find such a time in history. The farther back we go in the common law, the less rights do we find either wife or maid enjoying. In the primitive law they could not be said to have any rights at all; for they had no "standing in court," but were under the perpetual *mundium* of parents and friends. The married woman simply exchanged the control of a parent or guardian for that of a husband.

At that time even men had but few of that great variety of property rights now recognized. Not merely the objects of ownership, but the rights thereof were almost unknown. All was summed up in the possession, or *gewere*, and of that woman was incapable. The development of property rights did not exclude wives; it simply passed them by unnoticed, because they were, while *covert*, of no account in the eyes of the law.

I do not mean that their abstract rights were excluded from the process of development. All the forms of property which grew up one after another — inheritances, remainders, uses, trusts — might be vested in *femes covert* as well as in men; but having no power to *act*, change, transfer, or even resign those rights, their personality went for nothing. The *possession* and *enjoyment* of property, lands, or chattels was in the baron.

This is the key to the entire common-law doctrine of married women's property. There was no transfer of the things owned, of the objects of property, by the marriage. The change was entirely in the personality of the owner. The wife at once disappeared from the eye of the law under her coverture; the baron stood in her place, and represented her entirely and conclusively so long as the coverture lasted.

Nor was this an exceptional case or *jus singulare*. The entire doctrine of *estates* shows that rights which we now regard as measured by their objects, the land owned, were then purely personal qualities. The freeholder differed from the serf; not the freehold from the copyhold land. Consistently with this we find that *actual possession* is at once the source and the measure of the husband's rights, (if that word can properly be used here,) of his power over the wife's property. Whatever was or came into the wife's possession was *ipso facto* in the husband's, and *he*, not she, was regarded as the legal possessor. "They were but one person, and he was that person." Just so far as she, if single, could affect the property by dealing with its possession, or transferring that possession to another, he during the coverture could do the same in the same way. But we must be careful not to apply this rule to modern conceptions

of property, independent of possession; as where the fee simple is in question.[1]

Per contra, her abstract rights were unaffected by the coverture, — remained hers. Until the objects themselves came into possession, the merger of her personality did not change her relation to them. That she was entitled to a reversion at some future time, that money was due her, that she had good title to land in another's seisin, — gave the husband no rights, was not affected by the coverture.[2]

[1] The principle that even when the wife owns in fee simple, the husband's right attaches only to the freehold, and does not affect in any way the inheritance, is very often overlooked. Even Professor Ames, in his instructive article on the Disseisin of Chattels (Harvard Law Review, vol. iii. p. 317, February, 1890), says that if a disseised woman should marry the disseisor, the marriage would give the husband a fee simple in the land, as it certainly would an absolute ownership of the chattel. He *says* so, but he will excuse me, I trust, for doubting if he ever *thought* so.

[2] Albrecht, Gewere, § 24, has shown the true nature of the husband's right, in Germanic law, in the wife's property, in terms that may be applied almost exactly to the English law; and he makes the same remark, that it is incorrect to consider the husband's rights as based on a *gift* to him of the wife's property even in respect to personalty where he takes the entire irrevocable title (p. 265). Albrecht shows that this system appears most complete in the Sachsenspiegel (Sachs. Landr. i. 31, quoted by Albrecht, note 724), while in the Schwabenspiegel it is somewhat modified (cf. § 146, Lassb.)

The *gewere* of the husband attaches to all personalty that comes to his possession — under *sine hende und in sine gewere*, notes 745, 747, — not to that which does not; and it is not lost by his death, though it is by divorce, when the wife retakes what she brought, and loses her *morgengabe* (p. 264, Sachs. Landr. iii. 74, in note 748).

But this is not inconsistent with a continued ownership of the wife, alike as to land and chattels, under or beside the *gewere* of the husband (pp. 259, 266 *et seq.*). Albrecht argues this in part from the power of the wife, even during the husband's life, to reclaim land that he had parted with without her consent; and from the power to convey *with* her consent that is thus implied. — following Eichhorn's view (St. u. R. G., § 451, note *d*), against Hasse, — assuming that if she had not this, the vendee of the husband would get *rechte Gewere* by expiration of year and day (p. 267). This is certainly inapplicable to our English law, where it is expressly said that she could not resist his will while he lived.

But it seems to me to be implied in the very definition of the husband's power to exercise the wife's rights, as defined by Albrecht, p. 277, and to be supported by many rules of the English law.

The absolute unity of husband and wife at common law is well shown by an early rule of pleading quoted F. N. B. 118 F.: "A receipt made by the husband by the hands of his wife is his own receipt, and the writ and the count shall suppose that he himself did receive, etc., without saying by the hands of the wife: but it is otherwise if a husband receive money of a stranger; then the count shall be that he received by the hands of a stranger."

And so complete was his representation of her that if she had been made an executor, and was not yet of age to fulfil the office, yet "if married to a man of seventeen years of age or more [the age then required of an executor], it is then as if herself were of that age, and her husband shall have the execution of the will." Godolphin, Orphan's Legacy (1665), 102, citing Office Exec., cap. 12, 18.

If any proof were necessary that there was no "gift" to the husband, no transfer of rights in the wife's property, at all in the eyes of the law, as a consequence of marriage, it might be found in the one instance of a joint-tenancy held by the woman with other parties.

Any transfer of her interest in such a joint-tenancy would sever it, and make the transferee a mere tenant-in-common. This would be equally true whether it were a gift or a sale, — the consideration makes no difference. And it would be difficult to find a single exception to this rule in the entire common law.

But when the husband takes, upon marriage, his wife's share, he takes it simply as joint-tenant, — as his wife held it; and loses it if she die, or gains the whole if the other party die; while if he himself die before

her, she resumes her place as tenant, as she could *not* do had there been a transfer and re-transfer.

This may be considered the principle on which all questions of the husband's control over the wife's property may be determined. The law makes no transfer of rights upon the marriage, but the husband steps at once into the possession of the wife, and exercises all the power she could have done while sole.

This is most clearly illustrated in the old cases precisely where it is oftenest and most entirely overlooked to-day, in the law of real property. The seisin, the freehold, became the husband's at once upon marriage; the inheritance, the remainder or reversion, was unaffected.[1] The freehold became the husband's, and yet the *wife did not* lose it; she only lost the administration of it.

This is very clearly expressed in Y. B. Mich. 10 Hen. VI. pl. 38, fo. 11 a–12 a, — a case in which many points of the law of baron and feme are clearly brought out; e. g., that the freehold is in the baron for the life of the feme (= for coverture) immediately on the marriage, and yet if the wife commit felony and is attainted of it, her freehold is "*ale a dieu.*" (Chaunt. 11 b.)

Although the husband is thus said to have the freehold of his wife's lands before the birth of an heir, yet it is in a different sense from that which he has after the birth, when he is tenant by curtesy initiate.

This is clearly shown by Holt, C. J., in Park *v.* Fifield (Comb. 453; 22 Viner, 500). A woman, owner of land by descent, sued her tenant for years for cutting down trees. Some of them had been cut in her husband's lifetime, and it was held that as he had issue and was tenant for life, and intituled to be tenant by curtesy (if he had survived her), she could have no action (because the trespass was to his freehold), but if he had had no child the action would survive to the wife (having been for an injury to her freehold).

If a man seised in his wife's right is returned on a jury and his wife dies, he may be challenged, and so if he be seised *per auter vie;* his freehold ceases instantly in either case. (Co. Litt. 272 b.) By the *intermarriage* he gaineth a freehold *in his wife's right.* (Ib. 273 b.)

For this freehold in the wife's right, he must do and receive homage *with her.* (2 Bl. Comm. 126.) But as soon as issue is born the husband has a freehold of his own, as tenancy by curtesy, and both does and receives homage alone, as all authorities say. After the wife's death the tenant by curtesy neither does homage nor receives it, because he no longer has an estate of inheritance, — implying that he had one while his wife lived, in her right. (Co. Litt. 67 a.) And a feoffment in fee after birth of issue and before the wife's death is not a forfeiture, but the feoffee shall hold during the life of the husband. (Co. Litt. 30 a, and reff. in margin.) This seems to show, as it were, a double right, — of the fee in his wife's right, of the curtesy initiate in his own. The reason why no homage was done after the wife's death by tenant in curtesy is given, Glan. vii. 18 (R. M. ii. 58). It was that by receiving homage from him the lord would lose his reversion. This shows again that the husband's holding in his own right was quite a different thing from his holding his wife's possession.

That tenancy by curtesy is the same estate of freehold which the husband possesses, after the birth of issue, during the wife's life, and not a new estate beginning at the wife's death, is shown by an ancient record of 20 Hen. VI., quoted in Co. Litt. 29 b.

That king, by his letters-patent, recites that Richard, Earl of Salisbury, had married the daughter of Thomas, former Earl of Salisbury, and had issue by her before the death of her father, and that both *the wife*

[1] That the husband has nothing in the wife's reversion is conceded. Mich. 8 Hen. VI. pl. 32, fo. 13 b.

Upon the wife's merger in the husband's person, see Mich. 7 Hen. VI. pl. 15, fo. 9, etc.

and the issue were still living; and therefore (*eo prætextu*) said Richard has the estate and honor of earl of Salisbury, and ought to have it for *the term of his life.*

Littleton (§ 90) is also express that, the conditions being fulfilled, the husband does homage for the wife's lands because he has title by curtesy if he survives the wife.

The distinction between the husband's enjoyment of the wife's freehold from marriage to the birth of issue, and his own freehold thenceforward, is again clearly marked by Lord Hale's rule:—

"So nota that till issue the husband cannot use the title of his wife's dignity; but afterward he may. So adjudged by Henry VIII. in the case of Wimby, who claimed the title of Lord Talboys in right of his wife." (Hale MSS., quoted by Butler, note 1 to Co. Litt. 29 b.) Butler refers to Coll. Claims of Bar. 11, 44, 72, for the particulars of Wimby's case, and shows that the husband's right to curtesy in the wife's dignities had since fallen into disuse.

So, too, it was held that the lord could not avow for homage on baron and feme seised *in jure uxoris* [could not distrain for lack of such homage?] until birth of issue. The birth need not be alleged in the avowry, but plaintiff in replevin may reply the want of it. (Brooke, Fealtie and Homage, 3, citing 44 Edw. III. 41.) Before issue born the husband shall render fealty only. (Ib. pl. 10, citing Register.)

The husband's power over the freehold, but not over the inheritance, is well shown by a case, Y. B. Liber Ass. fo. 222, 38 Edw. III., pl. 6:—

Novel disseisin was brought against the Dame of Gilden in Dorsetshire. *Tank.* pleads for the dame that she was seised of the lands until she took husband, one A, who leased the land to B for the term of A's life, and afterward granted the *reversion* to the plaintiff. Then A died, B died, the dame entered, the plaintiff claiming under the grant of the reversion abates in her possession and she ousts him, and she demands judgment whether he ought to have the assize. *Pers.* [for plaintiff]. We protest that we knew not that the land was the said wife's right; but say that A leased to B for A's life, saving the reversion to himself and his heirs, and then granted the reversion to plaintiff and his heirs, by virtue of which grant the tenant attorned and then died, and after his death we entered, as into our reversion, and were seised until disseised by you; and we pray the assize. *Tank.* then asks judgment on the ground that the dame's right is admitted, and that as B survived the husband plaintiff never had the possession in the husband's lifetime, and the grant of the reversion could not prevent her lawful entry on the husband's death, so that there was no disseisin. And this was the opinion of the Court, that the plaintiff was barrable of the assize.

Notice that the husband's express limitation of the reversion to himself and his heirs, at the time of the lease, and his subsequent grant of it, were thus held merely null as to the wife.

The wife's inheritance was unaffected by the marriage so completely that if husband and wife sued for waste of the wife's inheritance, and laid the disinheritance to be of both, instead of *ad exhereditationem* of the wife alone, the brief abated; as was held in 1430. (Y. B. Mich. 8 Hen. VI. pl. 19, fo. 9.)

The application of the same principle to other forms of property, chattels real and things personal of all kinds, in possession or in action, need hardly be made at length. To point out its bearing on many modern conflicts of doctrine would extend this article beyond reasonable limits; and if it awaken sufficient interest to be worth doing at all, it must be done in another article.

THE CIRCUIT COURT FOR THE NEW HAMPSHIRE DISTRICT ONE HUNDRED YEARS AGO.

By William H. Hackett, *Clerk of the U. S. Circuit Court for New Hampshire.*

THE Chief-Justice and five associate justices of the Supreme Court of the United States were appointed Sept. 26, 1789. Of the associate justices, Robert H. Harrison, of Maryland, resigned, and James Iredell, of North Carolina, was appointed, Feb. 10, 1790. The court was not fully organized till the 3d of April, 1790, and on the next day Chief-Justice John Jay held in New York the first Circuit Court. In the same month he commenced his first circuit through New England, and on the 20th of April came to Portsmouth, when the first term of the Circuit Court for the District of New Hampshire was held in the State House. The citizens of Portsmouth, who had a few months before entertained President Washington for several days, evinced their respect for the new court by tendering the Chief-Justice a public entry into the town, and on his departure an escort attended him a considerable distance on his journey. The District Court having been previously organized, and by law, its clerk being the clerk of the Circuit Court, the new court had business prepared for its consideration.

The loyal people of New Hampshire do not appear to have committed any infraction of the Federal laws, as no grand jury was summoned, but petit jurors were in attendance. The first action entered upon the docket was a suit in favor of Christopher Gore, of Boston, against Jonathan Warner, of Portsmouth. Warner was a prominent personage in Portsmouth, and had been one of the King's council until the War of the Revolution terminated his office. His wife was the granddaughter of Lieut.-Gov. John Wentworth. In the right of his wife he owned the Warner mansion, one of the finest old houses in that old town so noted for its splendid specimens of colonial architecture. This house has to-day a lightning-rod put up in 1762 under the personal inspection of Dr. Benjamin Franklin. The house was begun in 1718, and finished in 1723 at an expense of £6,000. It has massive walls, eighteen inches thick. Much of the brick and other material used in its construction was brought from Holland. Warner was the third largest taxpayer in Portsmouth in 1770. He owned several slaves, and was one of the twenty-nine persons out of all the male inhabitants of the town who refused to sign the obligation recommended by Congress March 14, 1776, "to oppose the hostile proceedings of British fleets and armies." However, in 1789 he was one of the committee with John Langdon and other leading citizens to address President Washington on his coming to Portsmouth; in fact he was, take him for all in all, one of the most respectable citizens of New Hampshire who would be likely to be a defendant in a suit at law. The action was brought to recover the amount of several bills of exchange drawn on Messrs. Lane, Son & Fraser, of London, the originals of which bear the signature of a man who was conscious of his relative importance. The bills were dated Sept. 21, 1789, and amounted to 710 pounds sterling. The aristocratic defendant was arrested by the marshal, and gave bail. He appeared in court by counsel, and confessed judgment in the sum of $4,236 with costs taxed at £1 16*s.* 6*d.*, on condition that execution should not issue against him until August 20, with which the plaintiff was content. Colonel Warner had the honor of being the first man in the District of New Hampshire against whom was entered a judgment in a Federal court; and this too, at the trifling cost of six dollars and twelve and a half cents.

Upon the equity docket of the term was a suit brought by Perez Morton, of Boston, against Woodbury Langdon, a prominent merchant and brother of Gov. John Langdon. Woodbury Langdon built an elegant house on the site of the present Rockingham House, upon the façade of which is his medallion. He was a delegate to Congress, and became a judge of one of the courts, without any law education. He was disinclined to hold courts, and resigned his judgeship when about to be impeached for neglect of judicial duties. During the Revolutionary War he visited England, where his imposing address and great beauty caused him to receive marked attention from many of the nobility. Such was the respectable defendant of whom the Boston merchant complained, in due form of law, that in September, 1778, in a time of war between the United States and the Kingdom of Great Britain, he, Morton, with John Carter, John Langdon, Phillips Moore, Archibald Mercer, John R. Livingston, Adam Babcock, James McCarty, and Woodbury Langdon, purchased together a ship called the "Hampden," for the purpose of fitting the same as a privateer to cruise on the high-seas to annoy the enemies of the United States and to capture their property, by virtue and under the sanction of certain acts, resolves, and ordinances of the Congress of the United States and the Laws of Nations. That Woodbury Langdon was appointed agent to fit out, man, and provide the ship, which Langdon did, and charged the owners with their respective proportions of the cost. Morton owned a sixteenth of the ship, and paid his share of the outfit; and Langdon was made agent to receive all the prize vessels and captured goods and to divide the avails, etc. The "Hampden," it was alleged, in 1778 captured from the British a large and valuable French ship called "La Constance," which our British friends, the then enemy, had twenty-four hours before taken from the French. After condemnation in the port of Brest, France, the sale of the ship and cargo amounted to 200,000 French livres Tournois, equal to $37,142, half of which went to the master, officers, and crew of the "Hampden," which Morton asserted Mr. Agent Langdon directed to be remitted to Portsmouth and did receive, or a sum of $1,142,850, coming in the shape of merchandise in 1782, at a time when foreign goods were sold at three times their sterling or original cost in Europe. Morton also bought the interest in the "Hampden" of one of his co-owners, and called upon Langdon for an account. He persevered and applied in a friendly manner every year from 1782 to 1789 inclusive, for a payment of the sums due him; but Langdon refused to pay, and declined to adjust other than to offer a hundred pounds for Mr. Morton's shares of three sixteenths of the proceeds of the venture. Morton sought an accounting and an answer to certain specific inquiries as to the proceeds of the cruise of the "Hampden." The complainant appears to have acted as his own lawyer. Langdon appeared at the November term by such illustrious counsel as Theophilus Bradbury, and Theophilus Parsons of Newburyport, who filed a demurrer to Morton's bill in equity, which, denying the allegations in the bill, maintained that Morton by his own showing had a plain, adequate, and complete remedy at law for all his injuries and damages supposed in his bill to have been by him sustained, and they asked to have the bill dismissed with costs. Morton joined issue on this demurrer and upon the law question raised therein.

The court sustained the demurrer of Langdon, reserving the question of his costs until a succeeding term, when the prevailing defendant came into court and magnanimously relinquished his claim to costs, which at the most would be but for a nominal amount.

The courts in those days were held in the court-houses belonging to the county, as the Federal government had not then begun to build buildings for these purposes. In the court-house in Portsmouth the State legislature met until 1796. In the second story

of this building, constructed with the stately magnificence of colonial buildings, was the court-room with its elevated bench, its bar with its circular table covered with green baize, held fast by the round-headed brass tacks which the present generation never sees. The elevated boxes where sat the dignified and consequential high sheriff and the humble though none the less indispensable crier, while the dock was flanked on either side with a box in which a deputy of the sheriff constantly sat with argus-eyed care of the prisoner, showed conclusively to the spectators that no guilty man could escape. The sessions of the courts in those days were great events in the town. Perhaps no better illustration of this fact can be had than is contained in the following taken from the "United States Oracle of the Day," a newspaper published in Portsmouth. In the paper of May 24, 1800, appears this, almost the only local item, which may be regarded as a first-rate notice: —

"CIRCUIT COURT. On Monday last the Circuit Court of the United States was opened in this town. The Hon. Judge Patterson presided. After the jury were empanelled the Judge delivered a most elegant and appropriate charge. The *Law* was laid down in a masterly manner: *Politics* were set in their true light by holding up the Jacobins as the disorganizers of our happy country, and the only instruments of introducing discontent and dissatisfaction among the well-meaning part of the Community. *Religion & Morality* were pleasingly inculcated and enforced as being necessary to good government, good order, and good laws; for 'when the righteous are in authority, the people rejoice.'

"We are sorry we could not prevail upon the Hon. Judge to furnish a copy of said charge to adorn the pages of the United States Oracle.

"After the charge was delivered, the Rev. Mr. Alden addressed the Throne of Grace in an excellent and well-adapted prayer."

It may well be supposed that the judge, who was Associate Justice William Patterson of New Jersey, could hardly afford to concede the request of the New Hampshire editor, as doubtless the charge might be needed to be thereafter given in other districts by the learned judge, who probably spent more time in its preparation than was commonly required for matter which adorned the pages of Portsmouth papers nearly a hundred years ago.

In the court-room where this charge was given and where the courts were held down to 1836, Jeremiah Mason was admitted to the bar of the Circuit Court in 1798, and Daniel Webster in May, 1809. In October, 1812, Mr. Justice Story here conferred the honorable degree of Sergeant-at-Law upon Jeremiah Mason and Jeremiah Smith, and ordered that they be respected as such by the officers of the court, and at the same time conferred the degree of Barrister of Law upon Daniel Webster and three other prominent members of the Federal bar in the New Hampshire district. These titular honors seem never to have been afterwards conferred upon any other counsellors of the court.

CAUSES CÉLÈBRES.

XVIII.

THE CASE OF WILLIAM HARRISON.

[1660.]

MR. WILLIAM HARRISON in the year 1660 was steward to the Lady Viscountess Campden, at Campden, in Gloucestershire. He was then an old man, being about seventy years of age. On Thursday, the 16th of August, he set out from Campden, where he resided, to walk to Charringford, a distance of about two miles. The purpose of his journey was to receive rents for property belonging to Lady Campden. That night, as he did not return at his usual hour, his wife became uneasy; and after waiting until nearly eight o'clock, sent a man-servant named John Perry to Charringford in search of him. But although they waited up for them all that night, nothing was seen of either Mr. Harrison or the man-servant.

Early the next morning, Edward, Mr. Harrison's son, went towards Charringford to try to gain tidings of his father. On his way there he met Perry returning from thence, who informed him that he had been to Charringford, but had been unable to find his master. They then went on together to Ebrington, a village between Charringford and Campden. There they were told by one Daniel, that Mr. Harrison had called at his house the preceding evening, on his way from Charringford, but that he did not stay there long with him. They then proceeded half a mile farther on, to Paxford; but there they heard nothing more of Mr. Harrison, and therefore determined to return. On their way back to Campden, they met a person who told them that a hat, band, and comb had been picked up in the highway by a poor woman. As the woman was then gleaning in the neighboring fields, they went to her. On the woman producing the articles she had discovered, the son at once identified them as having been worn by his father when he left home to go to Charringford. On further examination, it was found that the hat and comb had been cut and hacked about, and also that the articles were covered with dried blood. At their request the woman at once took them to the place where she had found the articles. It was on the highway, near a great furze-brake, between Ebrington and Campden. A careful search was then made of the spot, for the body of the missing man, — it being concluded that he had been murdered for the sake of any money he might have had with him, — but after the most diligent search nothing more was found.

When the news reached Campden, the place was so alarmed that men, women, and children in multitudes hastened to search the surrounding neighborhood for Mr. Harrison's dead body. But the search was made in vain. His wife's fears for her husband's safety, which were very great before, were now much increased; and as she had sent the servant, John Perry, the evening before to meet his master, and he had not returned all that night, she suspected that he had robbed and then murdered him.

In consequence of these suspicions, on the following day Perry was examined before a justice of the peace concerning the cause of his staying out all night on the evening he went to meet his master. The account he gave of his behavior was that when his mistress sent him in the evening, he went down Campden Field towards Charringford. On his way there he met a man living at Campden, named William Reed, and spoke to him, and told him his errand. He also told him that as it was getting late, he was afraid to go farther, and would therefore go back and return with him.

He then accompanied him back to Mr. Harrison's court-gate, where William Reed left him, and he then remained for some time standing outside the gate. While he was waiting there, a man named Pearce passed by. As he knew this person, he went with him a little way along the fields, and then returned with him to his master's gate, where they parted. As he was ashamed to go into the house and tell the servants the cause of his return, he went into the hen-roost and lay down. Here he remained for about an hour, but was unable to sleep. While staying here, he heard the clock strike twelve. He then determined to go again in search of his master. He had gone some way towards Charringford, when, a great mist arising, he missed his way, and therefore lay down for the rest of the night under a hedge. When the day broke, he proceeded to Charringford, to the house of Edward Plasterer, and inquired for his master. Plasterer told him that his master had called on him on the afternoon of the previous day, and that he had then been paid three-and-twenty pounds for rent, but that Mr. Harrison did not stay long after he had received the money. He then went to inquire of William Curtis, who lived near the same place. Here he was told that his master had called on Curtis the day before, but as Curtis had not been at home Mr. Harrison had left without seeing him. It being then about five o'clock in the morning, he retraced his steps towards Campden, and on the way back had met his young master, as has been previously related. On Reed, Pearce, Plasterer, and Curtis being examined, they confirmed everything that Perry had stated about them. Perry was then asked by the justice how it was that he was afraid to go in search of his master at nine in the evening, when he was bold enough to go at midnight. To this he replied that at nine it was dark, but that at twelve it was moonlight. He was then asked how it was that, on returning home twice after he had been sent to meet his master, he did not go into the house to ask if he had come back. He answered that he knew his master had not come home because there was a light in his bedroom, which was never to be seen there so late when he was at home. Notwithstanding the plausible manner in which Perry accounted for the way in which he had spent the night, it was not thought advisable to liberate him from custody until further search had been made for the body of the missing man. He therefore continued in custody for about a week, during which time he was again examined, but no further information could be obtained.

It having been rumored that during his restraint he had told some who pressed him on the subject, that his master had been killed by a tinker, and that he had said to others that he had been robbed and murdered by a gentleman's servant who had hidden his corpse in the bean-rick at Campden, further search was made there, but with no result. At length Perry declared that if he were again examined before the justice, he would disclose a secret, which he would tell to no one else. On being again brought before the justice who had previously examined him, he confessed that his master had been murdered, but he denied having done the deed. The justice then told him that if he knew that his master had been murdered, he must know by whom the deed had been done. At last Perry confessed that he did know. On being further urged to reveal everything he knew about the matter, he declared that the murder had been committed by his own mother and brother. On hearing this, the justice cautioned him to consider well what he said; assuring him at the same time that he feared that it was Perry himself who was guilty of his master's murder, and at the same time warning him that he ought to be careful not to draw more innocent blood on his head, for what he had said might cost his mother and brother their lives. But the prisoner continuing to assert that he spoke nothing but the truth, the justice desired him to declare how and where the deed was

done. He then confessed that both his mother and brother had tempted him, ever since he had been in his master's service, to steal for them; reminding him how poor they were, and that it was now in his power to relieve them by simply giving them notice when his master went to collect his rents, for they would then waylay and rob him. He further said that on the morning of the day his master went to Charringford, he went on an errand into the town, and in the street met with his brother, and that he then told him his master was going to collect the rents, and that if he waylaid him, he might obtain the money. He also said that when his mistress sent him to seek his master, he met his brother at the gate. They then went on together a little way, when they parted, but soon after again met, and then went together until they came to a gate that led into Lady Campden's ground, called the "Conygree." Through this gate, to those who had a key to open it, was the nearest way to Mr. Harrison's house. Perceiving, as he thought, some one pass through the gate into the grounds, he concluded that it must be his master on his way home, for no one could enter the grounds without possessing, as his master did, the key to open the gate. But it was then so dark that they could not distinguish anything with certainty. He then advised his brother to follow his master into the grounds, and rob him there, while he himself, to give him opportunity, would walk about the fields for a time. His brother consented to this, and followed his master into the grounds. After waiting for a time, he went to seek his brother in the Conygree. There he discovered his master lying on the ground; his brother being on him, and his mother standing by.

On being asked by the justice whether his master was then dead, Perry replied that he was not, and that after he had reached him he heard his master cry, "Ah, rogues, will you kill me?" When he saw what they were doing, he asked them not to kill his master; but his brother only replied, "Peace, you fool!" and then proceeded to strangle his victim. After murdering him, his brother took a bag of money from his master's pocket and flung it to his mother. Then he and his brother carried the dead body into the garden that adjoined the ground. There they consulted what should be done with it. At length they agreed to throw it into the great sink behind Wallington's Mills that adjoined the garden. His mother and brother then directed him to go up to the court next to the house and listen if he could hear any one abroad, while they disposed of the body. He also said that after that he did not return to them, but went through the court-gate that leads towards the town. There he met with John Pearce, with whom he went into the field, and afterwards returned with him to his master's gate. From thence he proceeded to the hen-roost, where he lay till twelve. He then went out, taking with him his master's hat, band, and comb, which he had stolen from the body and hidden there. After cutting them with his knife, he laid them down on the highway where they were afterwards found.

In consequence of this confession, Perry's mother and brother were at once taken into custody on the charge of murdering his master. The sink into which it was supposed that Mr. Harrison's dead body had been thrown was carefully searched, as well as all the ponds in the neighborhood, but nothing was discovered. It being supposed that the dead body might have been hidden in the ruins of Campden House, which had been burned during the civil wars, search was also made there, but with no result.

When the mother and brother were confronted with Perry, they denied all knowledge of the murder, and bitterly accused him of bearing false witness against them. Perry, however, still persisted in his accusation, stating that he was willing to die if he had not spoken the truth. When a piece of rope with a slip-knot at the end, which was found in his brother's pocket, was shown to him,

he declared that it was the rope with which the murder had been committed.

In the spring following, when Perry and his mother and brother were tried for murder, they all pleaded not guilty. Perry, when his confession was brought forward in evidence against them, denied its truth, stating that he was then mad, and did not know what he said. The result of the trial was that they were all three found guilty of the murder of William Harrison. A few days afterwards they were brought to Broadway Hill, in sight of Campden House. There they were all three executed, strongly denying their guilt.

Now the most remarkable part of the history remains to be told. A few years after William Harrison himself returned to Campden. The account he gave of his absence was that as he was passing through Ebrington furzes some persons stopped him, flung a cloak over his head, fastened his wrists together, and then carried him across the country to the sea-coast. When they reached Deal, they sold him to a person for seven pounds. He was then put on board a vessel; there he remained at sea for six weeks. From thence he was transferred into a Turkish ship. When the vessel reached shore, he was sold to an aged physician at Smyrna, and remained there until his master's death. Then he ran away and concealed himself on board a ship, which took him to Lisbon. From thence he found his way to London. The account thus concludes: "Many question the truth of this account Mr. Harrison gave of himself, believing that he never was out of England. That Mr. Harrison was absent from his employment for two years is certain; and if not carried away, as he affirms, no probable reason can be given for his absence; he living plentifully and happily in the service of that honorable family to whom he had been then related above fifty years, with the reputation of a just and faithful servant, cannot reasonably be thought to have forsaken his wife, his children, and his stewardship, and leave behind him, as he then did, a considerable sum of money in the house. We cannot, therefore, in charity but believe that Mr. Harrison was carried away; but by whom and by whose procurement is the question. Those who did it he affirms never to have seen before. That he was spirited — that is, stolen — to be sent to the Plantations and there sold a slave, as some are said to have been, is noways probable, as he was an old and infirm man, and taken from the most inland part of the country; and if sold, as he apprehends he was, for seven pounds, would not recompense the trouble and charge of his conveyance to the seaside. Some, therefore, have had bad thoughts of his eldest son, not knowing whom else to suspect, and believe the hopes of his stewardship, which he afterwards (by Lord Campden's favor) enjoyed, might induce him to wish his father removed; and they are the more confirmed in this from his misbehavior in it. But, on the other side, it is hard to think that the son knew of his father's transportation, and consequently of these unhappy persons' innocency as to the murder of him, and yet could prosecute them to the death as he did; and when condemned could be the occasion of their being conveyed above twenty miles to be hanged in chains where he might daily see them, and himself stand at the foot of the ladder when they were all executed, as he likewise did. These considerations, as they make it improbable that the son should be privy to his father's transportation, so they render the whole matter more dark and mysterious, which we must therefore leave unto Him who alone knoweth all things in His due time to reveal and bring to light."

The Green Bag.

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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.

THE GREEN BAG.

IN the present number we commence a series of articles which we believe will prove to be the most valuable and interesting ever offered to the legal profession. We refer of course to the sketches of the Supreme Courts (or Courts of Final Appeal). Such arrangements have been made as enable us to say with confidence that we shall be able to include in the series the courts of every State in the Union. The articles will all be written by able and well-known members of the legal profession, and will be fully illustrated. Our July and August numbers will contain the NEW YORK COURT OF APPEALS, written by Irving Browne, Esq. Owing to its length and the great number of illustrations, it has been found necessary to divide this article into two parts. The illustrations will include one large two-page group, two single-page groups and twenty-three separate portraits of distinguished judges. The sketch is written in Mr. Browne's happiest vein, and is undoubtedly the best presentation of this distinguished court ever made to the profession. Articles are already prepared on the Supreme Courts of Maine, New Hampshire, Connecticut, Rhode Island, etc., and will appear in due course.

A CORRESPONDENT writes from St. Paul, Minn., giving his views on the difference between lawyers East and West.

Editor of the "Green Bag":

The other day while listening to the trial of a case in our District Court in St. Paul, the great difference between the English style of conducting their law business and our own struck me very forcibly, and recalling to mind the statement made by Max O'Rell, that there was not a typical American, I appreciated its truth. Not only is there not a typical American, but there is not a typical American way of transacting business. Each section varies, and this statement is as well exemplified in the law as elsewhere.

In the Eastern States, while they maintain nothing like the pomp of the English courts, they are still, to a certain extent, sticklers for the forms of law. This is seen as much as elsewhere in the examination of witnesses. In the Eastern States generally it is the most interesting part of the case; it is here that the battles royal are fought, and usually where the cases are won or lost. In the Western States, on the contrary, the evidence being largely documentary or record evidence, there is, as a rule, but little argument over the *form* in which it is taken, although very often, and in fact I might say as a rule, the case turns upon the *admissibility* of the evidence. It often happens that the attorneys stipulate that if a certain instrument is admitted in evidence the case shall go no further, unless an appeal is desired.

I was considerably surprised at first at the difference in the manner of conducting legal proceedings in St. Paul and in some of our Eastern cities. I expected to find in the newer country much more ostentation or elaboration of language. In fact, however, that is not the case. I have heard leading questions asked unchallenged, and opportunities for repartee and retaliation passed unnoticed, such as would have delighted an Eastern lawyer's soul, and have furnished him an opportunity for an exhaustive argument or a wordy contest for half an hour. Again, the manner of argument or summing up of the case is very different. In the East it is an opportunity for a display of forensic elocution and oratory not to be passed over lightly. When an able speaker is about to argue a case, half the legal profession in the city gather to the court to criticise or praise the oration, as it is often truly termed. I have heard much true eloquence wasted on jurymen who no more appreciated its beauty and force than they would appreciate any other true work of art. And did we not know that the attorney was speaking fully as much for the benefit of the audience behind him as for that in front of him, we should be surprised at his effort.

In this part of the West it is different. Here, as a rule, the case is argued more upon its merits. An argument is not looked upon so much as a work of art as a matter of business. All efforts are directed

to the *winning* of cases; and to attain that end, the lawyers use less elaborate periods and more homely words, the better to reach the understanding of the jury that is trying the case.

I have not been farther West; but I should imagine the farther you go the less regard would be found manifested for the strict forms and theories of the law, but much more grandiloquence in the legal arguments.

The reason for the difference, I think, is that the far West is a new country, where, as in all new places, more attention is paid to show, and but little to substance.

In the portions of the country fairly represented by St. Paul, the newness is worn off, and there is a great press of business on account of the organization and development made necessary by the rapid settlement of the country. The law business, especially, is thriving and urgent of settlement, partly because the law is the arbiter of nearly all of man's relations with his fellow-man, and also partly on account of the amount of friction unavoidably produced by the rapid amalgamation of such discordant elements.

In the East the organization is completed; and while there is some change constantly being made necessary by the activity of the age and country, still it is small compared to the West, with the exception of a few metropolitan cities. There they have more time to attend to the elegances of language and strict forms of law. A comparison of legal calendars of the different sections would illustrate the force of my statement more than any words.

England's verbosity and formality, although lately very much modified, are grounded in history. The people are as they are, because their fathers and grandfathers were so. Their terms and formulæ are the same as were used two, three, and in some instances five hundred years ago. This is a subject well worthy of expansion and elaboration; but our space cannot expand, and we must leave this pleasant occupation for some future time.

JOHN MCKEAN.

AN esteemed "contributor" to the "Green Bag" writes from Detroit as follows:

Editor of the "Green Bag":

The very excellent portrait and pen-picture of Judge Black, in the last issue of the "Green Bag," is a lesson to the bar in all States. It reveals many side-lights of a character that thousands admired in life and thousands feared to contend with. Such lives are splendid object-lessons for young men, and teach us one striking truth, — that intensity of belief may become a hardened habit of thought, and painful to bear if harbored too long without relaxing. As a singular opposite, we shall see a most rare and forgiving judge, always great and always gentle, described by Judge Brown when he gives the likeness of the late Justice Campbell.

The history of the bar is nearly all biographical. It is dense with great characters, and full of wonderful events. No one attains great rank without deserving it, — without earning it, without struggling for it. Of the two men mentioned, one spent a life of careful devotion to a single State, and the other sailed on a broader sea; yet time will make them both immortal. As Black resembled Ryan, the great Northwestern peer of Carpenter, whom men often speak of; so Campbell resembled Kent, whom thousands read of. A contrast of mental and physical natures, a contrast of characters. "The character of a people is known by the men they crown."

J. W. DONOVAN.

LEGAL ANTIQUITIES.

OWING to a laudable desire to make the study of the law more palatable to the public, and to entice them to acquire more knowledge of its principles and the forms of legal procedure, in olden times attractive titles were given to books which treated of such dry subjects. Thus, about the year 1500, a work was published which was likely to arrest the attention of the gay gallants of the age. It was written by Martial D'Auvergne, and called "Declarations, Proceedings, and Decrees of Love, pronounced in the Court and at the Bar of Cupid, in the case of different disputes heard before that Magistrate." When opened it proved to be a very learned treatise upon law, but applied to fictitious and amusing cases, as the following headings of some of the "decrees" sufficiently indicate: —

"5th. Process between two lovers wooing the same lady.

"18th. Concerning a kiss taken by force by a lover, against which the lady appealed.

"20th. An action brought by a lover against his mistress to compel her to take down a cage containing a quail which kept up a continual noise whenever it saw him at the door of the lady."

THE following law was passed in Virginia in 1662: —

"Whereas many babbling women slander and scandalize their neighbors, for which their poor hus-

bands are often involved in chargeable and vexatious suits and costs in great damages: Be it enacted that in actions of slander occasioned by the wife, after judgment passed for the damages, the woman shall be punished by ducking; and if the slander be so enormous as to be adjudged at greater damages than five hundred pounds of tobacco, then the woman to suffer a ducking for each five hundred pounds of tobacco adjudged against her husband if he refuses to pay the tobacco."

FACETIÆ.

THE following incident is related as having occurred in the judicial career of the late Sidney T. Holmes. It happened when the deceased was judge of the Madison County (N. Y.) Court. A case which had been on trial several days was about to be ended. The lawyers had finished their arguments, and the judge had completed his charge to the jury. He dismissed the jurors, telling them to retire and arrive at a verdict. The deputy-sheriff who had them in charge locked them in a room. It was then late at night. Immediately a rap came at the door. The persons who were waiting in the court-room were breathless, not expecting that a verdict would be reached so quickly. The officer opened the door, and the foreman spoke a word to him. The officer staggered; then he spoke to the judge.

"There 's a juror missing, your Honor."

"A juror missing?" repeated the court in surprise.

"That is what they tell me, your Honor," replied the officer.

"Those jurors were left in your charge, sir, and you are responsible for them. If there is a juror gone, it will be your duty to produce him. What right have you to go to sleep while on duty? Mr. Officer, produce that man or we will have you taken care of."

The officer was in a cold sweat; he was dumfounded. The people in the room burst into a quiet laugh.

The sleepy officer started. There were no lights in the streets of the place, and in order to discover his man it was necessary for him to carry a lantern. He walked up one street and down the other, holding the lantern in the face of every person he met. Finally, an hour afterward, he returned to the court-room and reported that he could not find the missing juror.

"You must find him," said the court, emphatically.

The officer wilted. He did not know what to do. Tired and weary from his long search and day's work, he was ready to take the consequences of his dereliction of duty.

It was finally suggested by the court to go to the juror's home and see if he was not there. It was ascertained where he was living, and the officer with his lantern started for the place. It was three miles from the court-house.

Two hours later the officer appeared with the missing juror.

"I found him in bed, your Honor, at his boarding-house."

"What do you mean, sir, by your very strange behavior?" asked the court of the offender.

"Nuthin', yer Honor. I just went home."

"But how did you come to go home?"

"You said I might, yer Honor."

"I said you might go home?" asked the judge in astonishment.

"Yes, sir, you told us we might retire, and I went home and done so."

The few people in the court-room joined Judge Holmes in a hearty laugh. The juror was immediately placed in the jury-room, and the next morning a verdict in the case was reached.

AN amusing incident occurred at the Albany term of the United States Court, Judge Coxe presiding, a few weeks ago. A queer-looking, solemn little man had been called by the defence to establish an alibi. He had testified that the defendant had been at his house during the time the offence was committed, and that others were present also, among them a Mrs. Robinson; when the following examination ensued: —

"Was Mrs. Robinson a neighbor of yours?"

"Yes."

"Is she here?"

"No."

"Do you know where she is?"

"No."

"Is she dead?"

"Yes."

One day Dunning (whose exterior graces were by no means commensurate with his personal vanity) had been cross-examining a young woman at considerable length upon the age of a person with whom she professed herself well acquainted. Finally he asked her, "How old, now, do you take me to be?" and was considerably dumfounded by her promptly replying, to the universal laughter of a crowded court, "From your appearance I should take you to be sixty; from your questions, sixteen."

NOTES.

When Colbert, the great French minister, sent for the merchants, and, anxious to promote their trade, asked them in what way he could serve this purpose, they made the memorable reply, "Leave us alone!" The principle which prompted this reply is the precise antithesis of that which guides many of our modern legislators.

At the last annual meeting of the Ohio State Bar Association, Hon. J. T. Brooks, referring to what must be recognized as a growing evil, — the miscarriage of justice in criminal matters, — said: "The devices of the profession in criminal practice are the scandal of the age. Murder is committed in open day for greed, hate, or revenge. The astute lawyer pleads emotional insanity, or finds justification in the barbaric instincts which still linger in the human breast, and the murderer goes unhung. The constant acquittal of criminals, through technical objections to the record, and by emotional appeals to the jury, are the deepest stain on the profession. A few years ago a school-teacher in Chicago, standing in his home, in the presence of his wife, in broad daylight, was shot dead by a ruffian who bore against him a personal grievance, and had come to his home for the express purpose of murdering him. Eminent counsel was retained for the defence, and an acquittal secured. It was spoken of as a great professional triumph. But the assassin should have found a grave beneath the gallows, and the lawyer been expelled from the bar. A few years ago the Chief-Justice of Kentucky was murdered by a man against whom the Supreme Court had affirmed a judgment. The assassin is free; but, unfortunately, murder is so common there that the fact of his freedom is no reproach to the State. But these cases are but two in hundreds. Shall a prisoner then be tried without counsel? No; but if guilt is certain, let the facts and the law be stated, and the accused put upon the mercy of the court. The law should be vindicated, even at the expense of an ancient legal maxim; and if I can secure that dominion of the moral sense for which I contend, I will risk the lawyer doing justice to his client when there is reasonable doubt of his guilt. There are omens in the air which indicate that the people are not satisfied with certain conditions of law, nor with the present course of the administration of justice. Most of them may be traced to the want of moral purpose and patriotic spirit among lawyers. It is well that we should heed them."

Trial by jury does not appear to be restricted to the human race; certainly the feathered tribes are acquainted with its forms and ceremonies. "Crow-Courts" and "Sparrow-Courts" are in some parts almost as well known as those intended for the arrangement of man's disputes. In the Shetland Islands, according to the authority of Dr. Edmonson, a regular assembly of crows of the hooded species is observed to take place at certain intervals. It is composed of deputations from different localities. All business is abstained from until the convocation is complete; consequently early comers have frequently to wait a day or two for the arrival of the later deputies. A particular hill or field suitable for the impending work is selected; and when all the expected members have arrived, the session commences. The court opens in a formal manner, and the criminal or criminals are produced at the bar; but what is his or their offence, the human spectator cannot divine. The charge is not made individually, nor the evidence given by separate witnesses; but a general croaking and clamor is collectively raised, and judgment delivered apparently by the whole court. As soon as the sentence is given, the entire assemblage — "judges, barristers, ushers, audience, and all — fall upon the two or three prisoners at the bar, and beat them till they kill them." Directly the execution is over, the court breaks up, and all its members disperse quietly.

Recent Deaths.

HON. AMASA J. PARKER, of Albany, N. Y., died May 13, after a brief illness. He was eighty-three years of age, and less than a week before his death argued a case in the Court of Appeals. He was born in Sharon, Conn., and was a graduate of Union College. He was admitted to the bar in 1828, and was made Supreme Court judge in 1844. He was a member of the Twenty-fifth Congress, and also a member of the Court of Appeals in 1855. In 1856 he was a candidate for Governor, but was defeated. At the time of his death he was a trustee of Cornell University, and president of the trustees of the Albany Medical College.

The "Green Bag" for April of this year contained an excellent portrait of Judge Parker.

HON. REUBEN R. THRALL, the oldest practising attorney in the United States, if not the world, died in Rutland, Vt., May 11. He was born in Rutland, Nov. 10, 1795. He studied law and was admitted to practice at the Rutland County Court in 1819, and had been in practice ever since, having cases on the docket of the County and Supreme Courts at the time of his death. He appeared in court at the March term, in 1889, and answered to the call of his cases. He was postmaster of Rutland from 1822 to 1829, and State Attorney in 1836. Mr. Thrall was an old-time Abolitionist, and a friend and co-worker with William Lloyd Garrison.

HON. SIDNEY A. BEARDSLEY, of Bridgeport, Conn., ex-Judge of the Supreme Court of that State, died April 24. He was sixty-seven years of age, was born in Monroe, Conn., and was a graduate of Yale. He went to Bridgeport in 1850, where he practised law until 1874, when he was appointed Superior Court Judge. He was appointed to the Supreme Court bench in 1887. He resigned in 1889, on account of poor health.

HON. GEORGE W. NESMITH, ex-Judge of the Supreme Court, died at Franklin Falls, N. H., May 2. He was nearly ninety years old. Mr. Nesmith was born in Antrim, Oct. 3, 1800. He graduated at Dartmouth College in 1820, was admitted to the bar in 1825, appointed judge of the Supreme Judicial Court in 1859, and remained on the bench until he was retired by constitutional limit as to age. Judge Nesmith represented Franklin several times in the Legislature, had been a trustee of Dartmouth College since 1858, a trustee of the State Agricultural College since 1870, and its president since 1877. He was for many years president and a director of the Northern Railroad. He was an intimate personal friend of Daniel Webster, and an ardent supporter of the "great expounder" during his memorable campaign for the Whig presidential nomination.

HON. HIRAM GRAY, an eminent judge and lawyer, died at his home in Elmira, N. Y., May 6, aged eighty-nine years. He had held the positions of Congressman and justice of the Supreme Court, and was one of the five Commissioners of Appeal appointed when the new Court of Appeals was created in 1869. Since 1875 he had lived in retirement.

HON. E. M. WILSON, one of the most prominent members of the Minneapolis Bar, died at Nassau, N. P., on April 10. He was born at Morganstown, Va., in 1833, and was the son of Edgar C. Wilson, an eminent Virginia lawyer. In 1856 he went to Minnesota as U. S. District Attorney for that Territory, and took up his permanent residence there. He was a most successful jury-lawyer and a noted case-winner. In the celebrated King-Remington case which he won for Colonel King, and in which millions were involved, his fee was said to have been $125,000.

As a citizen he was alike conspicuous in service to the State as United States District Attorney, as soldier, member of Congress, Mayor of our city, City Attorney, State Senator, member of the Park Board, or in the councils and services of party, he was alike the capable exponent and the faithful steward of the interests intrusted to his care.

As a man, above all, he was at once an example and a splendid type. Courteous in intercourse, upright in conduct, considerate of others, no man was his enemy, and all were his friends.

HON. THOMAS DRUMMOND, ex-Judge of the United States Circuit Court, died at Wheaton, Ill., May 15. Judge Drummond was a native of Maine, and graduated at Bowdoin College in 1830. He then went to Philadelphia, and studied law in the office of William T. Dwight, and was there admitted to the bar in March, 1833. He removed to Galena, Ill., in 1835, and finally settled in Chicago in 1854. In December, 1869, he was appointed Judge of the Circuit Court of the United States for the Seventh Judicial District, comprising Illinois, Indiana, and Wisconsin. He retired in 1884, at the age of seventy-five. Judge Drummond was a keen, profound, and honorable jurist, and he leaves behind him a flawless record.

REVIEWS.

THE JURIDICAL REVIEW for April presents a very attractive table of contents. The leading article is Hon. Edward J. Phelps's address, delivered at the Centennial Celebration of the Establishment of the Supreme Court of the United States; J. G. Bourinot contributes a paper on "The Federal Constitution of Canada;" Jules Challamel gives some interesting statistics concerning "Divorce in France;" Charles Sweet discusses "The Question of Fusion in the Legal Profession;" and A. Wood Renton describes "The Work of the West Indian Commissioners." The frontispiece is a fine portrait of Professor Lorimer, late Professor of Public Law in the University of Edinburgh, accompanied by a short sketch of his life.

THE March–April number of the AMERICAN LAW REVIEW comes as usual filled with useful and readable matter. The contents are as follows: "American Law concerning Employer's Liability," by Hon. John F. Dillon; "Crimes against Criminals," an address delivered by Robert G. Ingersoll before the New York State Bar Association; "The True Method of Legal Education," by George H. Smith; "The Proposed German Civil Code," by Ernst Freund; "Codification," by David Dudley Field; "A Lawyer's Address to a Lay Audience," by Henry C. Caldwell; "How the Supreme Court of Tennessee cleared its Docket," by J. M. Dickinson. The "Notes" are bright and sparkling as ever.

THE April number of the HARVARD LAW REVIEW begins the fourth year of the existence of this excellent law journal. The contents are: "The Story of Mortgage Law," by H. W. Chaplin; "The Right of Access and the Right to Wharf out to Navigable Waters," by Alfred E. McCordic and Wilson G. Crosby; "Defective Alimony Decrees in Massachusetts," by George F. Ormsby.

JOHNS HOPKINS UNIVERSITY STUDIES, Eighth Series, IV. Spanish Colonization in the Southwest, by Frank W. Blackmar, Ph. D.

This is one of the most interesting papers yet published in this series. No study has ever been more attractive to the student than that of the results of the Spanish occupation of the New World; and the story, as told by Mr. Blackmar, of the Spanish Colonies in California is fascinating in the extreme.

SCRIBNER'S MAGAZINE for May contains an article of unusual richness in illustration, dealing with the country about Barbizon, made famous by Millet's pictures. "Barbizon and Jean-François Millet" is the first of two articles by T. H. Bartlett, — the result of a long residence in that country, where he has constantly met with members of Millet's family and others who knew him intimately, and has had access to a great many of the artist's unpublished letters. The groups of eccentric and famous artists — Le Dieu and Aligny, Corot, Rousseau, and Barye — who preceded Millet in Barbizon are sketched, and the art life of the place is related from its very beginning, with special reference to the personal reminiscences and amusing anecdotes which still are told in Barbizon about these famous men. The other contents are a practical article on home-building for men of small incomes; two short stories of striking originality by entirely new writers; the second paper in the useful "Rights of the Citizen" series; and a description of Japanese theatres by a Japanese author, fully illustrated

by Japanese artists, — with other fiction, essays, and poems. Among the artists represented in this beautiful issue are Carroll Beckwith, Will H. Low, Theodore Robinson, Howard Pyle, Harry Fenn, and Otto Bacher. Among the authors are John Hay, T. J. Nakagawa (late Consul-General of Japan in this city), Eugene Schuyler (U. S. Consul-General at Cairo), Francis Lynde Stetson, and Harold Frederic.

THE CENTURY for May, the month of Memorial Day, is made notable by the number and variety of articles it contains which concern our national life and history.

Mrs. Edith Robertson Cleveland writes of "Archibald Robertson, and his Portraits of the Washingtons." William Armstrong and Edmond Law Rogers contribute two articles on "Some New Washington Relics;" and these papers are supplemented by a short one on "Original Portraits of Washington," by Charles Henry Hart. All of these articles in the Washington series are profusely illustrated.

The first instalment of Mrs. Amelia Gere Mason's valuable series on "The Women of the French Salons" opens in a delightful way, and is finely illustrated. Mr. Stillman, in his "Italian Old Masters," writes of Andrea del Verrocchio, to which Mr. Cole has added a magnificent engraving of a detail from Verrocchio's "The Baptism of Christ."

Mr. Jefferson's Autobiography continues its charming course, this month relating his experiences in Australia; and Mrs. Barr's "Friend Olivia" grows in interest.

Articles which will have a wide reading are George Kennan's striking paper on the methods of the Russian censors, entitled "Blacked Out," with which is given a fac-simile of two pages of one of Mr. Kennan's CENTURY articles on Siberia erased by the Government censors; "Chickens for Use and Beauty," by H. S. Babcock, profusely illustrated; "Two Views of Marie Bashkirtseff," with portraits, and pictures by Mary Bashkirtseff; Prof. H. C. Wood's striking paper on "A Study of Consciousness;" and Major J. W. Powell's valuable contribution on "Institutions for the Arid Lands."

Other articles of interest are "George Washington and Memorial Day," "The New Movement in Education," "The Lingering Duello," "The Churches and the Poor," in "Topics of the Time."

IMPORTANCE and novelty belong to almost all the contributions in HARPER'S MAGAZINE for May. Theodore Child opens the number with "Some Modern French Painters," stating clearly the distinguishing traits of contemporary French artists, and with the help of elaborate engravings, giving an exposition of the new art influences initiated by Corot, Millet, and Courbet. Paul Renouard supplements the biographical details of the article with portraits of MM. Puvis de Chavannes, J. C. Cazin, Aimé Morot, Dagnan-Bouveret, and Henri Lerolle. Prof. S. H. Butcher, LL.D., of the University of Edinburgh, contributes an article on "The Evolution of Humor." Quaint historic imaginings are the twenty-six drawings in which Howard Pyle makes visible the life of the olden time, described by John Austin Stevens in his paper on "Old New York Taverns." William Sharp, in an illustrated paper entitled "Through Bush and Fern," describes the contradictions and fascinations of the fauna and flora in "the *oldest* land in the world." Louise Imogen Guiney gives a summary of the lives and works of the "charming old poets" who wrote "English Lyrics under the First Charles." Mary E. Wilkins and Aubrey De Vere contribute poems; and there are three short stories, — one by Edward Everett Hale, revealing what a Boston girl can do without an escort; another, by S. B. Elliott, having reference to business booms in the South; and the third, by E. H. Lockwood, making a new departure in transferring the scene of "international episodes" to Germany. W. D. Howells concludes his dramatic analysis of a remarkable complication in "The Shadow of a Dream." The contents of the Editorial Departments are characterized by the same novelty as the body of the magazine.

IN the May ATLANTIC, Agnes Repplier in an article on "Literary Shibboleths," makes a plea for the people who resemble that "unfortunate young woman who for years concealed in her bosom the terrible fact that she did not think 'John Gilpin' funny." It is a plea for an honest confession of our real tastes in literature, and a warning against being carried away by literary

fashions. "Henrik Ibsen: His Early Literary Career as Poet and Playwright," is the opening article of the number. It shows the formative period of Ibsen's development, without a knowledge of which one cannot understand his literary character or his later career as a dramatic poet. Sir Peter Osborne (father of that Dorothy Osborne whose letters to Sir William Temple made some stir in the literary world a year or two since) is the subject of a picturesque sketch of a sturdy old Royalist in his island castle. Mr. Morton gives us his second paper on "Some Popular Objections to Civil Service Reform." Mrs. Deland's serial is continued, and Mr. James's "Tragic Muse" is concluded in a manner which is more of a conclusion than Mr. James usually vouchsafes us; while Dr. Holmes, in "Over the Teacups," finishes this always entertaining series of papers with some charming little verses called "I Like You, and I Love You." The short stories of the number are the pathetic sketch called "Rudolph," and part first of "Rod's Salvation."

BOOK NOTICES.

THE COMPLETE DIGEST: a Digest of all the reported American Cases and Selected English Cases, with Synopses of Statutes of General Interest, Reference to Articles and Essays in Current Law Periodicals, and to Text-books and other matters of value to the profession contained in the Official Reports, and various other Law Publications, from July, 1889, to January, 1890. E. A. JACOB, C. F. WILLIAMS, PETER KEMPER, Editors, 1889, Part II. Digest Publishing Co., New York, 1890.

There is no digest published so comprehensive in its plan as this work; and it is in fact, as its name implies, a *complete* digest of all legal thought, whether in the form of judicial decisions, statutes, treatises, or articles in magazines. The present volume has all the merits of those of the series which have preceded it; it contains a vast amount of matter admirably arranged, and is printed in clear, good-sized type which is a boon to the lawyer's wearied eyes. This series is so well and favorably known to the profession that further words of commendation would seem superfluous. It should find a place in the library of every lawyer.

THE MODERN LAW OF RAILWAYS as determined by the Courts and Statutes of England and the United States. By CHARLES FISK BEACH, Jr., of the New York Bar. In Two Volumes. Bancroft-Whitney Company, San Francisco, 1890. $6.00 net.

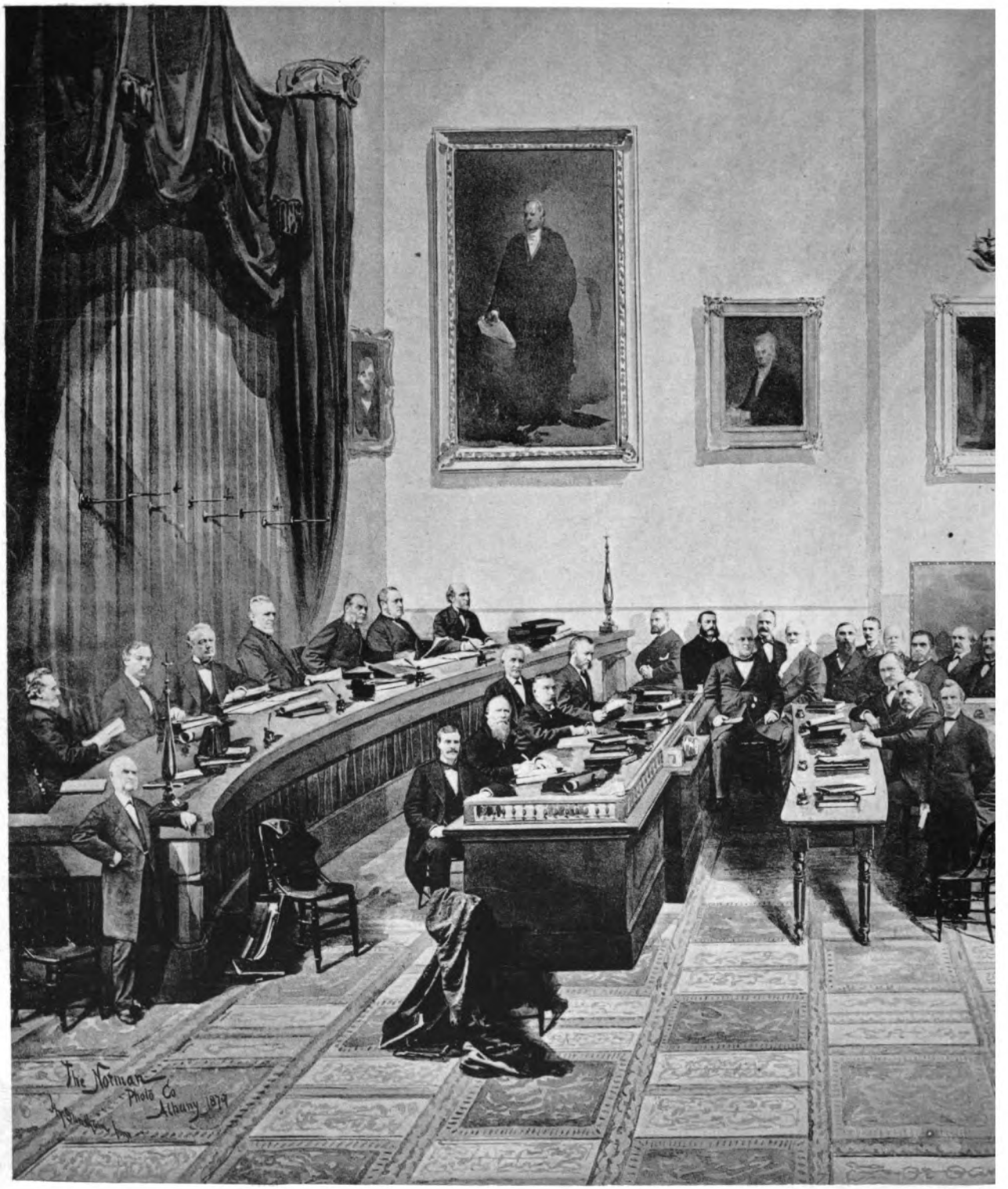
This work is the latest addition to the "Practitioner's Series" (familiarly known as the "Pony Series"). The author, Mr. Beach, has a well-established reputation as a law-writer, and his name is a guaranty that the work is thorough and exhaustive. Especial attention has been given to such branches of the general law of railways as seem to have been lightly or inadequately treated elsewhere. The law of Interstate Commerce is fully set forth; and the law of railway finance, including that of railway securities and the foreclosure of railway mortgages, is ably presented. The work will prove of great value to railway lawyers throughout the United States.

A TREATISE ON THE LAW OF RECORD OF TITLE OF REAL AND PERSONAL PROPERTY. By BRITAIN R. WEBB. The Gilbert Book Co., St. Louis, Mo., 1890. $6.00.

In preparing this treatise, Mr. Webb has rendered the profession, particularly that portion of it known as Conveyancers and Real Estate Lawyers, a real service. The matter of Registration of Title has heretofore been treated only as a branch of the general law of real and personal property, but the subject has reached such an importance that it properly demands a separate work. From a careful examination of this volume, we fully agree with the publishers' claim that the treatise is a clear and concise presentation of the law on this important and practical subject. It is brought down to date, the Statutes of the various States are carefully given, and the notes and references are exhaustive. The book will prove valuable not only to Conveyancers and Real Estate lawyers, but to the profession generally, and also to Notaries, Commissioners of Deeds, and all officers authorized to take acknowledgments.

THE AMERICAN STATE REPORTS. Vol. X. Bancroft-Whitney Company, San Francisco, 1890. $4.00 net.

We have had occasion more than once to speak in terms of the highest praise of this admirable series of Reports. The present volume is fully up to the high standard of its predecessors. The selection of cases is most judicious, and the annotations by Mr. Freeman are in themselves a mine of valuable legal information.



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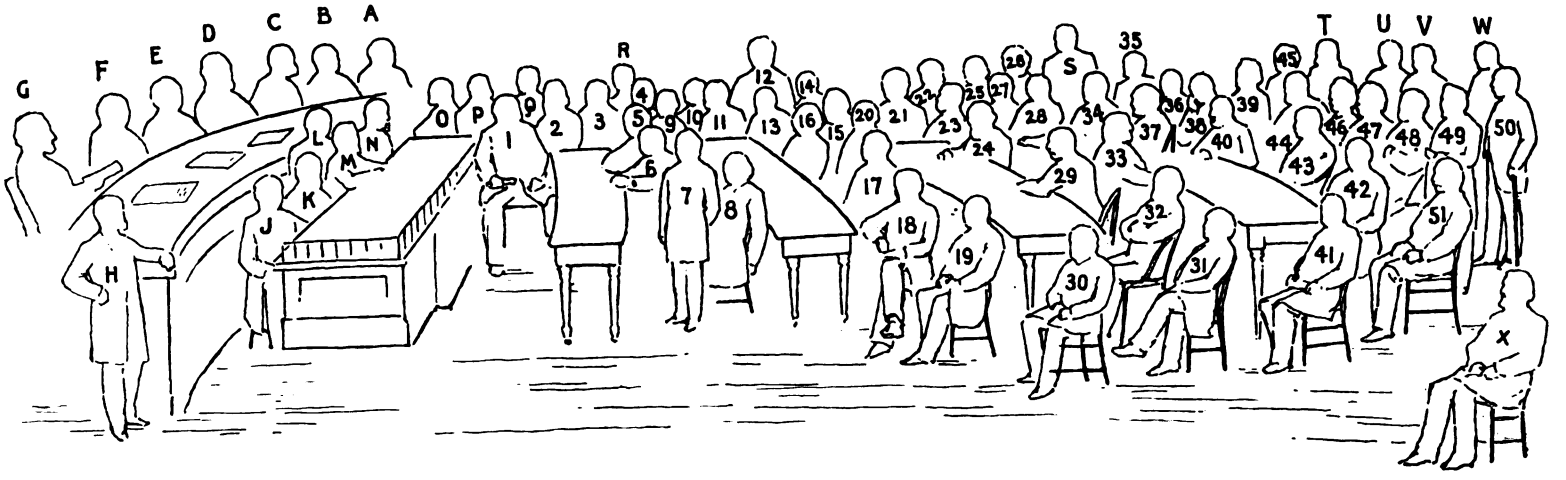
BOSTON PHOTOGRAVURE CO.

rt of Appeals, 1878.



KEY TO PHOTOGRAPH, COURT OF APPEALS. (1878).

JUDGES OF THE COURT.

G. Hon. Theodore Miller.
F. Hon. Charles A. Rapallo.
E. Hon. Wm. Allen.
D. Hon. Sanford E. Church, Chief Justice.
C. Hon. Charles J. Folger.
B. Hon. Charles Andrews.
A. Hon. Robert Earle.

OFFICERS OF THE COURT.

H. Amos Dodge, Court Crier.
I. F. Stanton Perrin, Deputy Clerk.
K. Hon. E. O. Perrin, Clerk of the Court.
L. A. J. Chester, Attendant.
M. G. Parks, Assistant Clerk.
N. H. E. Sickles, Reporter.
X. J. Cooper, Doorkeeper.

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2. Prof. T. W. Dwight, N. Y. City.
3. Hon. Charles Hughes, Sandy Hill, N.Y.
4. J. E. Burrill, Esq., N.Y. City.
5. A. J. Vanderpoel, Esq., N.Y. City.
6. *Hon. Samuel Hand, Albany.
7. Hon. Wm. M. Evarts, Washington, D.C.
8. *Hon. Jas. K. Porter, New York City.
9. W. C. Ruger, Esq., Syracuse.
10. Wm. H. Waring, Esq., Brooklyn, N.Y.
11. S. P. Nash, Esq., N.Y. City.
12. Hon. David Dudley Field, N.Y. City.
13. Hon. Geo. B. Bradley, Corning, N.Y.
14. Hon. Horatio Ballard, Courtland, N.Y.
15. **Hon. Daniel Pratt, Syracuse, N.Y.
16. *Hon. Geo. F. Comstock, Syracuse.
17. Joseph H. Choate, Esq., N.Y. City.
18. Hon. Francis Kernan, Utica.
19. **Hon. Amassa J. Parker, Albany.
20. Hon. Sherman S. Rogers, Buffalo.
21. Benj. D. Silliman, Esq., Brooklyn.
22. E. D. Roman, Esq., Albany.
23. Hon. J. McGuire, Elmira, N.Y.
24. William Allen Butler, N.Y. City.
25. N. Comstock, Esq., Brooklyn.
26. Hon. J. Lawrence Smith, Smithtown, L.I.
27. Calvin Frost. Esq., Peekskill, N.Y.
28. John Sherwood, Esq., N.Y. City.
29. Hon. Homer A. Nelson, Po'keepsie, N.Y.
30. Gen'l Jas. H. Martindale, Rochester.
31. *Hon. Henry E. Davis, N.Y. City.
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33. Hon. Geo. F. Danforth, Rochester.
34. Elbridge T. Gerry, Esq., N.Y. City.
35. J. Hampton Wood, Esq., Albany.
36. N. C. Moak, Esq., Albany.
37. L. B. Kerr, Esq., DeRuyter, N.Y.
38. Esek Cowan, Esq., Troy, N.Y.
39. Hon. A. P. Lanning, Buffalo, N.Y.
40. W. F. Coggswell, Esq., Rochester.
41. Hon. Wm. A. Beach, N.Y. City.
42. *Hon. Henry R. Seldon, Rochester.
43. Roger A. Pryor, Esq., Brooklyn.
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45. Hon. John F. Seymour, Utica.
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S. Scott D. M. Goodwin.
T. S. W. Rosendale.
U. A. T. Bulkley.
V. P. F. Miller.
W. Geo. H. Stevens.

*Formerly Judge of the Court of Appeals.

**Ex-Judge, Supreme Court.

The Green Bag.

VOL. II. No. 7. BOSTON. JULY, 1890.

THE NEW YORK COURT OF APPEALS.

PART I.

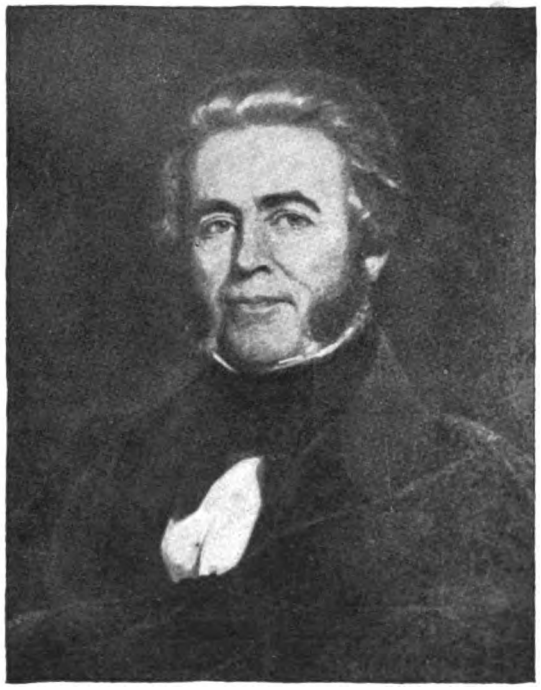
BY IRVING BROWNE.

THE Court of Appeals of the State of New York is unquestionably the most influential of all the State courts of this country. The variety, novelty, and importance of the business brought before it, and the remarkable abilities of its long line of judges have given it this reputation. Other courts have had some judges of equal powers; but the amounts at stake, and the general importance of its litigation, coming from the commercial metropolis, and concerning the agricultural and manufacturing interests of the most populous of the States, have made the judgments of this court the most interesting of any, independently of the question of judicial talents. Its history should be narrated in two divisions, the line of separation being the reorganization of the court in 1870.

The judicial machinery of the State of New York was entirely remodelled by the Constitution of 1846. At that time, as organized under the Constitution of 1823, the Supreme Court was partitioned into eight trial circuits, with one judge to each. From these an appeal lay to three other judges, who sat for the whole State. From these lay an appeal to the Court for the Correction of Errors, which consisted of the Senate, the Chancellor, and the three Supreme Court judges. There was also the Court of Chancery, made famous as the fountain of equity learning in this country by Kent and Walworth. I have said in another place, and it is well to repeat: "The chief-justices of the Supreme Court during this period were John Savage, Samuel Nelson, Greene C. Bronson, and Samuel Beardsley; and the associate justices were Jacob Sutherland, John Woodworth, William L. Marcy, Samuel Nelson, Greene C. Bronson, Esek Cowen, Samuel Beardsley, Freeborn G. Jewett, Frederick Whittlesey, Thomas McKissock. It would be difficult to parallel these names, for public virtue, professional learning, and successful administration of the law, in the history of any other community. The name of Marcy is of national reputation, as Senator of the United States and Secretary of State; a man of the highest quality of native powers, our State recognizes him as perhaps the greatest of her statesmen. Judge Nelson served his country, in our State and on the Federal Supreme bench, for half a century; a man of leonine strength and sagacity. The reputation of Judge Cowen is also a national possession. It is doubtful that any other State judge, excepting Kent and Shaw, is so well and widely known throughout the country. He possessed great native acuteness, displayed an unparalleled industry, and acquired prodigious learning. His treatise on Justices' Courts and his notes on Phillips' Evidence, written in association with Nicholas Hill, stand on the shelves of nearly every lawyer in the land,— a mine of professional learning. Judge Bronson was a man of marvellous brilliancy and power. Seldom has any court been composed of three such legal giants as Nelson, Cowen, and Bronson, and seldom

have they been succeeded by such men as Beardsley and Jewett. Our Supreme Court, under these eminent men, may be declared the finest fruit of the system of an appointed judiciary."

In the early years of the Court for the Correction of Errors, which was a half-way copy of the Lords' Court, the Senators delivered few opinions. The Chancellor and one or more of the law judges usually led off, and the Senators frequently contented themselves with voting. Later, frequent written opinions were delivered by DeWitt Clinton, William H. Seward, Gulian C. Verplanck, Alonzo C. Paige, Luther R. Bradish, William Ruger, Erastus Root, Harvey Putnam, John A. Lott, Lyman Sherwood, Elijah Rhoades, Henry W. Strong, Abraham Bockes, John Porter, Addison Gardiner, Hiram F. Mather, Nathaniel P. Tallmadge, John W. Edmonds, Albert H. Tracy, Leonard Maison, Samuel L. Edwards, David Wager, Gabriel Furman, John Crary, Charles Stebbins, Cadwallader D. Colden, John Sudam, John C. Spencer. Those of Putnam, Verplanck, Spencer, Colden, Edmonds, Tracy, Edwards, and Maison were numerous, very learned, and very carefully elaborated. Senator Verplanck's were among the most numerous, and are among the most learned and elegant judicial essays ever written in this State. Verplanck was a man of remarkable scholarship, and acquired an enviable reputation both in law and letters.



GREENE C. BRONSON.

But in 1846 serious fault was found with the judicial system, and the following were the main grounds of objection to it: —

1. It was inadequate to keep pace with the litigation.

2. The people were disposed to elect their judges by popular vote rather than have them appointed by the governor.

3. The Court for the Correction of Errors was distrusted as a fluctuating and partisan body, too numerous and unwieldy, containing many who had no knowledge of law and yet were not apt to yield to the opinions of the lawyers.

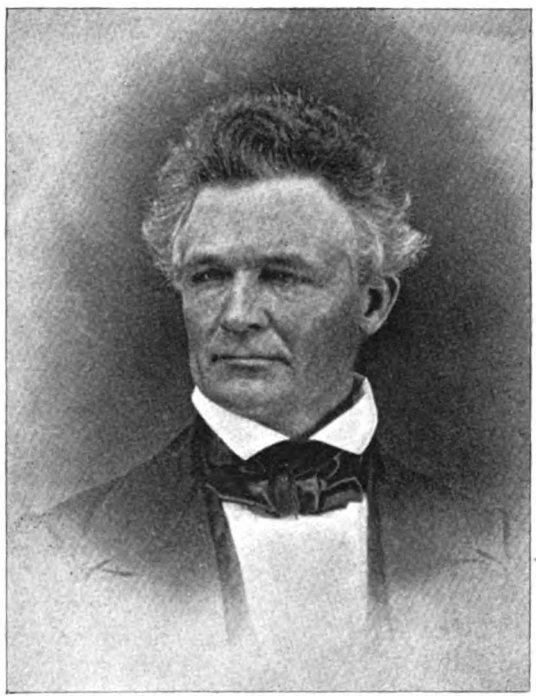
4. The Court of Chancery was regarded as tedious, costly, and capricious, and as subjecting the suitor to the proverbial danger of two stools.

5. The limitation of the judicial tenure to the age of sixty years was regarded as extremely unwise, as was demonstrated in the case of Kent; and at the same time it was felt that it would be unwise to constitute the term one for life.

The Constitution of 1846 abolished the Court for the Correction of Errors and the Court of Chancery, and reorganized the Supreme and Circuit Courts, and created, first, a Court of Appeals of eight judges, four to be chosen by the electors of the State, to sit for eight years, and four to be selected by the Governor from the class of justices of the Supreme Court having the shortest time to serve, and to sit one year each; second, a Supreme Court, with general jurisdiction in law and in equity, consisting of thirty-two justices, to be chosen

by the electors, in eight separate districts, the electors of each district choosing four, the justices first chosen to be classified so that one justice in every district should go out of office every two years, but every justice afterward chosen to hold for eight years; general terms of the supreme court for appeals to be held in the several districts by three or more of the justices.

The chief radical changes wrought by the new Constitution were therefore as follows: (1) The judges were to be chosen by popular election instead of gubernatorial appointment; (2) They were to hold for terms of eight years, but without limitation by reason of age; (3) The distinction between law and equity was abolished; (4) An ultimate court, composed of a comparatively small number and wholly of lawyers, was substituted for the Court for the Correction of Errors.



FREEBORN G. JEWETT.

The first Chief-Judge of the Court of Appeals was Freeborn G. Jewett, who had been an Associate Justice of the old Supreme Court; and his associates were Greene C. Bronson, who had been Chief-Justice of that court, and Addison Gardiner and Charles H. Ruggles, who had been Associate Judges of that court.

Chief-Justice Jewett was succeeded by Greene C. Bronson, Charles H. Ruggles, Addison Gardiner, Alexander S. Johnson, George F. Comstock, Samuel L. Selden, Hiram Denio, Henry E. Davies, Ward Hunt, Robert Earl. The remaining Associates were the last named, excepting Gardiner, Ruggles, and Earl, and in addition, Samuel A. Foot, William B. Wright, Henry R. Selden, John K. Porter, Martin Grover, Lewis B. Woodruff, Charles Mason, John A. Lott.

Of this shining list all but three — Comstock, Porter, and Earl — have died. It would be a grateful task to make careful research and write detailed biographies of all of them; but the limitation of space forbids, and the materials for some of them are scant and mainly traditional.

Greene C. Bronson.

Of this judge, Mr. W. F. Cogswell writes: —

"It is a matter of common knowledge that the marked men of the court were Judges Bronson and Gardiner. They were diametrically the opposite of each other in many respects. Judge Bronson was by nature an intense conservative. He had been a member for thirteen years of a court of solely appellate Common-law jurisdiction. He was, by the very proprieties of his office, precluded from mingling much with men or affairs. He was thoroughly grounded in the common law, without much adaptedness for or acquaintance with equity jurisprudence. He was a great judge in a comparatively limited sphere. Judge Gardiner, on the contrary, was a radical, and had his mind liberalized by large acquaintance with men and affairs; for three years he had presided over the higher branch of the State Legislature; he had administered, for eight years, as Vice-Chancellor, equity law. It was no more than natural that these men, both men of great force and positiveness of character, with dissimilar natures and dissimilar experi-

ences, should, as they often did, differ. There was nothing unseemly in their differences, but some of the best specimens of juridical discussion in the reports of this State will be found in their conflicting opinions, as the one or the other led the majority or the minority of the court."

After leaving the bench Bronson became counsel for the city of New York. In Shindler *v.* Houston, 1 N. Y. 261, he united in reversing his own judgment in the Supreme Court. In Vilas *v.* Jones, 1 N. Y. 274, on usury, and Shorter *v.* People, 2 N. Y. 193, on self-defence, may be found good examples of his powers. His politics resembled the common law rather than equity, — he was a "hard-shell" Democrat. He once ran, or rather cantered, for governor, — his speed was not sufficient.

Freeborn G. Jewett.

Of Judge Jewett there are singularly few records except those which he made in the reports. He was prominent in politics and in law. He was Inspector of State Prisons, and Member of Assembly and of Congress, County Judge, Circuit Judge, and the first Chief-Justice of the Court of Appeals chosen by law under the Constitution of 1846. His opinions show him to have been a well-grounded lawyer, a patient investigator, and a clear and discriminating writer. The court in their memorial "remember the clearness of his intellect, the justness of his judgment, the purity and benevolence of his heart." He was born in Connecticut, in 1791, had a common education, resigned from the bench in 1853, owing to illness, and died in 1858. He was a Democrat in politics.

Charles H. Ruggles.

Judge Ruggles was the chairman of the committee, in the Constitutional Convention of 1846, appointed to prepare the new judicial system. His judicial powers are well exemplified in De Peyster *v.* Michael, 6 N. Y. 467, holding a reservation of quarter-sales in a lease to be invalid; Silsbury *v.* McCoon, 3 N. Y. 380, holding that a wilful trespasser gets no title to whiskey manufactured from corn which he has converted; and in Barto *v.* Himrod, 8 N. Y. 483, holding that a statute dependent on popular adoption is void.

Addison Gardiner.

Addison Gardiner was born in New Hampshire in 1797. His grandfather was one of the few but immortal patriots who fell at Lexington. He was appointed circuit judge at the age of thirty-two. He presided at the historical trial of People *v.* Mather, indicted for conspiracy in abducting Morgan on account of disclosing the secrets of the Masonic order. He was elected lieutenant-governor in 1844 and in 1846, as a Democrat, and was thus President of the Senate and the Court for the Correction of Errors. It is said that he might subsequently have been governor if he would.

On the bench of the Court of Appeals he frequently differed from Bronson, the other leading mind of the court as first constituted. He voluntarily retired in 1855, owing, it is said, to the fluctuating character of the court. From that time, for twenty-five years, he heard as referee as many important causes as any judge of the Supreme Court. In 1861 he declined the office of Peace Commissioner. A competent critic[1] has said: "There have been judges of greater learning, but in large comprehension and true judicial wisdom it is doubted whether he is surpassed by any. . . . His opinions are simple, terse, business-like documents. . . . He never wrote a line to display his learning, or for rhetorical effect. . . . The hesitating utterance of the truth by the timid was not lost upon his receptive ear; the subtle perversion of it by the disingenuous did not deceive or mislead him." He was a man of magnificent physique; genial, sympathetic, and full of humor; fond of history, poetry, and fiction; careless of fame; deeply reli-

[1] Mr. William F. Cogswell.

gious. His long seclusion from public life was regarded as a public deprivation. He died with unimpaired powers, in 1883. Good examples of his opinions may be found in Miller *v.* Danks, 1 N. Y. 129 (dissenting), on the constitutionality of an exemption of personalty from execution for antecedent debts; Leggett *v.* Perkins, 2 N. Y. 297, on a trust to receive and pay over rents and profits of land; Chautauqua Co. Bank *v.* White, 6 N. Y. 236, on the scope of a receiver's deed; and Talmage *v.* Pell, 7 N. Y. 328, on an illegal purchase of State stocks by a bank.

Ward Hunt.

Of Ward Hunt it is sufficient to say that he was a scholarly man, was governor of the State, and at his death was a judge of the United States Supreme Court.

Henry E. Davies.

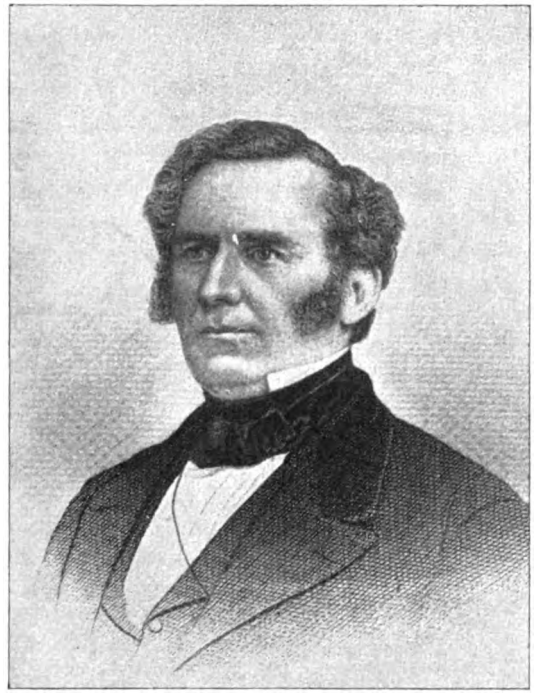
Henry E. Davies was one of the most laborious and exhaustive of the old school of judges, who thought it essential to write essays for opinions, reviewing every case ever decided on the point in question, and many that steered clear of the point, discriminating, reconciling, approving, or disapproving, and supplying a small text-book where an announcement of the rule of the case would have been more satisfactory to everybody but the counsel; the men of precedent rather than of principle. Excellent examples of these opinions are afforded in People *v.* Canal Appraisers, 33 N. Y. 461, on compensation for diversion by the State of the waters of the Mohawk River for the Erie Canal; Henry *v.* Root, 33 N. Y. 526, on ratification of an infant's contract; DuBois *v.* Ray, 35 N. Y. 162, on reading "have" for "leave" in a will; Gardner *v.* Ogden, 22 N. Y. 327, on jurisdiction to compel conveyance of land in another State. It is probable, however, that such opinions were valuable at that stage of our jurisprudence. They are monuments of learning and labor, and have supplied learning and saved labor to succeeding judges and lawyers. It is said that Judge Davies regarded his opinion, delivered when he was upon the Supreme Court bench, in the case of the Cumberland Coal Company *v.* Sherman, 30 Barb. 553, as one of the most important which he ever delivered. That case for the first time in our State, I think, declares the principle that directors of corporations are to be regarded as trustees, and are accountable to the corporation and its stockholders as trustees. He was one of the best circuit judges I ever knew, and one of the few who have ever had the courage to rule out merely cumulative evidence in the first instance. He despatched business rapidly and accurately. He presided at the famous trial of Mrs. Cunningham, for murder, in the city of New York. I am informed "that he went to his library after dinner on Friday evening of the trial to prepare his charge to the jury, and that he never left his chair until the breakfast-bell rang the following morning at eight o'clock, when he was finishing his charge.

ADDISON GARDINER.

He never experienced the slightest inconvenience from that or any other extra effort that he made. Such was his endurance."

John K. Porter.

John K. Porter wrote a few superb opinions, rich in research, masterly in argument, exquisite in style; but it was felt that he was greater as an advocate than as a judge, and he found himself more at home at the bar than on the bench, and resigned his judgeship to resume his leadership at the bar. He has long since retired from practice. Certainly he was one of the most influential and admirable advocates of this country, and his name will long be remembered from his association with the great cases of the Parish Will, Tilton *v.* Beecher, the Whiskey Frauds, and the Guiteau prosecution. I endeavored years ago to estimate his genius in an article in the "Albany Law Journal," vol. 12, p. 4, entitled "Three Great Advocates," contrasting him with Evarts and Beach. He is an accomplished scholar, a brilliant wit, and a charming companion. He lighted up the commonest case by the blaze of his beautiful genius, and the greatest speech I ever heard in a court-room was made by him on the question of the good faith of an assignment for creditors, of which nothing is left but the echo, but which at the time extorted from his powerful antagonist, Beach, the exclamation, "I wish I had the brains to make such a speech as that." As a judicial writer Porter may be seen at his best in Hulett *v.* Swift, 33 N. Y. 571, on the liability of an innkeeper for the destruction of his guests' goods by an accidental fire; Bascom *v.* Albertson, 34 N. Y. 583, on charitable trusts and conflict of laws; Ernst *v.* Hudson River R. Co., 35 N. Y. 9, on negligence at a railroad and highway crossing; Tyler *v.* Gardiner, 35 N. Y. 559, on undue influence over a testator. It is easy to select from Judge Porter's opinions many sentences as felicitous as the following from Bascom *v.* Albertson: "They had been warned by the experience of their ancestors that the free alienability of property is as essential to the healthful condition of a State as the flowing of the tides to the purity of the sea, or the circulation of the blood to animal life."



HENRY E. DAVIES.

William B. Wright.

William B. Wright was one of the very best judicial writers who have illuminated the pages of the law reports of this country. In a memorial address Alfred B. Street, the poet, said of him: "His taste was cultured by much and varied reading, and he twined the fresh roses of literature with the dry lichens of the law. As a writer his style was beautifully concise and clear, his ideas showing through the clearness like objects through crystal water." He was of Irish extraction, of small schooling; was apprenticed a printer, and then became an influential political editor. His mind was not alert, but his conclusions after deliberation were just and weighty. His body was ponderous, and kept pace with his

mental operations. An excellent example of his writing may be seen in Levy *v.* Levy, 33 N. Y. 97, on charitable trusts. Also see Sparrow *v.* Kingman, 1 N. Y. 242, on estoppel *in pais*.

Henry R. Selden.

Henry R. Selden's name is better known as reporter than as judge, as he held the former office from 1851 to 1854, and reported the decisions from volume 5 to volume 10 inclusive, and a supplementary volume known as Selden's Notes. He was a most excellent reporter. He is known in this State as a lawyer of uncommon ability, and his opinions in volumes 25–31 are a confirmation of his reputation. He held the office of lieutenant-governor. He seems to have been a modest man. He was a member of the convention that first nominated Lincoln for the presidency, and it is said that he declined the nomination for the vice-presidency in favor of Hamlin. He was a brother of Samuel L. Selden, and on the retirement of the latter in 1862, he was appointed chief-justice in his place; but he took his seat as an associate, leaving the place of chief to be filled by Judge Denio, who would have succeeded under the Constitution of 1846. He was early interested in telegraphy with Morse, and assisted in forming a company operating from Harrisburg to Lancaster, Penn., out of which grew the Western Union Company.

JOHN K. PORTER.

Samuel L. Selden.

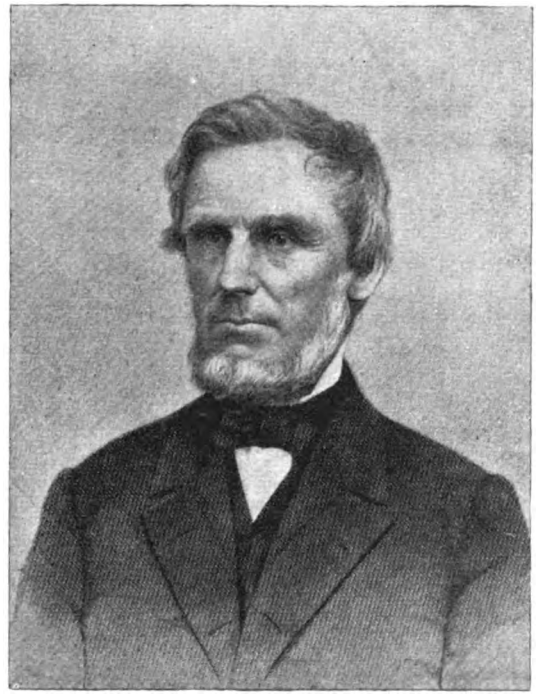
Samuel L. Selden may be judged by his great (dissenting) opinion in Curtis *v.* Leavitt, 15 N. Y. 9; and by those in Hoe *v.* Sanborn, 21 N. Y. 552, on implied warranty; Lampman *v.* Milks, 21 N. Y. 505, on diversion of water; Matter of Cooper, 22 N. Y. 80, on admission to the bar; Bissell *v.* Railroad Co., 22 N. Y. 259, on *ultra vires*. He was born in 1800, elected to the court in 1856, resigned in 1864, and died in 1876. He was a profoundly learned lawyer, and a man of the most unassuming, pure, and beautiful character.

But probably the most distinguished names in this list are those of Hiram Denio, Alexander S. Johnson, and George F. Comstock. Rarely have three men of such remarkable judicial talents sat contemporaneously in the same court in this country.

Hiram Denio.

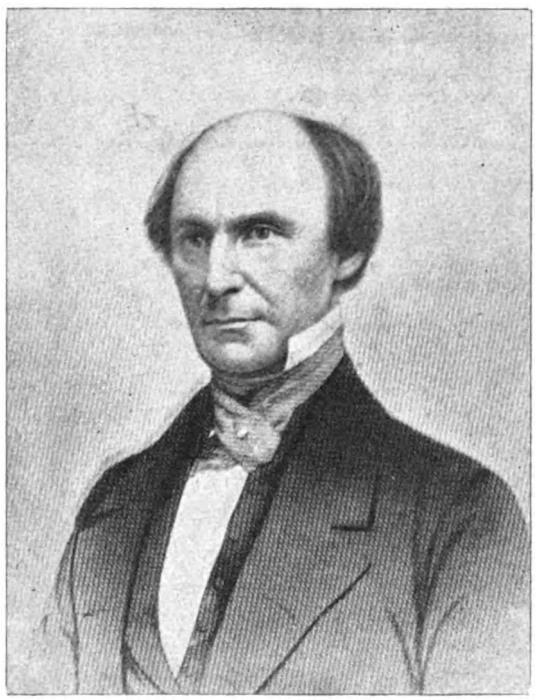
Hiram Denio was born in 1799. He was appointed circuit judge and vice-chancellor in 1834; but owing to ill health he resigned after four years' service, and returned to practice. He was reporter of the decisions of the Court for the Correction of Errors and the Supreme Court from 1845 to 1848, and the five volumes bearing his name are models for the imitation of all who would succeed in this difficult duty. In June, 1853,

he was appointed by the governor to fill a vacancy on the bench of the Court of Appeals, and was twice elected to that place by the popular vote, serving thirteen years. At the close of his second term, in 1866, to the general regret, he declined a re-nomination. He was by no means a brilliant man, and was conservative and unprogressive. He was strongly opposed to the great legal reforms effected by the Constitution of 1846. In the preface to the last volume of his reports he said: "A new system of legal procedure has been introduced, under the specious name of reform; and in professed obedience to a constitutional provision looking only to the modes of practice, all the divisions under which legal rights and remedies had been arranged, and the whole nomenclature of legal science, as learned and practised in this court, have been abolished. The ancient simplicity of the common law has been made to give place to a system in which every case is made a special one; and the ancient and established principles of jurisprudence, illustrated and enforced in the series of adjudications of which this volume is the concluding portion, can now only be found and applied by approximation and a species of elective affinity, as tedious in its operation as it must be uncertain and fluctuating in its result." This now sounds amusing. But it must be confessed that Judge Denio was not a factious opponent of the new system; he generally lent his powers to the elucidation of it in a candid manner. The most technical and illogical exhibition of his intellect is perhaps in White *v.* Wager, 25 N. Y. 328, where the court held (Wright and Smith, JJ., dissenting) that under the married women's acts of 1848 and 1849, giving the wife power to convey "as if unmarried," she could not effectually convey directly to the husband, because the acts did not remove the husband's common-law disability to take directly from her. In other words, a wife cannot convey to her husband, like a single woman, because a single woman has no husband. But he had a comprehensive, calm, and clear intellect, a strong memory, untiring diligence, absolute fairness, and complete independence. His learning was so great that he had a reputation in Westminster Hall as well as in every State of the Union. No judge ever more fully possessed public confidence. So strong was this that on his death, an eminent lawyer, in pronouncing his eulogy in the Court of Appeals, declared that "counsel would willingly argue their case before him alone, sitting as a court of last resort." A more emphatic and significant tribute was never paid to a deceased judge, and it would form a fitting epitaph. His independence was illustrated by his opinion in the Lemmon case (20 N. Y. 562), in which he applied to our State Mansfield's immortal declaration that no man could breathe the air of England and be a slave. This decision gave temporary offence to the party which elected him, and for a time endangered his re-nomination; but the public confidence in



HENRY R. SELDEN.

his justice and purity finally prevailed. His judicial career was also distinguished by modesty, dignity, just regard for those representing suitors before him, and the most deliberate consideration of their causes. Many men on this bench have surpassed him in brilliancy and scholarship, and in qualities which obtain popular admiration; and the reverence in which he has always been held is a striking proof of the truth of the utterance of America's great philosopher, that character is stronger than intellect. I refer the student to his opinions in Williams *v.* Williams, 8 N. Y. 525, on charitable trusts; Trustees of the New York Protestant Episcopal School *v.* Davis, 31 N. Y. 574, on the constitutionality of a statute authorizing the sale for assessments of land held by a charitable corporation; Darlington *v.* City of New York, 31 N. Y. 164, on the constitutionality of an act providing for compensation by cities for property destroyed by mobs; and his dissenting opinion in Caujolle *v.* Ferrié, 23 N. Y. 90, on presumption of illegitimacy. Denio was rather short, very plump, and had a good-humored, not intellectual face, with genial blue eyes; but his head was noble and spacious.

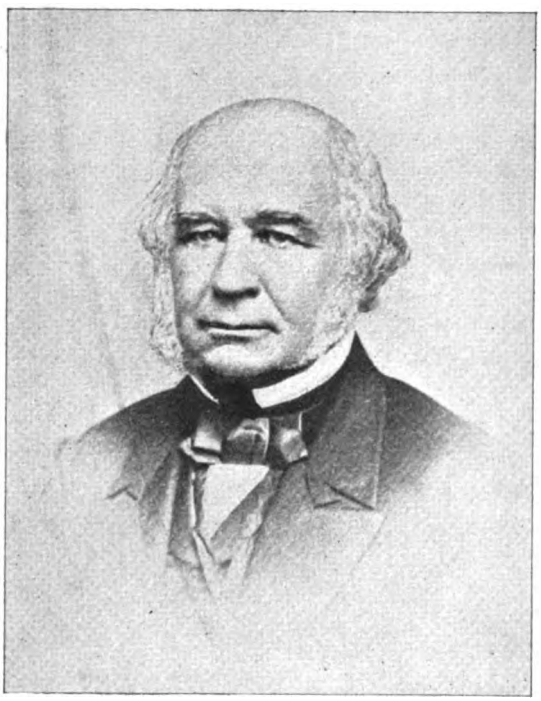


SAMUEL L. SELDEN.

Alexander S. Johnson.

Alexander S. Johnson was born in 1817, and was educated at Yale College. He was elected to the Court of Appeals in 1851, and held that place until 1860. He became a judge of that court at an earlier age than any other person, with possibly one exception, upon whom the honor has ever been conferred. In 1873 he was appointed a Commissioner of Appeals to fill a vacancy, and in the same year was appointed to the Court of Appeals to fill a vacancy, and held that place until 1874. It is noteworthy that he was defeated on the Democratic ticket in 1860, and on the Republican ticket in 1874, in a canvas for the Court of Appeals. For some four years from 1864, he was engaged, under appointment by President Lincoln, as Commissioner for the United States in the settlement of claims of the Hudson's Bay and Puget Sound Companies, under treaty with Great Britain. Subsequently he was on a commission to revise the Statutes of New York. This place he resigned on his appointment, in 1875, as United States Circuit Judge for the second district, which post he held at the time of his death in 1878. He had much the same mental and moral characteristics as Judge Denio, but was perhaps of a broader cast of mind and larger general culture. Judge Comstock said of him: "His was the most absolutely impartial mind that I ever knew. The parties to a controversy were to him a mere abstraction." Of his opinions he said: "They are models of neatness, simplicity, and precision." He was a scientific student all his life, and a quite ardent microscopist. As Regent, it is said that his bibliographical knowledge, exquisite taste, and great culture were exceedingly useful in building up

the State Library. His life was passed in a quiet and unostentatious way; and yet, as may be seen from the list of his offices, he did important and various public service, and it was always done to the complete acceptance of the people and the legal profession. In person he was of middle height, stout and broad-chested, with eyes as black and keen as a hawk's. He was an adventurous sportsman with rod and gun, and I have more than once seen him in a small boat on Lake George, in a flannel shirt, hailing the steamboat for a tow to the hotel after a hard and successful day's work in the woods or on the water. See his opinions in Wenzler *v.* People, 58 N. Y. 516, on a question of constitutional law concerning an office; and Wynehamer *v.* People, 13 N. Y. 378, on the constitutionality of an excise act.

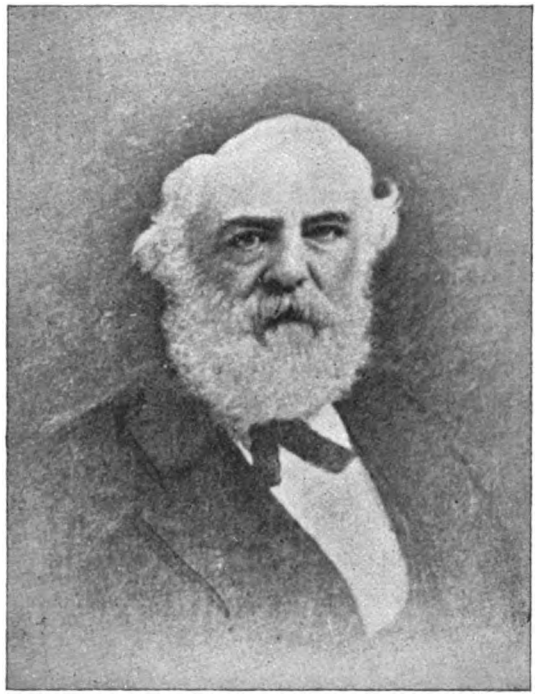


HIRAM DENIO.

George F. Comstock.

Judge Comstock's profound learning and brilliant intellect have probably caused him generally to be regarded as the ablest of the judges who graced this bench during the first period. He was elected in 1856 to fill the vacancy made by the resignation of Judge Ruggles, and became the chief in 1860, and so continued until the expiration of his term in 1861. He thus sat in the court only five years, but he left an indelible impress upon the jurisprudence of the State and the country. There have been judges regarded as "safer," perhaps as "sounder;" but there can be no question about his intellectual pre-eminence, his marvellous research, his subtle discrimination, his dialectic skill, his freedom from bondage to precedents, his boldness and originality. He has been called an iconoclast, and accused of overturning ancient law to an unprecedented and dangerous extent. But like Judge Allen, he seems to have had the ability to enforce his views upon his associates — men of no mean powers — in an unanswerable manner. It is probable that during his short incumbency he has pronounced more great and important and widely influential opinions than any other judge who has ever sat in the court for any length of time, which have made him famous in every State of the Union and on the other side of the ocean. To substantiate this statement, it is only necessary to cite the Wynehamer case, 13 N. Y. 378; Downing *v.* Marshall, 23 N. Y. 366, on charitable trusts; Bissell *v.* Michigan, etc. R. Co., 22 N. Y. 258, on the liability of a corporation for a personal injury in an act *ultra vires;* Storrs *v.* City of Utica, 17 N. Y. 104, on the responsibility of a city for an injury by an unguarded excavation in a city; Condit *v.* Baldwin, 21 N. Y. 219 (dissenting), on usury by agent; Marshall *v.* Moseley, 21 N. Y. 280, on apportionment of rent falling due after termination of life estate; Mallory *v.* Gillett, 21 N. Y. 412, on the statute of frauds, — oral promise to pay the debt of another; Curtis *v.* Leavitt, 15 N. Y. 9, on trusts; Matter of Reciprocity Bank, 22 N. Y.

9, on power to alter or repeal bank charter; Merritt *v.* Todd, 23 N. Y. 28, on demand of payment of a demand note on interest to hold indorser; People *v.* Commissioners, 23 N. Y. 192 (dissenting), on taxation of stock of the Federal debt; People *v.* Commissioners, 23 N. Y. 224, on taxation of personalty out of the State; Beekman *v.* Bonsor, 23 N. Y. 298, on charitable uses. The list might be extended indefinitely, but enough have been cited to give an idea of the scope and quality of his work. Some idea of the labor which he bestowed upon these wonderful opinions may be gained from the information that he spent an entire vacation on the Bissell case.



ALEXANDER S. JOHNSON.

Before he went on the bench, Judge Comstock had a wide reputation as an advocate, and was retained in the most important business; and since he left the bench he has been in active practice at Syracuse, and engaged in great and laborious causes, as for example in the Sharp case. He is still practising, at the age of more than eighty years.

The first Supreme Court justices who sat in the old Court of Appeals were Samuel Jones, William B. Wright, Thomas A. Johnson. These were succeeded by Charles Gray, Daniel Cady, Selah B. Strong, William H. Shankland, James G. Hoyt, Elisha P. Hurlbut, Ira Harris, Daniel Pratt, Henry W. Taylor, William T. McCoun, Alonzo C. Paige, Hiram Gray, James Mullett, John W. Edmonds, Malbone Watson, Philo Gridley, Henry Welles, Nathan B. Morse, John Willard, Charles Mason, Moses Taggart, Henry P. Edwards, Amasa J. Parker, William F. Allen, Samuel L. Selden, Gilbert Dean, Augustus C. Hand, Schuyler Crippen, Richard P. Marvin, William Mitchell, Frederick W. Hubbard, Thomas A. Johnson, John W. Brown, William H. Shankland, Levi F. Bowen, James J. Roosevelt, Theron R. Strong, Selah B. Strong, Cornelius L. Allen, Hiram Gray, Martin Grover, Thomas W. Clerke, William J. Bacon, John A. Lott, Amaziah B. James, Charles Mason, James G. Hoyt, Josiah Sutherland, George Gould, E. Darwin Smith, James Emott, Enoch H. Rosekrans, Ransom Balcom, Daniel P. Ingraham, Henry Hogeboom, Joseph Mullin, Platt Potter, William W. Campbell, Noah Davis, Jr., William H. Leonard, Leroy Morgan, Rufus W. Peckham, James C. Smith, William W. Scrugham, Augustus W. Bockes, John M. Parker, William Fullerton, Theodore Miller, Charles C. Dwight, William Murray, Charles Daniels, Henry A. Foster, Charles R. Ingalls.

This list furnished a United States Senator, four judges of the present Court of Appeals, and two Commissioners of Appeals. As a whole, these men were characterized by unusual learning, and had all the other essentials of the good magistrate. Some of these names have become celebrated in the legal and judicial history of the State.

A number of these judges had been circuit judges of the old Supreme Court: Emott, Willard, Gridley, Parker, Edmonds, and Gray.

Samuel Jones wrote opinions of wonderful learning in Corning *v.* McCullough, 1 N. Y. 47, on the statute of limitations in action against a stockholder; Ruckman *v.* Pitcher, 1 N. Y. 392, on wagers; Brewster *v.* Stryker, 2 N. Y. 19, on implied trusts.

Daniel Cady was a man of proverbial sturdiness of character, whose name was a household word among the laity as well as among the lawyers. He not only had profound legal learning and judicial calmness, but when he was at the bar he was a powerful advocate. It is related that so deep was he in the public confidence that he was more than once retained, after his judicial career was finished, merely to "look virtuous;" to say nothing and to do nothing but nod assent to all his associate might say, and wag a vigorous dissent from all the opposition might utter. The story is perhaps exaggerated, but its currency gives an impression of the man's reputation. See Judge Cady's opinion in Dry Dock Bank *v.* American, etc. Co., 3 N. Y. 344, on usurious loan under guise of a sale.

Ira Harris was one of the most illustrious of our judges, a man of broad mind and great foresight, a legal reformer, and a renowned teacher of law. In a sketch of the Albany Law School, in a former number of this periodical, may be found an estimate of his character and services, which it is not necessary to repeat.

John W. Edmonds was a remarkably brilliant and learned man, once attorney-general and State senator, who conferred lasting benefit on his profession by various volumes of reports, and especially by his edition of the statutes of the State. He once went on a government mission to the Indians, and learned several Indian languages. He was State-Prison Inspector, and founded a society for ameliorating the condition of criminals, and was instrumental in mitigating corporeal punishment of convicts and instituting rewards for their good behavior. He was especially learned in criminal law. He was one of the ablest of the old circuit judges. On the criminal trial of "Big Thunder," the anti-rent bogus Indian chief, he evinced his courage by committing Attorney-General John Van Buren and Ambrose S. Jordan for contempt in quarrelling in court, imprisoning one in the clerk's office and the other in the sheriff's office. In his latter years the judge was a firm believer in "spirits;" and although they flew all around him in his office and played pranks, they seemed not to disturb his grasp of earthly affairs.

Alonzo C. Paige was the well-known and admirable reporter of the ten volumes of Chancery reports which bear his name.

John Willard was the author of elaborate and favorite treatises on Equity Jurisprudence and Real Property.

Of the brilliant and useful career of Amasa J. Parker sufficient has been said in my sketch of the Albany Law School. He wrote a very interesting opinion in Snedeker *v.* Warring, 12 N. Y. 170, holding that a sun-dial and an out-door statue are fixtures. He died in May, 1890, in active practice, at the age of eighty-three.

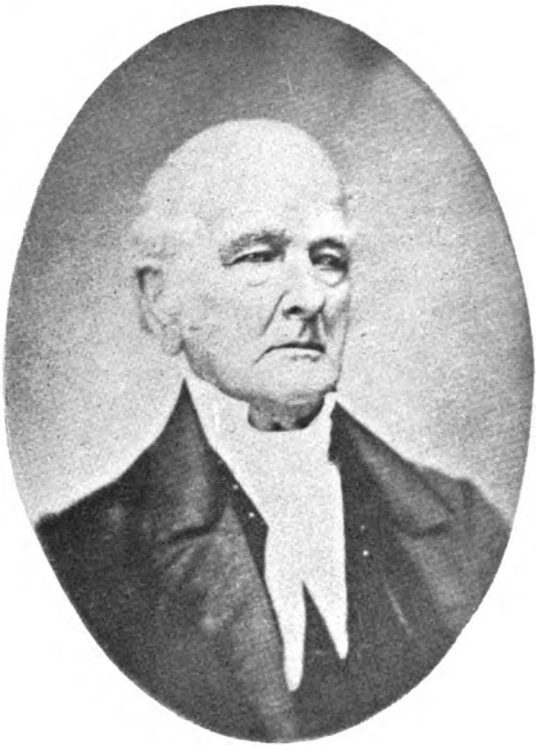
George Gould, son of the judge who founded the Litchfield, Conn., Law School, and wrote the learned work on Pleading, was the only "Know-nothing" judge of our State, and paradoxically he was the best-educated lawyer I ever knew, although he did lay down the untenable doctrine, in Alden *v.* N. Y. Central R. Co., 26 N. Y. 102, that a common carrier is an insurer of the roadworthiness of its vehicles. He afterwards became so strenuous in enforcing the doctrine of "Look before you cross," as against persons suing on account of collisions at the crossings of railroads and highways, that the present Esek Cowen jocosely represented him as charging that "any person on the point of being killed is bound to stand still and look both ways at the same time; otherwise the killing, although not praiseworthy, is *damnum absque injuria*." (The judge de-

lighted in Latin.) Judge Gould was very talkative, both off and on the bench; but his charges to the jury were the shortest ever known. They reminded me of an old clergyman in New Hampshire, a great wit, who was called on to make a prayer at the dedication of an Odd Fellows' hall. He had never heard of that new-fangled institution, and so he prayed as follows: "O Lord, we pray for — we know not what. If it be good, bless it; if it be bad, curse it. Amen." This was about the sum and substance of the judge's charges. On one occasion, when he was presiding at general term, — the appellate sittings of the Supreme Court, — he informed Mitchell Sanford that his hour was up. "Well," said Sanford, "your Honor ought to give me half an hour more, for you have talked half of my time." On another occasion he fell into the dock at Albany in trying to jump on the ferry-boat. In telling Martin I. Townsend about it, he said: "I can't swim a stroke, but I just lay on my back, kept my mouth shut, and came off safe." Townsend replied: "That's the first time I ever heard of your keeping your mouth shut." Meeting him once on the street on a Wednesday, I said to him that I thought he was absent, holding the Ulster circuit. "Oh, yes," he said, "I went down there Monday, organized court, called the calendar, and took up a railroad cause in which both sides were ready. The other lawyers began to pack up their papers, and spectators began to leave the court-room. I took out my knife, rapped on the bench, and said, 'Gentlemen, gentlemen, let there be order.' One lawyer said, 'Your Honor, this is going to be a long cause, and it is supposed to be unnecessary for other lawyers and witnesses to wait.' 'Don't be too sure of that,' I said; 'I sometimes make long causes very short;' but," with a shrug of his shoulders, "they all went. I nonsuited that plaintiff in three quarters of an hour, called the calendar through, nobody was ready, adjourned court, and here I am. I'll teach those fellows." The judge taught me three things, — to love Walter Scott; that a good Episcopalian must be a Calvinist (not that I am either, nor perhaps that he was); and not to place an adverb between the sign of the infinitive mood and the verb. His own written style was bad, involved and full of parentheses, and he resorted to italics for emphasis to an excessive degree.

GEORGE F. COMSTOCK.

Henry Hogeboom was a man of unique characteristics, large law learning, and the most admirable rhetorician I ever heard in a court-room. His written opinions bear no comparison with his extemporaneous speeches. As an advocate he tried every case, — and I have heard him try many cases, — with a learning and a finish that seemed to indicate that he had made it his special study for years, and had arranged the testimony and every incident and detail in advance. He treated even his rebuffs with a coolness and indifference that deprived them of half their effect. His charge to the jury was the

most exquisite exhibition of intellect that his contemporaries ever witnessed on the bench; but it is a remarkable fact, so evenly did he balance the scales, and with such absolute candor did he treat both parties, that he had more disagreements than any other judge of his time. In his latter days as a circuit judge he fell into a critical and doubting state of mind, which led a lawyer to say that "he seemed to think it was impossible for the plaintiff in any case to make out a cause of action." Judge Hogeboom was a person of great dignity and of old-school manners and dress. He always wore very tight trousers, with straps; hence the irreverent young limbs of the law called him "Old Straps." A natural aristocrat, he never gave anybody anything more than a flabby hand-shake, and to most only two fingers. I cured him of that, as to myself, when I was an impudent youngster, by giving him one finger. After that I got a whole hand, and always much friendship and consideration. He was not destitute of humor. Some ten years ago a young lawyer made his debut at the Troy bar, in the defence of a criminal, at a session presided over by Judge Hogeboom. I said to the judge: "I understand young So-and-So produced a very good impression." "Why, y-e-s," drawled the judge, who was a great stickler for forensic etiquette, "but he had one habit that annoyed me very much. He had a lemon, and was continually sucking it. I did n't like the looks of it, but I did n't want to hurt the young man's feelings by a public reprimand; and so I addressed him a little note, intimating that unless the lemon was essential to his health, it would be more in accordance with the received etiquette of courts to desist from the exercise, or postpone it until recess. The lemon disappeared; but they told me afterward," continued the judge, with a grin and an indescribable squeal, "that it contained w-h-i-s-k-e-y." The judge was of a sluggish temperament; but when fully aroused, as he was on the famous trial of Mrs. Robinson, the "veiled murderess," he evinced tremendous power, and it behooved smaller men to stand out of the way. In contrasting his written with his spoken style, I am minded to reverse and apply Garrick's observation on Goldsmith, — that "he wrote like an angel, but talked like poor poll," — not that his writing was not respectable, but that he appears to no distinctive advantage in the reports, while at the bar he was pre-eminent in style. Judge Hogeboom always spoke of the opposite attorney or counsel as "my adversary," as if he were the devil.



DANIEL CADY.

Platt Potter, still living at the age of ninety, is known by his edition of Dwarris on Statutes and a work on Corporations. His opinions exhibit profound learning and patient research. But the most distinguished act of his life was in maintaining the independence and authority of the judiciary against the Assembly in an attempt to overawe it. In 1870 he was summoned to the bar

of the Assembly for a high breach of its privileges, for ordering the arrest of one of its members for disobedience of a subpœna issued by him as judge to appear before a grand jury. On this occasion he vindicated his right in person, and with such power, clearness, dignity, and eloquence that the Assembly impliedly acknowledged its error, and abandoned its action. Judge Potter's grand argument on that occasion will always be regarded as an unanswerable vindication of the rights of the judiciary, and a clear definition of the boundary of legislative interference. An impudent and tyrannical usurpation of authority was never more signally rebuked. For this special act, and for many years of eminently useful judicial service, this venerable citizen deserves remembrance and honor. Although of a very dignified and apparently austere exterior, he has a keen sense of humor, and was always noted for his good stories and companionable qualities. I once witnessed a very amusing exhibition in his court at chambers. William A. Beach was arguing a motion, and the opposite attorney exclaimed "That 's a lie." The attorneys were on opposite sides of a long table, at one end of which sat the demure judge. Beach glared at his antagonist an instant, and then started for him around the table. The offender skipped away from him at a lively gait, and after pursuing him once and a half around the table, Beach gave up the chase with a snort of disgust, and the other apologized. Both parties probably expected to be called to order; but the judge took no notice, judicial or otherwise, and gazed into vacancy in a rapt manner. As it was only his manner that was rapt, and not the table, Beach saw the ridiculous aspect of the affair, and desisted. Afterward I asked the judge why he did not interfere. "Well, he said, "I thought they perhaps needed a little exercise, and that they would be more apt to feel ashamed than if I had rebuked them."

During the earlier half of this period there was a remarkable lack of harmony in opinion. Dissents were extremely common and frequently formidable. It strikes one with surprise to note how many principles now regarded as well settled were originally pronounced by a divided court, sometimes by a majority of only one. In some cases, it seems to me, the weight of reputation as well as of reason was on the side of the minority. This state of things is probably inevitable in a new court, composed of strong and independent minds, dealing with novel and debatable propositions. The court grew more harmonious as it became older and more stable in its composition.

The early reporters of this period — Selden, Comstock, and Kernan — were great lawyers, and their reporting is among the most admirable in the history of American courts. The later reporters, Smith and Tiffany, were among the worst conceivable; and their work is a disgrace to the State, — prolix, inaccurate, incomplete, inelegant, and misleading.

LICKBARROW v. MASON.

(1 Sm. L. C. 737. — Temp. 1786–1793.)

By John Popplestone.

THE story told in the old Term Reports
Of Mason and Lickbarrow, and the right
To stop in transit goods, unpaid for, sold
To an insolvent; and when nights are long
Read by each student lovingly with care
Ere yet he girds him for his Final day.

For Freeman, as beside the Hasingvliet —
Fairest of all fair waterways that thread,
By street and bridge, the town of Rotterdam,
Where land and water meet, and every spire
Lies deep reflected in the waves beneath —
He paced half lost in meditative mood,
Spoke thus to Turings: "Lo! the summer wanes;
The corn that waved so fairly, while the Sun
Stood at his zenith, lies within your barns.
Send me a cargo; send it me, I pray,
There where the Royal Liver makes her nest,
At Liverpool, beyond the Northern Sea,
And I will pay you by acceptances."
Then Turings, hearing, did as he was prayed,
And through the northern water the white spray
Foamed and dashed high in air. Yet, ere he went,
Sang Holmes, the bravest of all knights who stood
Upon the vessel's deck, and Captain called,
And loud his voice and cheery. Thus he sang:

"Four bills of lading I have signed to-day;
Three bills of lading soon have passed away,
For Turings has them; three and one are four.

"One bill of lading still do I retain;
One I shall have when the good ship shall gain
Her distant port; and three and one are four."

Then, as they sailed, did Turings take the bills;
And two he gave to Freeman, who with joy
Received them, nor by him to be outdone
In knightly courtesy, he turned and gave
Bills of exchange to Turings for the price.
So the days passed, and the moon waxed and waned,
And August days grew shorter, and the barge
Yet sailed apace. But Freeman meanwhile sold
To Lickbarrow of Liverpool his corn,
The corn that lay within the vessel's hold,
And sent his bills of lading, and assigned
Them duly over, and Lickbarrow paid
His price. But Freeman, ill at ease, and grave
With many cares, and bearing now the pain
Of former loss, was bankrupt. Turings heard
And shuddered; his acceptances as yet
Were not matured, and lost was this his wealth.
Yet rallying, as becomes a noble knight,
Wise in the tent as valiant in the field,
He seized the bill of lading he retained,
And sent it in hot haste to England's shore,
To Liverpool, to Mason; and he said:
"My hour of need is come; friend, be my friend
In this my travail. Get ye down with speed
To where the water beats upon the land,
And oozes black by the far stretching quays,
And where ye see the fair *Endeavour* lie,
There haste ye. Take the corn she groaning bears —
My corn it is — and sell it; yet unpaid
Am I; and send the money ye acquire."
And Mason, ever faithful to his charge
Stayed not to question, did as Turings bid.
Then said Sir Holmes, seeing in Mason's hand
The bill of lading, "Sir, so let it be
As ye would have it. I have done my deed
Do ye what resteth." So he gave the corn,
And Mason took, and sold it, in despite
Of Lickbarrow, who, turning, strove and cried:
"Wrong, bitter wrong and foul despite ye do,
As though the land were kingless, or as though
Rough Might ruled o'er us. Sirs, the corn was mine;

Justly I bought it and the price I paid.
Give it, I pray you, that our strife may cease.
Yet — if ye will not — let us to the hall
Where, by his minster of the West, the King
Sits to right wrong, with him who meetly wears
The Ermine of the Lord Chief Justiceship."
But Mason answered: "Sir, ye waste your words;
The corn is Turings'. Freeman, when he sold
And sent you bills of lading, had not paid
The price he promised. Bankrupt now is he,
And since I stopped it, lo! the corn was mine."

Then on a day when, in due order ranged,
The judges, following their custom, sate
To hear the plaints of those who suffer wrong,
In the great hall, where the dim light beat through
The many-colored panes, the knights drew near
And cried for Justice. And when all was told
Stood one grave judge before the rest and sang:—

"This is the song, the Song of Ashurst, J.,
Let him who will, J. Ashurst's song gainsay;
He errs in counsel. Lo! I sing the law.

"Dear is the right to stop *in transitu*
The goods unpaid for, when the seller knew
The buyer bankrupt. List! I sing the law.

"Yet, if before the goods the seller takes,
The purchaser a due assignment makes,
No right remaineth. Lo! I sing the law.

"This corn Lickbarrow from yon Freeman bought;
Justly he claimed the goods; and true he ought
To have them rendered. I have sung the law."

Thus ceased he, and the murmured plaudits rose
As, for the plaintiff finding, he resumed
His seat august. Then slowly from the hall
The people passed away, and darkness fell
Upon them with the night; and the gray mists
Rose from the river, and the land was still.

GLEANINGS FROM EARLY MASSACHUSETTS LAWS.

By Austin A. Martin.

TO the student of history the statute-book of any particular period furnishes much valuable information as to the general habits and modes of life of a people. The main features of the laws of all Anglo-Saxon communities are substantially the same, varying in details according to the different conditions in which each finds itself. There everywhere exist the same needs of good government, administration of justice, regulation of trade, descent of property, encouragement of morality, and suppression and punishment of evil-doers.

The differences which appear in the statutes depend upon varying social and local conditions, and the more or less severe moral sense of the people. Beyond the laws which are essential and common to all communities, it is safe to say that every statute has been enacted to meet some real or supposed local need, and it is from these that the student can glean many curious and significant facts. For example, a statute fixing a bounty for the killing of wolves would hardly be found in any country where the wolf was not a somewhat near neighbor. Laws regulating dealings with Indians, or those relating to the discipline of negro slaves, are the natural concomitants of the existence of those people in the community. The punishments enacted for the suppression of crimes and minor offences strongly reflect the existing moral sense at the time.

Without further preface, and without going back to the earliest days of the Colony, an old folio volume in my library, the "Laws of the Province of Massachusetts Bay," from 1692 (4 William and Mary) to 1766 (6 George III.), edition of 1759 with supplements, contains some enactments which may well surprise and amuse the descendants of their framers.

In the first place, the laws affecting criminals have none of the sentimental euphemism which characterizes some later statutes. A spade is called a spade with unmistakable clearness of diction, and the punishments are prescribed with a vigorous emphasis. The gallows, pillory, stocks, and the lash, branding, cutting off and nailing of ears, are the means by which, in addition to or in lieu of fines, the blind goddess enforced her decrees. It is true that Section 43 of the "Body of Liberties" prescribes that no man shall be beaten with above forty stripes, nor shall any true gentleman, nor any man equal to a gentleman, be punished with whipping, unless his crime be very shameful, and his course of life vicious and profligate. Section 45 of the "Body of Liberties" also provides that no man shall be forced by torture to confess any crime against himself, nor against any other, except in certain cases therein laid down; in which event he may be tortured, "yet not with such tortures as be barbarous and inhumane." Unfortunately we know that on Sept. 19, 1692, Giles Corey was *pressed to death* at Salem, for refusing to plead, when arraigned for witchcraft. In 1692 the laws against witchcraft were still in force; namely, "If any man or woman be a witch, that is, hath or consulteth with a familiar spirit, they shall be put to death." On Sept. 22, 1692, at Salem, occurred the last execution for this crime in the Province, when several persons were put to death, all protesting their innocence. In January, 1693, the Grand Jury brought bills against some fifty persons for witchcraft; but all were acquitted except three, and these were reprieved. It is thus evident that a reaction in public feeling had set in, and in 1697 the General Court appointed January 14 as a day of fasting and prayer on account of "the late tragedy raised among us by

Satan and his instruments through the awful judgment of God."

Leaving these gloomy reminiscences and coming to lighter matters of the law, we find that profane swearing was very properly punished by a fine of five shillings, failing to pay which the offender was set in the stocks, not exceeding two hours. If he uttered more than one oath on the same occasion and in hearing of the same persons, his punishment was twelve pence for every oath after the first, and a seat in the stocks for three hours, where he could cool his spleen and reflect on his sins, unless the contributions of addled eggs and other missiles by the youths of the town interrupted his meditations.

A person convicted of drunkenness could take his choice between paying five shillings or the stocks for three hours.

A conviction of theft involved a fine of five pounds or twenty stripes; and if the thief was unable to make restitution or pay threefold damages to the injured party, the latter could dispose of him in service to any of their Majesties' subjects, for such term as should be adjudged by the court.

Burglars and robbers were to be branded on the forehead with the letter B. For a second offence they were to be set upon the gallows for the space of one hour with a rope about their necks, and one end thereof cast over the gallows, and to be severely whipped, not exceeding thirty-nine stripes. For a third conviction, they were to suffer death, *as being incorrigible*. This latter provision is noteworthy, as being in line with our Habitual Criminal Acts, though more Draconian in its character. For the first and second offences the culprits were to pay treble damages to the injured parties. Indeed, throughout all these criminal statutes, full measure of restitution as well as severe punishments are prescribed.

The severity of the above penalties appears to have been insufficient, for Chapter I., Acts of 1715, after a preamble setting forth that "Whereas, notwithstanding the Laws already made for the punishing of criminal Offenders, many Persons of late have been so hardy as to break open in the Night, the Dwelling Houses of several of his Majesty's good Subjects, and have not only stolen their Goods, but put them in Fear and Danger of their Lives," enacts the punishment of death for the crime.

And Chapter I., Acts of 1711, "To the Intent Her Majesty's Leige People may be in peace and out of Fear of being assaulted and robbed by ill-minded, wicked Ruffians, as they are travelling the Common Roads or High-Ways," enacts as a penalty for robbery, burning in the forehead or hand, six months' imprisonment, and treble damages to the party robbed; and for a second offence, death. And by Chapter VIII., Acts of 1761, for the first offence, death, "without Benefit of Clergy."

Liars and libellers might find themselves mulcted to the tune of twenty shillings, or be seated in the stocks, or be publicly whipped, at the discretion of the court.

A forger found scant mercy. He had to make full restitution to the injured party; also he must be set in the pillory, and then and there have his ears cut off, and suffer imprisonment for one year. Fancy the duties of the officer deputed to brand B's upon men's foreheads, cut off their ears, or nail them to boards. One can imagine the awkward attempts to get the iron hot and apply it to the forehead of the struggling culprit, and the unskilful efforts to cut through the tough, gristly substance of the ear, amid the howls and contortions of the victim.

A perjurer or suborner of perjury had the disagreeable alternative of paying twenty pounds, or of being set in the pillory for an hour, and to have both his ears nailed; and to be forever after infamous, until judgment reversed.

Chapter IV. of the year 1694 re-enacts in substance the earlier law of Plymouth Colony, on which Hawthorne's famous story "The Scarlet Letter" is founded. The punishment for adultery, as there laid down, is

that both parties "shall be set upon the Gallows by the space of an Hour, with a Rope about their Neck; and the other End cast over the Gallows; and in the Way from thence to the Common Goal, shall be severely whipped, not exceeding forty Stripes each. Also every Person and Persons so offending shall forever after wear a Capital A, of two Inches long and proportionate Bigness, cut out in Cloth of a contrary Colour to their Cloaths, and sewed upon their upper Garments, or on their Back in open View." If afterwards found without his or her letter, the culprit was to be publicly whipped not exceeding fifteen stripes.

The House of Correction, fetters or shackles, and *moderate whipping* not exceeding ten stripes at once, and in case of failure to work, while sojourning at the House of Correction, *a judicious reduction of food*, were the lot of Rogues, Vagabonds, Beggars, Persons using any Subtle Craft, Juggling, or unlawful Games or Plays; Persons feigning themselves to have Knowledge in Physiognomy and Palmistry; Fortune Tellers, Common Pipers, Fiddlers, and numerous others of the vicious and vagrant classes, and "*such as neglect their Callings, spend what they earn, and do not provide for themselves or the Support of their Families.*"

Indian, Negro, and "Molatto" slaves must not be abroad in the night-time after "nine a Clock," unless upon some errand for their respective masters or owners, under penalty, unless they could give a good account of themselves, of being sent to the House of Correction "to receive the Discipline of the House."

In Chapter I., Acts of 1711, it is provided that composers or publishers of profane songs or mock sermons may be punished by a fine of twenty pounds, or by standing on the pillory once or oftener, with an inscription of their crime, in capital letters, affixed over their heads.

Chapter V., Acts of 1713, after a preamble setting out "Whereas the Limbs and Lives of several Persons, have been greatly endangered in riding over Boston Neck by their Horses throwing of them, being affrighted and starting, at the Firing of Guns by Gunners that frequent there after Game," enacts a penalty of twenty shillings for every such firing on Boston Neck within ten rods of the highway.

Serving on juries seems to have been no more popular in 1716 than at the present day; for Chapter V. of that year, after a preamble setting forth that the former penalty of forty shillings for default as a juror had not been sufficient to induce many of the most able and best qualified persons to perform their duties, prescribes a fine of not less than four pounds, nor exceeding six pounds, for such neglect.

The killing of wolves was encouraged in 1693 by a reward of twenty shillings for every grown wolf, and five shillings for every wolf's whelp. This was subsequently raised in 1715 to forty shillings for every grown wolf.

In 1693 the militia must have been an awe-inspiring body. Every foot-soldier was to be armed with "a well fix'd Firelock, Musket, of Musket or Bastard Musket bore, the Barrel not less than three Foot and a half long: a Snapsack, a Collar with twelve Bandaliers, or Cartouch-Box; one Pound of good Powder, twenty Bullets fit for his Gun; and twelve Flints; a good Sword or Cutlash; a Worm and Priming Wire, fit for his Gun." By a subsequent Act, Chapter IV., Acts 1711, "a good Goosenecked Bayonet with Socket," was substituted for the Sword or "cutlash." Commissioned officers were given authority to correct disorders, contempt on watch and some other military offences, by punishments not greater than "laying Neck and Heels, riding the Wooden Horse, or ten Shillings' Fine." Fancy our gallant Cadets or the dignified Ancients and Honorables undergoing the above discipline.

Chapter XVII., Acts 1701, fixes the fee for an attorney at law in the Superior Court of Judicature at twelve shillings; and in the Inferior Court of Common Pleas, ten

shillings and no more. Chapter I., Acts 1714, provides that no person shall "entertain" more than two attorneys, "that the adverse Party may have Liberty to retain others of them to assist him, upon his Tender of the established Fee, which they may not refuse." Hard times for attorneys, truly!

Chapter IV., Acts of 1700, enacts that all Jesuits and Roman Catholic priests and missionaries shall depart out of the Province, under penalty of *perpetual imprisonment;* and if they should escape from such imprisonment, to be punished *by death.*

By Chapter VI., Acts of 1705, any negro or mulatto presuming to strike any person of the English or other Christian nation, was to be severely whipped in the discretion of the court.

While the Indian inhabitants of the Province were carefully restrained from lawlessness, their rights were vigilantly protected by various wise and just laws. Severe penalties were imposed for selling them liquor, cheating them out of their lands, and otherwise defrauding them. Their lands, too, were not liable to be taken for their debts.

The foregoing gleanings convey a fair idea of the flavor, so to speak, of the then laws.

While we may condemn the more barbarous modes of punishment then in vogue, and the undue severity of some of the penalties, one cannot but feel that in case of some particularly brutal and savage crimes, notably house-breaking, garroting, and wife-beating, we might well return to the severe but salutary discipline of the lash as administered to evil-doers in those days by the good citizens of Massachusetts.

LEGAL INCIDENTS.

IV.

JIM WAY.

By J. W. Donovan.

THAT many a man is convicted without just cause, needs no argument; that many men are imprisoned unjustly, need not be urged to be believed. Such was the case with Ben and Jim Way, father and son.

It was before the war, at St. Clair, on a cold winter morning, when the sheriff called up the turnkey early, to admit a couple of English prisoners under arrest for murder. It was a dreary, bitter cold morning. The prisoners were scantily clad in "blue jeans," and looked tired and hungry, pinched and half frozen. They pleaded not guilty, and were soon bound over to the circuit for trial by jury.

Trial-day came, and they were ably defended; but their showing was rather meagre. The jury — a very dull and stupid and biassed one — found defendants guilty of murder in the first degree. The father and son sat dazed under the finding; at last the old man said, "That's wrong; that's wrong." This was overheard by a bright young lawyer, who remembered it. He visited Judge Turner before sentence, and stated what he heard, and urged that a new trial be granted, which, after much delay, was allowed, and a new trial set and had, in which the real truth came out with all the vividness that a boy's keen nature could develop it.

It appeared, by the father's story, that the killing was not murder in any sense, but merely the killing of a human being without motive or malice. Ben Way and son were English. The neighborhood was of another nationality. A school-meeting had been held, at which the old man had advocated an advance in the teacher's salary. Words had followed; and on their way home, Ben and Jim Way were beset by one who struck a heavy blow at the father with a club, but failed to hit him in the darkness, when the big fellow grappled and threw the old man face downward, who then called to his son, "Help, Jim! he's killing me;" and the son grabbed an axe near by, and cut the assailant deep in the back, killing him instantly.

To avoid the mob who gathered and broke in the old man's windows, his wife fled to the lake-shore; and later on, the father and son followed, leaving a deserted team and home and many marks of crime behind them. It was at the lake-shore they were arrested, on the night before their capture as described. After hearing the old man's story (not related at the first trial), the jury said, "Not guilty as to Ben, and guilty as to Jim," to the surprise of the trial judge and counsel, and a majority of the spectators.

Jim was small and young, and bore it like a boy hero. He had become a hero as soon as the old man told of his bravery. At the time of sentence, he said, "It's all right, Judge. I struck him, — I did it to save father. That's all I have to say, Judge, — I did it to save father. His words appealed to me, Judge. You know I was excited. I could n't help it."

Every eye in the court-room grew moist; tears came down the cheeks of the judge, who gave "Jim" a sentence of *three months in prison*, and hoped they would "be kind to him." At this remark the whole crowd broke out in tears and applause. "Jim" was met with kindness at Jackson. After a few days' confinement, he was given the freedom of the yard, and a nominal restraint only was kept over him, for he was hailed as a hero for defending his father.

JURIES AS THEY WERE AND ARE.

THERE are curious things to be told regarding juries, both as to their ancient and modern history. Valuable as the institution is, we have little or no certain knowledge of its origin. Not only have the Normans, the Saxons, the Gauls, the Romans, and even the Trojans, in turn had ascribed to them the honor of being the inventors of the system, and in turn been dispossessed of it, but some writers, acting like those foolish old testators who make a point of leaving their money to persons already having more than they know what to do with, declare that to Alfred the Great — a sovereign already lauded as the inventor of half the noblest institutions of England — the entire credit of the whole matter is due.

Whoever was the inventor, or what the period of the birth of the system, it is quite certain that very few traces of it are to be found anterior to the reign of Henry II. From the time of William to that of Henry II., the mode of administering justice was very simple. In civil cases a little hard swearing on one side or the other soon settled the matter; while as to criminals, by "fighting it out," a far more speedy result was, we doubt not, obtained than is arrived at in our courts of justice at the present day. In Henry's reign, however, the simplicity of all judicial proceedings was much broken in upon by the passing of a famous statute, usually called the Grand Assize. This statute ordained that in all cases in which the ownership of land, the rights of advowson, or the claims of vassalage came in question, four knights of the county should be summoned, who joining with them twelve men, neighbors of those whose rights were in dispute, should hear from them,' upon their oaths, the truth of the matter in question. If these twelve could not agree in the tale they told the knights, the minority were dismissed, and others chosen in their stead; and this was repeated until twelve men were found whose tale was uniform; and then according to it judgment was given.

This singular mode of adjudicating appears to have ever since been held in great estimation; for although other species of trial by jury soon after sprung up, the grand assize was not set aside, but continued to be put in practice now and then down to the year 1838, when, for the last time, four knights girt with their swords, and twelve recognitors, met in the Court of Common Pleas at Westminster, and were addressed by the Lord Chief-Justice Tindal as "gentlemen of the grand inquest and recognitors of the grand assize." The institution was shortly after abolished by act of Parliament.

During the time of Edward I. the jury system was greatly improved, and to a certain extent resembled that of the present day. Knights of the shire were summoned by the sheriff, — the origin of the present grand jury, — twelve of whom had to be unanimous in *presenting* the guilt of a prisoner to the petty jury who were to try him. The petty jury, indeed, differed from a modern one in one important particular; for those composing it, after being sworn to act truly, heard no evidence from others, but each separately delivered a verdict founded on his own knowledge of the matter, and was thus a witness as well as a juryman. If the twelve could not agree, the minority were, as in the grand assize, turned aside, and others chosen in place of them, and this was done until the twelve presented a uniform verdict.

It may amuse the reader to know that the first civil matter tried by a jury, properly so called, of which any record has descended to us, was an action by the parson of Chipping-Norton against another parson for turning him out of his house on a Sunday.

It was not until the time of Henry VI. that witnesses were allowed to be called, to inform the consciences of the jury respecting

the matter in dispute, and not until so late as the reign of Anne that witnesses for a prisoner were heard upon oath.

The position of jurymen in "the good old times" must have been one of no ordinary severity. The fundamental rule was that the twelve men must agree in order to form a legal verdict. Why twelve were chosen in preference to any other number does not appear; and the only explanation, if it may be called one, is that of Sir Edward Coke, who says that twelve "is a number in which the law delighteth." In order then to get these twelve men to agree, all kinds of manœuvres were used. At first the practice of adding fresh jurymen, and turning away those who would not agree with the majority, technically called "afforcing," was adopted; but this was attended with the expense of so much time and trouble as to be almost useless. Then it became the custom to heavily fine those who would not agree with the majority, and this shortened matters a good deal; subsequently the verdict of the majority was taken, the dissentients being fined or imprisoned; and at last the practice was adopted which has descended to the present day, of confining the sacred twelve alone, without meat, drink, or fire, until the verdict was satisfactory.

In some of our old law books we meet with very amusing accounts of unfortunate jurymen being detected in attempting to evade this very stringent measure, and their peccadilloes seem always to have met with severe chastisement.

Thus, in Hilary term, 6 Henry VIII., we have a long account of a motion in the King's Bench to arrest a judgment obtained at the previous assizes, on the ground that the jurors had "improperly eaten and drank;" and says the report, "upon examination it was found that the jury had after long consideration agreed, and returning to the court-house to give in their verdict, they saw Read, C. J., in the way *running to see a fray*, and they followed him, and all ate bread and drank a horn of ale; and for this every one was fined forty shillings, but the plt. had his judgment stand upon their verdict." The report does not inform us what fine was inflicted upon the learned judge for leaving the judgment-seat "to see a fray."

In another case of "Mounson *v.* West," about the same period, the jury had been absent so long to consider their verdict, that "the court did suspect, and gave commandment that a trusty man should search them, which was done, when some had figs in their pouches, and some had pippins, and some did confess that they had eaten of figs, and some that they had pippins, but had not eaten thereof; whereupon after great and solemn advice and consideration, they who had eaten of the figs were fined £5 each, and they who had pippins, of which they had not eaten, forty shillings each."

Shortly afterward the court of Queen's Bench declared that for "a juryman to have sweetmeats in his pocket was a high misdemeanor, punishable by fine or imprisonment or both."

It was not, however, on the score of eating when he should have been fasting alone, that the juryman's life was a hard one; if the judge considered that their verdict was against evidence, they might be punished with loss of all their personal property, might be imprisoned for a year, and were ever afterward considered infamous; while the amount of bullying to which they were exposed, both from the judge and from the counsel, would scarcely be credited at the present day. They were threatened, laughed at, and even taunted with being accessory to the prisoner's guilt, if they hesitated about giving the desired verdict. After enduring all this uncomplainingly for some hundred years, we find juries about the middle of the sixteenth century suddenly attempting to throw off the disgraceful shackles with which they had been for so long loaded. The first important case on record in which a jury boldly stood out against the judge is that of Sir Nicholas Throckmorton, tried at Guildhall in 1554.

Throckmorton was indicted for high treason, and after a shamefully one-sided trial, the jury were almost *directed* to find him guilty. After a long absence from the court they returned and deliberately pronounced a verdict of "Not guilty." "Upon this," says the reporter, "the Lord Chief-Justice remonstrated with them in a threatening tone, saying, 'Remember yourselves better. Have you considered substantially the whole evidence as it was declared and recited? The matter doth touch the queen's highness and yourselves also; take good heed what you do.'" When he had finished Whetston, the foreman, said: "My lord, we have found him not guilty, agreeably to our consciences; and so say we all." But the jury suffered grievously for their honesty; the court committed all twelve to prison: four were soon discharged on humbly admitting that they had done wrong; but of the remaining eight, the Star Chamber adjudged that three of them should be fined £2000 each, and the other five £200 each. So much for impartiality in the sixteenth century!

Throckmorton's jury had, however, broken the ice, and others were not slow in following their example; and for more than one hundred years after, battles were being continually fought between judge and jury with ever-varying results In poor Mrs. Lisle's case the judge (Jeffreys) gained the day; on William Penn's trial the jury stood firm and triumphed; but the most glorious example of their success was shown upon the trial of the seven bishops in 1688, from which period we may date the decline of the arbitrary authority which the judges had before exercised.

While our modern jury system is a vast improvement over that which has preceded it, still it must be admitted that many glaring defects still remain in this noble institution. The composition of our juries is a matter which must cause a vast deal of reflection to the thinking man. Cases involving questions requiring the utmost intelligence for their consideration are often submitted to men possessing not even ordinary reasoning powers; and criminal matters, involving as they frequently do the lives of fellow creatures, whose guilt or innocence can only be determined upon by disentangling with the utmost nicety the most conflicting evidence, are intrusted to men often of very limited endowments.

No one unused to the proceedings in our criminal courts would believe what strange exposures of the ignorance of jurymen now and then take place. Prisoners have before now been declared guilty and recommended to mercy on the ground that the jury were not *quite sure that they did it*. A jury at Cardigan found a man guilty of arson *with £20 damages*. Another set of "clodhoppers," trying a man for murder, and being much confused by the judge telling them that upon the same indictment, if not satisfied as to the capital crime having been committed, they could find the prisoner guilty of manslaughter, just as they could on an indictment for child-murder find a woman guilty of concealing the birth, — after deliberating for a long while, found the man *guilty of concealing the birth of the deceased*. A few years ago a poor woman was tried at an assize town in South Wales, for the murder of her infant. The jury appeared to listen to the case with the utmost attention; but what was the general astonishment when upon the conclusion of the "summing up," the foreman addressed the judge with: "My lord, I wish to say that I am the only man on the jury *understanding English*." Of course, nothing could be done in such a case; the prisoner had been given into their charge, and they were bound to convict or acquit her. The foreman had therefore to explain the case to his brother-jurymen, and it is hardly necessary to say the woman was acquitted.

A still more ridiculous instance of jury ignorance occurred some years ago on the Western Circuit. A man was indicted for burglary; the proofs were so clear against him, he having been caught in the act, that it was presumed that no defence would be attempted. His counsel, however, made a

long and flaming speech, and protested that *he* believed the man to be innocent. The judge told the jury that it was unnecessary for him to sum up, as they could have but one opinion. After conferring a moment, the jury turned round and deliberately pronounced a verdict of "Not guilty," to the amazement of every one in court. Of course the prisoner was, without further question on the case, discharged. On inquiring of a juryman the reasons which influenced them in giving so curious a verdict, the following reply was elicited: "Well, sir, we be most on us P—— men, and though the Lunnon judge said *he* thought the prisoner were guilty, *our recorder* [who was the man's counsel] said *he* thought he warn't, and we like to stick up for our recorder!"

Of course it is at all times easier to point out defects than to suggest remedies; but for the grievances we have mentioned, the cure seems simple and obvious. In all cases involving important questions or the life of a fellow creature, allow *special* juries, consisting of men who from their education and position in society are enabled to understand all the bearings of the case, and pronounce a verdict thereupon in a much more satisfactory manner than any *common* jury could do. — *Chambers' Journal.*

USURY.

By Champion Bissell.

I DO not propose to follow in the footsteps of Jeremy Bentham, and write another "Defence of Usury;" but it may not be time wasted to suggest to the profession that as occasion serves, its members should endeavor to influence the repeal of statutes against usury, of which it is not too much to assert that they are relics of barbarism, infringements of personal liberty, and inconsistent not only with constitutional rights but with themselves.

The statutes of the State of New York in particular labor under these conditions. They provide that whoever receives more than six per cent per annum for the loan or forbearance of money is guilty of a misdemeanor, the penalty for which, on conviction, may be a fine of not more than one thousand dollars, or imprisonment for not more than six months, or both. A few years ago, 1880, the lawful price of money was changed from seven per cent per annum to six; so that the same transaction which would have been virtuous and legal in 1875 is a crime in 1885. Here is an inconsistency, since whatever is right at one time is right at all times.

Licensed pawnbrokers may, however, charge and receive thirty-six per cent and twenty-four per cent and twelve per cent per annum. Now, if usury is a crime *per se* the State does wrong to license men to commit such a crime; and if usury is not a crime *per se*, the State does wrong to punish citizens criminally for taking as much rent for the use of money as the borrowers are willing to agree to pay.

Corporations may not plead usury, or complain to the magistrates against those persons who receive high interest from them. That is, usury is a crime, and burglary is a crime; but you may practise one crime with impunity provided the victim is a corporation, while it still remains a felony if you burglarize a corporation.

So much for the inconsistent demerits of the statute in force in the most populous and wealthy State in the Union, in 1890. How does such a statute affect the rights and personal liberty of the citizen?

One of the axioms of civilized society is that a citizen may do what he likes with his own property, so long as he does not injure any other person. Humanity has curtailed this right as to the particular instance of cruel treatment of animals, recognizing in them, and justly, a certain personality and citizenship. But he is at liberty to give away his grain, or sell it for all he can get, or keep it; but the usury statute forbids him to treat in the same manner the price he may have received for the grain. He may give it away or he may keep it; but if he sells it for all he can get, he may be sent by the judges of special or general sessions to the penitentiary for six months, and his reputation be clouded during his life and thereafter.

The advocates of this usury statute aver that the person who violates the statute does injure another person, namely the borrower, by "taking advantage of his necessities" and thus causing him to pay for money more than it is worth. I have heard a United States Circuit Judge use these identical words.

If this view is correct, then the baker who receives from me ten cents for a loaf of bread which costs him three cents "takes advantage of my necessities." Certainly I must have the bread or go hungry. But the baker would say, "Do not send me to the penitentiary for this; if you don't like my loaf at ten cents, go to another baker, or satisfy your hunger with some other edible." And the money-lender would also say, "If you do not like my money at fifteen per cent, go to some other lender; or make your purchases or satisfy your creditor in some other way." And if the baker is right, the money-lender is not wrong.

In fact the position of the baker is not so tenable as that of the money-lender; since the supply of grain or bread may be monopolized, but the supply of money never can be monopolized. There is more money than grain or bread or any other one commodity all over the world, and the supply is more equally distributed; hence money is less liable to be "cornered" than any other commodity.

One might even maintain this proposition, namely, that there is no such thing as usury; since upon absolutely safe security, such as British consols, United States bonds, and bullion, money can always be had, wherever money exists, at a minimum of charge, usually less than legalized rates. When securities are not absolutely safe, and the element of insecurity is disclosed, whatever excess is charged is an insurance premium. But the statute makes it criminal for a lender to take such a premium; although by statute the pawnbroker may take a premium without the risk, and by statute you may commit this crime with impunity against a corporation.

At common law there can be no penalty for usury, because the common law enforces all contracts, not fraudulent or *contra bonas mores*, made between adults of sound mind.

Equity might step in, and say to the lender, Your charges under the circumstances are too onerous; you must accept your principal with so much less interest.

Finally appears an act of a legislature, by which you not only lose your loan, but may be consigned to the penitentiary in 1890 for doing what was declared to be by a foregoing legislature eminently virtuous and proper in 1875, and what you have in reality a right to do at all times.

It is the effect of absurd statutes to defeat their own purposes. Large capitalists as a rule do not lend money on dubious securities. Borrowers on insecurities seek out small capitalists, who not only charge insurance premium on the risk of loss, but another and larger premium on the risk of a defence in court, and another and larger premium on the risk of prosecution in a criminal court. There are thousands of borrowers in New York and King's counties who are to-day paying one hundred per cent per annum for money which, but for the usury statutes, they could borrow at twenty-

five or thirty per cent. The latter percentage in the average case covers the risk of loss; and would not distress the average small borrower, whose principle may be summarized thus: "I would rather borrow money at thirty per cent and get it, than talk about borrowing it at six per cent and *not* get it."

I have not begun to cover the ground, as to this subject; but this article is long enough.

SOLILOQUY ON LAW REFORM.

A CODE, or not a code, — that is the question!
Whether 't is better in the law to suffer
The flaws and defects of numerous practiques,
Or to take arms against a sea of troubles,
And by revising end them! To prune, to change,
No more — and by a code to say we end
Abuses, and the thousand natural pests
That law is heir to; 't is a consummation
Devoutly to be wished. — To prune, to change,
To change, perhaps DESTROY! Ay, there 's the rub;
For in that sleep of law what ills may come,
When we have shuffled off the dreadful plague
Must give us pause. There 's the respect
That makes precedents of so long life;
For who would bear the whips and smarts of law,
The high judge's frown, the lawyer's charges,
The pangs of satisfying debts, the law's delay,
The insolence of sheriffs, and the spurns
That patient merit of the policeman takes,
When he himself might his *quietus* make
With a *bare reform?* Who would judges pay
To groan and sweat under a weary life,
But that the dread of something after change
(Those undiscovered evils from whose ruin
No government returns) puzzles the will,
And makes us bear those ills we have,
Than fly to others that we know not of.
Thus *wisdom* does make cowards of us all,
And thus the native hue of resolution
Is sicklied o'er with the pale cast of thought,
And enterprises of great pith and moment
With this regard their currents turn awry,
And lose the name of action.

Old Law Magazine.

DRUNKENNESS AND ITS ANCIENT PUNISHMENT.

AMID the great variety of treatment to which drunkenness was subjected by the ancients, all lawgivers seem to agree in treating it as a state of disgrace; and since it is brought on deliberately, it is still more odious and without excuse. Whatever individuals may think and say, no nation treats it as meritorious. Yet Darius is said to have ordered it to be stated in his epitaph, that he could drink a great deal of wine and bear it well, — a virtue which Demosthenes observed was only the virtue of a sponge. At the Greek festival of Dionysia, it was a crime not to be drunk, — this being a symptom of ingratitude to the god of wine, — and prizes were awarded to those who became drunk most quickly. And the Roman bacchantes, decked with garlands of ivy, and amid deafening drums and cymbals, were equally applauded; but at length, even the Bacchanalia were suppressed by a decree of the Senate, about 186 B. C.

Notwithstanding these exceptions, the offence of drunkenness was a source of great perplexity to the ancients, who tried nearly every possible way of dealing with it. If none succeeded, probably it was because they did not begin early enough, by intercepting some of the ways and means by which the insidious vice is incited and propagated.

Severe treatment was often tried to little effect. The Mosaic law seems to have imposed stoning to death, at least if the drunkenness was coupled with any disobedience of parents. The Locrians, under Zaleucus, made it a capital offence to drink wine, if it was not mixed with water; even an invalid was not exempted from punishment unless acting under a physician's order. Pittacus, of Mitylene, made a law that he who, when drunk, committed an offence should suffer double the punishment which he would do if sober; and Plato, Aristotle, and Plutarch applauded this as the height of wisdom. The Roman censors could expel a senator for being drunk, and take away his horse. Mahomet ordered drunkards to be bastinadoed with eighty blows.

Other nations thought of limiting the quantity to be drunk at one time or at one sitting. The Egyptians put some limit, though what it was is not stated. The Spartans had some limit. The Arabians fixed the quantity at twelve glasses a man; but the size of the glass was not, unfortunately, defined by the historians. The Anglo-Saxons went no further than to order silver nails to be fixed on the side of drinking-cups, so that each might know his proper measure. And it is said that this was done by King Edgar, after noticing the drunken habits of the Danes. Lycurgus, of Thrace, went to the root of the matter, by ordering the vines to be cut down; and his conduct was imitated, in 704, by Terbulus, of Bulgaria. The Suevi prohibited the importation of wine, and the Spartans tried to turn the vice into contempt by systematically making their slaves drunk once a year, to show their children how foolish and contemptible men looked in that state.

Drunkenness was deemed much more vicious in some classes of persons than in others. The ancient Indians held it lawful to kill a king when he was drunk. The Athenians made it a capital offence for a magistrate to be drunk, and Charlemagne caused a law to be enacted that judges on the bench and pleaders should do their business fasting. The Carthaginians prohibited magistrates, governors, soldiers, and servants from any drinking.

CAUSES CÉLÈBRES.

XIX.

DESRÜES.

[1777.]

ON the morning of the 3d of February, 1777, a little man, rather elderly in appearance, dressed after the fashion of the day in a lilac coat, *à l'Anglaise*, and carrying in his hand a gold-headed cane, walked slowly through the narrow, dirty Rue de la Mortellerie, near the Hôtel de Ville in Paris. His small, piercing black eyes wandered in all directions, and seemed to be seeking something upon the front of the buildings. Finally they rested upon a sign bearing these words: "A CELLAR TO LET." Planting his cane in the mud in the middle of the street, the little man took out his snuff-box, and while taking a pinch of snuff, examined the outside of the building bearing the sign. It was distinguished, according to the custom of the time, not by a number but by a name, "THE PEWTER POT."

Having finished his examination, this peculiar individual entered a narrow passageway which led from the street to the house, and accosted a woman, of whom he asked if he could speak to the owner of the building.

The house belonged to a woman named Masson, and having obtained her address, the little man presented himself at her residence, and said very politely: "I am, madame, the owner of an estate in Beauvoisis, and also possess property in Paris in the Rue Montmartre and elsewhere. My name is Du Coudray. I see that you have a cellar to let; and as I have just received some wine from Spain, for which I have no room in my house, I wish to find a place to store it."

Madame Masson replied that the cellar would not be free until the next day. Du Coudray seemed greatly annoyed; the wine was lying on the wharf, and he desired to store it at once. However, he engaged the cellar, paying one quarter's rent in advance.

On the morning of the 4th, this same little man might be seen wandering about the Quay Saint-Nicholas. He there hired a cart, bought a cask of cider, and caused his purchase to be conveyed to the Louvre. Arriving there, he entered the *atelier* of a sculptor named Mouchy. He found only a pupil in the room, to whom he said: "My dear sir, I have come to take away a trunk which I left yesterday with my friend Mouchy; will you thank him for me for his kindness in taking charge of it?"

The trunk, which was very long and peculiar in shape, was then placed upon the cart, having first been carefully wrapped in a large piece of canvas, provided by the little man.

Half an hour later, Du Coudray started for the Rue de la Mortellerie with the trunk and cask of cider.

At the corner of the Rue des Haudriettes he perceived two men, who were following the cart at a distance. Leaving the driver to continue his way, he fell back, and watched these two individuals. Then one of them approached and placed his hand upon Du Coudray's shoulder. Trembling visibly, the little man raised his eyes, and recognized a certain Mevret, to whom he had owed seven thousand livres for a long time.

"I have caught you at last," cried Mevret; "I have been seeking for you for a long time. I tell you this affair has got to be ended; I have an order for your arrest! So, you see, further words are useless. When will you pay me?"

"My dear sir," replied Du Coudray, whose limbs were trembling violently, and who kept his gaze fixed intently on the cart, "I regret exceedingly having obliged you to wait so long; but now I am in a condition to assure you that you shall be paid at once."

"Do those packages on that cart ahead belong to you?" asked Mevret.

"Yes," replied Du Coudray, in a tremulous voice. "I have there some precious merchandise which I am going to store in a building near by. I have other packages to arrive; and as soon as I effect a sale I will pay you all I owe."

Mevret bowed, and joined his companion; but he did not lose sight of the little man and the cart. "Follow them," he said to his friend. "I believe the rascal means to play me a trick."

The friend followed slowly; and Du Coudray, who looked back from time to time, did not recognize the companion of his creditor. On reaching the house in the Rue de la Mortellerie bearing the sign of "The Pewter Pot," Du Coudray began to discharge his load; and Mevret's friend withdrew, having first carefully noted the name of the place.

The cask of cider was easily handled, but the trunk seemed to be very heavy. Du Coudray called a water-carrier and a coal-heaver, who were passing through the street. The two aided the teamster to transport the packages to the cellar. Having paid these men, Du Coudray went about the neighborhood seeking a dealer in second-hand articles. He finally found one, of whom he bought a wooden shovel, a hammer, some nails, and some boards; he then purchased a bundle of straw and returned to the cellar, where he remained for about an hour. When he came out, he was very red, his face was covered with perspiration, and he appeared nervous and excited.

For a long time nothing was seen or heard of the little Du Coudray in the Rue de la Mortellerie. Rogeot, the water-carrier, who had assisted in carrying the packages to the cellar, and who lived in the house, noticed, however, that his dog always scratched at the cellar-door whenever he passed it, and howled mournfully.

One week after the events already described, the inhabitants of the Rue Beaubourg, attracted to their doors in the early morning to view the maskers parading the streets (for it was Mardi-gras), might have seen coming out of the old Hôtel de Saluces, at the corner of the Rue des Ménestriers, the little man of the Rue de la Mortellerie. He was accompanied by a tall youth, apparently about twenty years of age. This young man, whose solid, well-built form certainly indicated a vigorous constitution, was, nevertheless, very pale and walked with a slow, uncertain step.

"Come, my dear boy," said Du Coudray, "it is nothing, — a mere indisposition which the cool, fresh air will quickly dissipate; take my arm, and let me carry the bag. We shall soon reach the coach for Versailles, and in a few hours you will embrace your dear mother, the excellent Madame de la Motte."

The young man passed his hand across his brow, and seemed to make an effort to control himself. The two reached the coach. Once in the carriage the young man sank, apparently exhausted, into a corner. During the journey the little man, who was evidently the guardian or a relative of his companion, gave him his instructions. "Your mother," he said, "awaits us at Versailles, and we shall doubtless find her at the entrance to the Avenue de Paris. If, however, we do not meet her at once, there will be no cause for uneasiness; we will go to an inn, for if she does not come to-day, she will to-morrow, without fail. She is at this moment busily engaged in matters which concern your future, and has brought to bear the most powerful influences to obtain for you the situation of which I have spoken to you."

Versailles was reached, but there was no one in the Avenue de Paris who resembled Madame de la Motte. After waiting for an hour, the young man, who still appeared to be suffering greatly, asked for an opportunity to rest and warm himself. Du Coudray took him to an inn called the Fleur-de-Lys on the Avenue des Sceaux. He left him there before a good fire, saying that he was

going to seek quarters for themselves, as there were no vacant chambers in the Fleur-de-Lys.

After a short search, Du Coudray found, in the Rue de l'Orangerie, an inn of modest appearance, kept by a cooper. He entered and asked if they could prepare a chamber with two beds for his nephew and himself. The cooper, Pecquet, called his wife, who conducted the traveller to a room situated just above the shop.

While examining the chamber, Du Coudray said to Pecquet's wife: "My name is Beaupré; I reside in Commercy; I have come to Versailles to establish my nephew in a situation in the War Department." Having made all necessary arrangements concerning the apartment, the little man departed for the Avenue de Sceaux and presently returned with his pretended nephew. Young De la Motte was very pale and hardly able to stand. "Come, my dear child," said Du Coudray, "you must rouse yourself. I will take you to see the royal garden; that will distract your attention and dissipate this slight indisposition caused by the journey."

La Motte allowed himself to be led from the house. A quarter of an hour later the two returned to the inn. "You have not taken much of a walk," said the innkeeper's wife. "No," replied Du Coudray; "my nephew is not feeling well, he is suffering from an attack of nausea. I am going to make him lie down for a while;" and he added in a low tone: "I am afraid it may be small-pox; nothing could be more unfortunate, for I am expecting his mother, who is to present him to the Minister of War."

Du Coudray—or Beaupré, as he now called himself—and the young man then shut themselves up in their chamber. Toward evening Beaupré descended. "He has been seized with an attack of vomiting," he said to the innkeeper's wife. "What a misfortune if this illness should result seriously! I am expecting his poor mother at any moment. By the way, if the boy should ask for his mother, you will tell him that she has arrived, that she saw him while he was asleep, and that she is now occupied with matters concerning his situation in the War Department."

The next morning Beaupré came down, and said: "Send and buy me two ounces of manna and some saltpetre. My nephew is no better; however, I hope that his sickness will not prove serious. I am going to prepare a dose of medicine for him."

Pecquet's wife went up to the chamber, and saw that the young man had vomited profusely. Beaupré had washed the floor. "Why, Monsieur," exclaimed the woman, "the boy looks very sick to me. Had you not better send for a physician?" "It would be useless, my good woman," said Beaupré. "I am a physician myself, and I understand his complaint perfectly."

Pecquet's little daughter brought the drugs, and Beaupré prepared the medicine. Young De La Motte, in a feeble voice, asked for his mother. The innkeeper's wife repeated the lesson taught her by Beaupré, and the sick youth sighed.

A little later Beaupré went down and breakfasted in the dining-room. Madame Pecquet served him; she seemed sad and preoccupied. "What is the matter, my good woman?" asked Beaupré. "One would think that something was worrying you." The innkeeper's wife, won by his kindly words, then confided to him that she had to pay ten crowns the next day, and had not a single crown wherewith to meet the debt. "Is that all?" cried Beaupré; "I see that my nephew's illness will probably detain me here some days, and my bill will doubtless amount to more than that sum. Take these ten crowns and credit them to my account."

Madame Pecquet overwhelmed him with thanks, and to prove her gratitude, went up several times to care for the sick youth. He no longer spoke, and seemed to be in a sort of stupor.

The next day (Wednesday) Beaupré sent for more drugs. "I really begin to feel

very anxious," he said; "if he does not improve I shall send for a confessor —"

"But, Monsieur, is it not rather a physician that you need?"

"The soul, my good lady, should be attended to before the body. But, thank God! we are not yet at the last extremity. I may be unnecessarily alarmed. As for physicians, do not mention them. I might, perhaps, put him into the hands of one who would kill him."

On Saturday, the 15th, Beaupré sent for more manna and saltpetre, and some other drugs. "If this medicine works," he said to Pecquet, "I am sure he will recover. His pulse is better this morning, and his mind clearer."

In fact, young De La Motte had risen and seemed much improved. An hour later Beaupré opened a trap-door, which enabled him to look into the shop, and called excitedly, "Bring me a pitcher of hot water at once."

"Is he worse?" asked Pecquet.

Beaupré raised his eyes toward heaven with a despairing look, and did not answer.

Pecquet hastened to the chamber, and found the young man lying unconscious on the bed. He assisted Beaupré in undressing him.

"Run for a priest, my good fellow!" cried Beaupré, who had thrown himself upon his knees beside the bed, and manifested signs of a most poignant grief.

Pecquet descended hurriedly, and sent his wife to seek the Abbé Manin. When he remounted to the chamber, the young man was breathing heavily; and Beaupré, his eyes flooded with tears, was holding the hands of the dying youth. "My dear child," he said between his sobs, "think of God; repent of your sins; offer these sufferings as an expiation for the faults you have committed. — Ah, my good man, what a trial! He was not a nephew to me, he was a son. And to see him die thus! Poor child! what a misfortune, and what a blow for his poor mother!"

At the sight of this despairing grief the good Pecquet could not restrain his tears. At nine o'clock all was over. The young man died before the priest arrived.

Beaupré sank into a chair, overwhelmed by this great misfortune, and buried his face in his hands. After a few moments given to silent grief, he asked for a prayer-book, and kneeling beside the dead body, he read the prayers for the dying. The Abbé arrived, joined his prayers to those of the uncle, and as he left the house, said to Pecquet, "My heart bleeds for that poor man; he is truly a saintly man!"

On Sunday morning Beaupré prepared the body for burial, Pecquet assisting him in this sad duty. He then went to the parish Saint-Louis, and reported the decease of Louis-Antoine Beaupré, son of Jacques Beaupré, of Commercy, aged twenty-two years and six months.

The curé, having inscribed these names upon the parish register and having given the uncle a copy of the register, asked for instructions regarding the funeral.

"I wish it to be as simple as possible," replied Beaupré, weeping. "The poor boy has more need of prayers than display; I would rather give to the poor and for Masses the money which would be necessary for useless pomp and pageantry."

He left, in fact, six livres for Masses and six livres for the poor. Pecquet and Beaupré alone followed the body, which was buried in the little cemetery near the forest of Satory.

Returning to the inn, Beaupré gave Pecquet a louis for his trouble. "And now," he said, "I must depart at once to prevent the arrival of his poor mother. Thank God, she did not come in time to witness his mournful end."

As he spoke, he hastily gathered together his things. The effects of the young man he left, saying that he would call for them the next day.

An hour later Beaupré — or, if one prefers, Du Coudray — was installed in the coach

running from Versailles to Paris. He seemed to be in a joyous frame of mind, and rubbed his hands with an air of satisfaction, as if he had just completed a most excellent bargain. As the coach rolled along, he hummed an air from the latest opera, —

"Si Zerbin était roi, Zerbine serait reine."

Who was this man, — Du Coudray at Paris, Beaupré at Versailles? What secrets did his mysterious movements conceal? That is what we shall learn from the story of DESRÜES.

Desrües, a name celebrated in the annals of crime! Desrües, the most finished type of the hypocritical poisoner!

(*To be continued.*)

JUDICIAL COMPLIMENTS.

BY JOSEPH ULLMAN.

THE learned counsel who were "sat upon" by the courts in the cases cited in the article "Animadversion of Counsel by the Court" in the "Green Bag" for April, may perhaps be consoled by the reflection that courts are as severe in rebuking and commenting on inferior tribunals as they are on counsel. The following instances are from late reports of the New York Court of Appeals. All of them are reversals, and the remarks have reference in every case to the propositions and rulings of the courts below, and not to the arguments of counsel. It must be remembered, also, that appeals to our highest court are taken, not from the decisions of the court of first instance, but from the court in banc (general term), which is an intermediate appellate court, composed usually of three judges. The following comments therefore apply to adjudications which had been approved generally by four judges (in two courts) below.

"The current of authority has been, for a long course of years, uniform and unbroken in the highest courts of the State; and as no opinion was rendered in the courts below, we are at a loss to know the theory upon which they proceeded in giving judgment to the plaintiff."— RUGER, C. J. Candee *v.* Smith, 93 N. Y. 349.

"While the defendant bore an assumed name, he was physically at all times within this State, and there was no hiding or concealment of his person except as he assumed and bore the fictitious name. It passes my comprehension how, by any process of reasoning or metaphysics, such a person continually present in the State for nearly ten years can be said never to have come here, and to have been continually absent from the State." — EARL, J. Engel *v.* Fischer, 102 N. Y. 400.

"The proceedings in the Surrogate's Court, and the decision which closed them were without any apparent regard to certain well-established equitable principles; to the recognition and protection of which every person is entitled, while accounting in that court for his acts as executor or administrator. . . . There is something in this which shocks the legal as well as the moral sense."— GRAY, J Matter of Niles, 113 N. Y. 547.

"We think the judgments of the courts below in this case have proceeded in disregard of the elementary rules referred to." — Thomas *v.* The Musical, &c. Union, 30 N. Y. State Reporter, 563, Court of Appeals, April 15, 1890.

"We are of the opinion that the courts below have erred in their views of this case, and that the question presented by the exception has been repeatedly adjudged in favor of the plaintiff by the courts of this State. . . . It seems to

us that the courts below have failed to appreciate the effect produced by the abolition of the distinction between law and equity, and the more recent decisions in this State depriving a mortgage of the characteristics of a conveyance. The cases are very numerous in our reports, and so familiar to the profession that we are surprised at the necessity, at this date, of referring to them at all." — Barry *v.* Hamburg-Bremen Fire Ins. Co., 110 N. Y. 1.

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"The plaintiff's application [which had been successful in the two lower courts] is to the equitable jurisdiction of the court; but a case suggesting fewer considerations likely to influence a court of equity in its favor or more opposed to the rules and maxims by which such a tribunal must be guided than the one on which he relies, has not been brought to our attention. In the diversity of causes of action it seldom happens that one is found which has no other support than an admitted breach of confidence, and violation of trust reposed by a father in his son. Such is this case." . . . After citing authorities: "Indeed the decisions are all one way." — Robbins *v.* Robbins, 89 N. Y. 251.

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The conjunction of two such famous men as the brothers John and William Scott, rising from very humble positions to those of such commanding height, is one of the most remarkable in the histories of public men, and all the more striking in the total dissimilarity of the men, — Eldon slow, cautious, and conversative; Stowell quick, unhesitating, and progressive; Eldon contributing nothing to the law itself, merely defining and elucidating; Stowell the creator of the whole of the present system of Admiralty law. Of the two, Stowell has always struck me as much the greater man, yet of lesser fame.

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much-needed reform in this matter. It is no easy task to write a head-note which will at the same time point out just what was decided by the court, and not lug in the arguments of the judge who writes the opinion; but this is what the busy and overworked profession need, and need badly. A decision without a proper head-note to indicate precisely what is decided therein is like an unexplored country.

But there is another and equally needed reform I wish you would prevail upon the judge, or some other equally good man, to inaugurate; and that is in the matter of indices to the law books the profession are compelled to buy and use every day. It is indeed a rarity to find a book with even a moderately good index. Some are entirely too meagre, as the index to "Tiedman on Commercial Paper," and the index to the last "Central Law Journal;" others are so arranged that no living man can find anything in them, like the index to "Abbott's New Practice and Forms," which has the most abominable index that has been put into an otherwise excellent book in the last decade. This index will have to answer for more profanity among even-tempered lawyers than any other annoyance that harasses a long-suffering profession.

An index to a law book is to the work what a gate is to a garden, — serves to let you in. A book that is really excellent in its conception and thorough and painstaking in its execution will be comparatively useless if not provided with an index; and a poor book with a good index may be very serviceable to the profession. The trouble seems to be that the majority of authors regard an index as a thing that requires neither pains, skill, nor genius to prepare; and for that reason turn it over to some student in the office or other incompetent to prepare, and the consequence is a jumble that is disgusting to the profession and a disgrace to the honest workmanship of the author.

Every index should consist of terse lines or phrases which embody in the first word or the first two words the leading idea of the line; and these lines should be arranged alphabetically under their proper subdivisions, similar to the index in "Wiltsie on Mortgage Foreclosure," which the "Green Bag," in common with the other journals of the country, has praised. The advantage of this method of preparing and arranging an index is that it saves time to the searcher. The ordinary index is a perfect jumble, a miserable hodge-podge of points, without head or tail, and you have to run laboriously through an entire title before you can find the point you are looking for. Take as an example "Boone on Code Pleading," vol. ii. In the index, under the head "Complaint" there are thirteen pages of index matter absolutely without arrangement, and you are compelled to search through the entire thirteen pages for the reference you want. If this index was arranged on the plan spoken of, the searcher could turn directly to the letter where the point should be found and hit at once upon it, and save the annoyance and the time required in running the eye over the entire thirteen pages.

I call attention to this sad defect in our "tools of trade," in the earnest hope that it may not prove altogether "useless."

LIMB O' THE LAW.

THROUGH the kindness of THE NOTMAN PHOTOGRAPHIC COMPANY, we are enabled to present to our readers the admirable group which forms the frontispiece of this number. It is reproduced from a photograph made by the NOTMAN COMPANY and copyrighted by them, and they have most courteously granted us permission to use it. A group of more distinguished jurists it would be difficult to find.

OUR August number will contain two full-page groups of the First and Second Divisions of the present New York Court of Appeals, and separate portraits of Judges Miller, Allen, Grover, Rapallo, Church, Folger, Andrews, Danforth, Earl, Ruger, and Peckham.

LEGAL ANTIQUITIES.

ONE of the most important measures (says Mr. Crabb, in his "History of English Law," p. 337), connected with the administration of justice, was that of putting the names of attorneys on the roll; which, in consequence of their increasing numbers, was now found necessary. Wherefore it was enacted (4 Hen. IV. c. 18) that for the better assurance of their being duly qualified, they were to be examined by the justices, and by their directions their names should be put in a roll. They were required to be good and virtuous and of good fame, and on being received were to be sworn well and truly to serve in their offices.

PROBABLY the King's Attorney was the only law-officer of the Crown until the reign of Edward the Fourth. In the first year of this king one Richard Fowler was made Solicitor-General to the King, and in the eleventh year William Husee was appointed "Attornatus generalis in

Anglice cum potestate deputandi clericos et officiaros sub se in qualiter cumque curia de recordo." This is the first mention of Attorney-General, who at that time was appointed for life. — *Dugd. Chron.*, Ser. 67, 171.

FACETIÆ.

A LAWYER who was defending a suit for a widow, in the fervor of his zeal in his client's cause, exclaimed: "Gentlemen of the jury, a man who would be so mean as to sue a helpless widow-woman ought to be kicked to death by a jackass; and, gentlemen [here the eloquent counsel turned towards the judge], I wish his Honor would here and now appoint me to do the kicking."

A JUDGE in a neighboring State once intervened to prevent a waste of words. He was sitting in Chambers, and seeing, from the piles of papers in the lawyer's hands that the first case was likely to be hardly contested, he asked, "What is the amount in question?"

"Two dollars," said the plaintiff's counsel.

"I 'll pay it," said the judge, handing over the money; "call the next case."

He had not the patience of taciturn Sir William Grant, who, after listening for a couple of days to the arguments of counsel as to the construction of an act, quietly observed when they had done: "That act has been repealed."

INSTRUCTOR (*at a law school*). What is an accommodation note?

STUDENT. One which the maker does n't have to pay until he is ready to. (*Actual fact!*)

FORTY years ago the leader of the New York Bar was George Wood, whose grave deportment and habit of closing his eyes when in thought gave him an owlish appearance.

One day a gentleman called on Daniel Webster, who had temporarily forsaken politics and resumed the practice of law, to retain his services in a case involving a large sum of money.

Mr. Webster, in accepting the retainer, asked what counsel was to oppose him.

"Oh," answered the client, "he is some New York lawyer, with a commonplace, every-day name, which I forget."

"What sort of looking person is he?"

"Rather a sleepy-looking man."

"Is his name George Wood?"

"Yes, that 's his name."

"Then," rejoined Mr. Webster, with emphasis, "don't wake him up!"

MR. STORRS was once arguing a motion before Judge Drummond at a time when his Honor was busy. After listening patiently for some time, the Court told Mr. Storrs that he would not trouble him to discuss that point further. Disregarding the hint, Mr. Storrs was proceeding with his argument, when he was again interrupted by the Court with the remark that if he had any authorities in support of his position he might cite them; otherwise, as the time of the Court was fully occupied, he must decline to listen to further argument on the matter.

Said Mr. Storrs: "If there are no authorities in support of my position, perhaps it would be worth while, your Honor, to have a little patience and hear a first-class original reason in its favor."

"Very well," replied Judge Drummond, "bring on your man!"

DANIEL O'CONNELL was at one time defending a man accused of murder at Clonnel. The circumstantial evidence was so strong against the prisoner that the jury had already determined upon their verdict of guilty, when the man supposed to be murdered was brought into court, alive and unhurt. The jury were desired to return their verdict at once, and they did so; but it was one of "Guilty." "What does this mean?" inquired the judge. "If the man has not been murdered, how can the prisoner be guilty?" "Please, yer Honor," said the foreman, "he 's guilty; he stole my bay mare three years ago."

A NEGRO witness giving evidence in court was asked if he knew the reputation of a neighbor for honesty.

"I don' know nuffin ag'in him, Jedge," was the reply; "but if I war a chickum, I 'd roost high when he wuz hangin' round."

"I CAN'T understand all this fuss about using electricity for executions," remarked Judge Lynch of Kansas, reflectively. "Out in our section we have used the telegraph-pole for years."

ATTORNEY. My dear madam, I find that your estate is heavily encumbered. You will have enough to live upon, but you must husband your resources.

WIDOW. Well, my daughter Mary is my only resource now.

ATTORNEY. Exactly; husband her as soon as possible.

A WITNESS was being examined at a trial of an action for the price of goods which were alleged by the defendant to have been returned as not up to sample.

"Did you see the defendant return the oats?"

"Yes, your Honor."

"*On what ground* did he refuse to accept them?"

"In the *back yard*, your Honor."

NOTES.

IN the *Spectator* a writer says: "Affairs of consequence having brought me to town, I had the curiosity the other day to visit Westminster Hall, and having placed myself in one of the courts, expected to be most agreeably entertained. After the court and counsel were with due ceremony seated, up stands a learned gentleman and began: "When this matter was last *stirred* before your lordship; the next humbly moved to *quash* an indictment; another complained that his adversary had *snapped* a judgment; the next informed the court that his client was *stripped* of his possessions; another begged leave to acquaint their lordships that they had been *saddled with costs*. At last up got a grave serjeant, and told us his client had been *hung up* a whole term by a writ of error. At this I could stand it no longer, but came hither and resolved to apply myself to your Honor to interpose with these gentlemen, that they would leave off such low and unnatural expressions; for surely, though the lawyers subscribe to hideous French and false Latin, yet they should let their clients have a little decent and proper English for their money."

MR. CLAIR JAMES GRECE, LL.D., solicitor of Redhill, Surrey, asks to be permitted to point out what might possibly be overlooked, that on September 3 was accomplished the seventh century of what is still known to lawyers as the term of legal memory. This, as is well known, dates from the commencement of the reign of Richard I.; but as reigns were then deemed to begin not at the demise of the last sovereign, but with the coronation of his successor, Sept. 3, 1189, or seven hundred years ago on September 3 last, when the crown was placed on the brow of the Lion-Hearted Monarch at Westminster, marks the exact epoch from which legal memory is computed. — *Law Journal* (*London*).

A REPORTER of one of the Paris papers has had an interview with M. Beauquesne, director of the Roquette prison, where criminals condemned to death are confined.

"I am a partisan of the death-penalty," said M. Beauquesne; "but the application of that penalty such as it exists seems to me sufficient, and it is needless to aggravate it. Let me explain. Capital punishment by the guillotine is carried out pretty rapidly. From the moment when I go into the cell of a condemned man to announce to him that his application for a writ of error has been rejected, and to exhort him to have courage up to the time when the fatal instant arrives, it seldom takes more than ten minutes or a quarter of an hour. Now I am thoroughly convinced from reading the description of the American system of death by electricity that this lapse of time must be exceeded. The preparations are necessarily longer and more minute. The patient must be present at them, since the attendants must place him in the fatal chair, bind him, and stretch his legs. That seems to me an aggravation not foreseen by the law. And think of the horrible scenes of resistance that must inevitably occur often! The culprit will struggle. He will not consent to be seated upon the chair of death, and he will be all the stronger because his hands and feet are free until he is in position. Then the executioner and his aids must grapple with him,

and a death-struggle ensues with the victim. Such scenes are terrible. And when the victim is at last brought by force into the chair, other scenes no less atrocious must follow when the final preparations are being made. Then, again, if in his excitement the executioner forgets some connection, he will turn on the current in vain. It will have no effect, and the whole programme must be recommenced. The authorities have no right, either in a legal point of view or in the point of view of humanity, to prolong in that manner the agony of a condemned man. I could understand that kind of death, if the culprit was not made aware of the preparations beforehand, and if they simply made him step upon a trap where the electric current would kill him. What I do not like in the New York system is the preparation at which the doomed man is obliged to assist.

"In my opinion, executions by electricity will not last long in America. After one or two trials the Americans will come back to hanging."

But to get at the opinion of an interested party, a man condemned to death, the reporter went to Vodable, the assassin recently sentenced at the Assizes of the Seine, and made him read the description of the American electric system. "B-r-r-r!" exclaimed Vodable. "I vote for the guillotine!"

According to the "Asiatic Researches," a very curious mode of trying titles is practised in Hindostan. Two holes are dug in the disputed spot, in each of which the plaintiff's and defendant's lawyers put one of their legs, and remain there until one of them is tired or complains of being stung by the insects, in which case his client is defeated. Mr. Crisp, from whom we extract this, says: "In this country it is the client and not the lawyer who puts his foot into it." The learned "Conveyancer's Guide" does not say the duty devolving on the lawyer could be performed by deputy. Quære, also, whether the insects were of the order of legal sinecurists which in other places as well as Hindostan tire both lawyer and client.

Common as the expression to "dun" a debtor is, but few persons are, perhaps, aware of the origin of the word. It owes its birth to one Joe Dun, a famous bailiff in the town of Lincoln, England, so extremely active and so dexterous in his business that it became a proverb, when a man refused to pay, "Why do you not Dun him?" — that is, Why do you not set Dun to arrest him? Hence it became a cant word, and is now as old as the days of Henry VII.

REVIEWS.

The Harvard Law Review for May contains, as its leading article, "The Burden of Proof," by Prof. James B. Thayer. Edward A. Hibbard contributes a timely paper on "Elevated Road Litigation;" and Joseph H. Beals, Jr., discusses "Taxation of Pipes in Public Streets." The next number will not be issued until October.

We have received from Mr. Eugene D. Hawkins, of the New York Bar, a copy of his exhaustive paper on "The Rights of Minority Stockholders, and what Legislation, if any, is needed for their Protection," which was awarded the prize of $250 by the New York State Bar Association. The subject is one of unusual interest, and is most ably treated by Mr. Hawkins.

The Political Science Quarterly, for June, opens with a defence of "National Sovereignty" in the United States, by John A. Jameson, against the theories of the "analytical jurists." E. I. Renick, of the Treasury Department, discusses the relations of "The Comptrollers and the Courts" in the settlement of claims against the government; Dr. Charles B. Elliott, writing of "The Legislatures and the Courts," gives an interesting history of the origin and development of the power to declare a law unconstitutional. Prof. R. M. Smith, in a timely paper "On Census Methods," shows the scientific importance of the census, and suggests improvements in the methods of taking it; Professor Seligman contributes the first of a series of articles on "The Taxation of Corporations," containing an exhaustive review of all the legislation on the subject in the United States; and Horace White replies to Professor Patten's criticism of Wells's Recent Economic Changes. There are the usual number of reviews, and a "Record of Political Events" for the six months ending May 1.

SCRIBNER'S MAGAZINE for June is a Stanley number, containing the only article which he will contribute to any periodical, and the first authoritative word from him on many of the most important features of his great expedition for the relief of Emin Pasha. This article fills thirty-two pages of the issue, and is a most graphic and exciting narrative from first to last. The illustrations are unique, presenting the first results of modern photographic methods as applied in places never before seen by a white man, as well as drawings from sketches made by Mr. Stanley himself. One of the most striking pictures shows a group of the Wambutti Pygmies, a new race discovered by Stanley. "The City House" (the East and South), by Russell Sturgis, is the second article in the series on Homes. It is very fully illustrated with pictures of typical houses in New York, Boston, Philadelphia, and the South. The first instalment is published of an anonymous serial entitled "Jerry," which will run through the year. The story, it is announced, will deal with some significant social problems in a most dramatic way. President Seth Low, of Columbia College, writes of "The Rights of the Citizen as a User of Public Conveyances" (the third article of the Citizen's Rights Series), and makes some definite suggestions as to legislation to remedy the existing abuses of street-railway and ferry franchises. "Barbizon and Jean-François Millet" is finished with a most interesting selection from the unpublished letters of Millet to his friend Sensier, which give an intimate personal view of his life at Barbizon, the trials with which he contended, and the measure of success which came to him at last. Like the previous article, this is very richly illustrated

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THE CENTURY for July has for a frontispiece an excellent portrait of the well-known writer Walter Besant. Albert Shaw contributes an interesting article on "London Polytechnics and People's Palaces," which is profusely illustrated. John Lafarge continues his "Artist's Letters from Japan," with his own illustrations. Perhaps the most notable article is the second paper by Amelia Gere Mason, on "The Women of the French Salons." The accompanying portraits include Anne Marie Louise d'Orleans, Anne de Rohan, Madeleine de Souvre, Anne d'Autriche, Queen of France, Catherine de Médicis, and Françoise Bertaut. "A Modern Colorist" gives some excellent specimens of the pictures of Albert Ryder, who, by the way, is a Massachusetts man, being a native of Cape Cod. "Joe" Jefferson's delightful Autobiography is continued, and this number is devoted to his experiences in Australia. In fiction we have the opening chapters of a new serial entitled the "Anglomaniacs;" and there are short stories, "Trusty No. 49," and "Mère Marchette." Some interesting "Memoranda on the Life of Lincoln," are given, which are contributed by several writers.

THE American public is happy in having the first laugh over Alphonse Daudet's new Tartarin story. "Port Tarascon: The Last Adventures of the Illustrious Tartarin," the translation by Henry James, beginning as a serial in the June number of "Harper's Magazine," will be published complete before the French public can share in enjoying the immense drolleries of the original. The illustrations by Rossi, Montégut, and others are delightful. Another distinguished Frenchman, the Vicomte Eugène Melchior de Vogüé, member of the French Academy and author of the vivid papers on Russian Life in this magazine last year, contributes to the same number an account of what he saw during a trip "Through the Caucasus." The short stories are by the bright new American writers George A. Hibbard and Matt Crim, and the clever artist and author F. Hopkinson Smith. Among the other contents are: "The Enemy's Distance," by Park Benjamin, Ph. D., explaining Lieut. Bradley A. Fiske's important invention for range-finding at sea by electricity; "The American Burlesque," by Laurence Hutton, richly illustrated with portraits of leading actors of the past and present; "Fürst Bismarck," by George Moritz Wahl, with plate portrait of the ex-Chancellor; "The Best-governed City in the World," a striking paper upon municipal polity, by Julian Ralph; "The Young Whist-player's Novitiate," by Prof. F. B. Goodrich, with diagrams, illustrating some practice hands for beginners; and "Chapbook Heroes," a picturesque article on Claude Duval, Jack Sheppard, and Dick Turpin, by Howard Pyle, with illustrations drawn by the author; "Three Sisters," one of the four poems in the number, is a strikingly modern production, by a new poet, Angie W. Wray.

THE question of hours of labor is discussed by General Walker in the ATLANTIC for June. The author of the article will be remembered as the writer of a criticism of Mr. Bellamy's "Looking Backward," which appeared in the "Atlantic," and to which Mr. Bellamy replied at some length. General Walker has made social questions a study, and his criticisms and suggestions on the present "Eight-Hour Law Agitation" come from a man more fully fitted to speak with authority than almost any one in the United States. Charles Dudley Warner's article on "The Novel and the Common School" is a keen analysis of the duty of the public schools in the supply of reading for our young citizens. This and Hannis Taylor's consideration of "The National House of Representatives: Its growing Inefficiency as a Legislative Body," are the two articles which make up the solid reading of the number. Miss Repplier has a whimsical paper called "A Short Defence of Villains;" and Dr. Holmes discusses "Book-hunger," the uses of cranks, and tells a curious story entitled "The Terrible Clock." Mrs. Deland's "Sidney" and the second part of "Rod's Salvation" furnish the fiction of this issue; and there are two poems, an account of a pilgrimage to the localities immortalized in the legends of King Arthur, and several short papers of interest.

BOOK NOTICES.

WHAT INSTRUMENTS ARE NEGOTIABLE. By J. M. HAWTHORNE. THE TRANSFER OF NEGOTIABLE PAPER AS COLLATERAL SECURITY. By LEWIS LAWRENCE SMITH, of the Philadelphia Bar. THE EXECUTION OF TRUSTS BY THE STATUTE OF USES IN MARYLAND. By JOHN P. O'FERRAL. T. & J. W. Johnson & Co., Publishers, Philadelphia.

These three little volumes were originally written as essays by the several authors; and each obtained the prize in the Universities of Wisconsin, Pennsylvania, and Maryland, respectively. They are all clearly and succinctly written, and give evidence of thorough research on the part of the writers. Each volume is accompanied by a table of cases and a well-arranged index. Practitioners will find them of value as containing in a small compass the recognized law upon the subjects of which they treat.

RIGHTS, REMEDIES, AND PRACTICE AT LAW, IN EQUITY, AND UNDER THE CODES. By JOHN D. LAWSON. Vol. V. Bancroft-Whitney Company, San Francisco. $6.00 net.

This volume — continuing the third division, Property Rights and Remedies — embraces the titles Insurance, Contracts, and Licenses. The same care and intelligent judgment are evidenced in the treatment of these subjects which we have noted in the preceding volumes, and the ground is well and thoroughly covered. Only two more volumes are to come to complete the work; and the lawyer who possesses the seven volumes will have a library which will meet the requirements of an ordinary practice.

LAWYER'S REPORTS ANNOTATED, BOOK VI., WITH FULL ANNOTATIONS. By ROBERT DESTY. The Lawyer's Co-operative Publishing Co., Rochester, 1890. $5.00 net.

Mr. Desty still maintains his reputation as an editor, and this last book is fully up to the standard of its predecessors. A well-selected assortment of cases and admirable annotations combine to make a most valuable volume of Reports.

THE AMERICAN DIGEST, 1889 (UNITED STATES DIGEST, THIRD SERIES, VOL. III.). West Publishing Co., St. Paul, 1890. $8.00 net.

A volume containing 4,400 pages, and covering all the decisions of all the United States Courts, and Courts of Last Resort of all the States and Territories, and the Intermediate Courts of New York State, during the year 1889, is offered to the profession by the enterprising publishers of this admirable digest. The work involved in the preparation of such a volume is something stupendous; and that the result should be so thoroughly satisfactory is a matter for congratulation, not only to the compilers, but to all who have occasion to use a Digest. The decisions are arranged in such a way as to render them easily accessible as precedents; the classification is uniformly good, and the logical connection of the decisions is made the leading guide in the arrangement. We can but repeat what we have said of the previous volumes that the work is indispensable to every practitioner.

A HAND-BOOK OF THE TARIFF ON IMPORTS INTO THE UNITED STATES, THE FREE LIST, AND THE BOND AND WAREHOUSE SYSTEM NOW IN FORCE. BY GEORGE H. ADAMS, of the New York Bar. Baker, Voorhis, & Co., New York, 1890. $3.00 net.

If this book only settled the vexed question of the tariff, it would indeed be a boon of incalculable value. The author, however, has done the next best thing, and given us a most useful work on the tariff as it is, and one which will be a great aid, even if the present laws should be changed, to importers, customs officers, and all lawyers who are called to advise in customs cases. The acts of Congress relating to imports, even if readily accessible, are difficult of application to particular cases. The chief aim of this book is to show, in a compact form, how the Tariff Acts have been applied to actual cases by a long series of decisions by the Secretary of the Treasury. It contains the published decisions of the Treasury, in the form of abstracts or notes, arranged under the section of the statute, or the paragraph of the schedule to which each applies; and with them are abstracts of all cases decided by the courts and the Attorneys-General since the adoption of the Revised Statutes of the United States that are deemed to be of advantage and illustrative of the subject. We most heartily commend this book to all who are in any way interested in the matter of customs.

LEAVES OF A LIFE; BEING THE REMINISCENCES OF MONTAGU WILLIAMS, Q. C. Published by Houghton, Mifflin, & Co., Boston and New York, 1890. Two volumes. $7.50.

"I think I may safely say," says the author, "that I have defended more prisoners than any other living man;" and certainly Mr. Williams is one of the best known of English criminal lawyers. Had he been able to continue in practice, he would undoubtedly have stood at the very head of his profession in this particular branch, but unfortunately a severe disease of the throat obliged him to retire some four years since. The two volumes before us are written in a peculiarly interesting style; and while there is a vein of egotism running through the narratives, it is perhaps pardonable in a man who has met with such distinguished success. Associated with him in many of his most important cases was Serjeant Ballantine, a name as familiar in this country as it is in England. Mr. Williams says of him: "The Serjeant was a very extraordinary man. He was the best cross-examiner of his kind that I have ever heard, and the quickest at swallowing facts. It was not necessary for him to read his brief; he had a marvellous faculty for picking up a case as it went along, or learning all the essentials in a hurried colloquy with his junior. There is no point that the Serjeant might not have attained in his profession had he only possessed more ballast."

Mr. Williams was engaged in some of the most celebrated cases of his time. The first was that of Catherine Wilson charged with administering sulphuric acid to one Sarah Parnell, with the intent of murdering her. He was counsel in the Hatton-Garden murder case, which was regarded by him as one of the most remarkable in his career; the Cannon Street murder; the case of De Tourville, accused of murdering his wife; the defence of one of the parties accused of being concerned in the Clerkenwell explosion; the case of Lefroy, indicted for murdering a Mr. Gold in a railway train. Mr. Williams was also engaged in the trial of Dr. Lamson for the murder of his brother-in-law by the administration of aconitine; and a host of others too numerous to mention.

Anecdotes are scattered through the book, — some more or less old; but there are many good ones which we had never heard before, and which will bear repetition.

"A certain Mr. F—— of the Western Circuit, conducting the defence of a woman charged with causing the death of her child by not giving it proper food, while addressing the jury, said: "Gentlemen, it appears to be impossible that the prisoner can have committed this crime. A mother guilty of such conduct to her own child! Why, it is repugnant to our better feelings;" and then being carried away by his own eloquence, he proceeded: "Gentlemen, the beasts of the field, *the birds of the air*, *suckle their young*, and —" But at this point the learned judge interrupted him and said: "Mr. F——, if you establish the latter part of your proposition, your client will be acquitted for a certainty."

The following story is told of the chairman of the Bench of County Magistrates somewhere in the North. The gentleman in question, who was a large landed proprietor, had among his laborers a very useful man, who was somewhat of a favorite of his. This person had taken a fancy to some of his neighbor's fowls, was arrested, and sent before his master for trial. Upon the case being called on, the prisoner, in answer to the charge, pleaded "Guilty." The chairman, nevertheless, went on trying the case, just as though the plea had involved a denial of the accusation. Knowing that the chairman was very deaf, a counsel present jumped up, and as *amicus curiæ*, ventured to interpose, and remind his worship that the prisoner had confessed his guilt. Upon this the presiding genius flew into a tremendous passion, begged the learned counsel would not interrupt him, and exclaimed: "Pleaded Guilty! I know he did; but you don't know him as well as I do. He 's one of the biggest liars in the neighborhood, and I would n't believe him on his oath." The trial proceeded; and while the result is not given the probabilities are that the prisoner was acquitted.

The book will well repay a perusal, and cannot fail to interest and entertain its readers.

JUDGES OF THE COURT OF APPEALS, 1890.—FIRST DIVISION.

John Clinton Gray, Denis O'Brien.
Francis M. Finch. Chas. Andrews. William C. Ruger, Chief. Robert Earl. Rufus W. Peckham.

The Green Bag.

VOL. II. No. 8. BOSTON. AUGUST, 1890.

THE NEW YORK COURT OF APPEALS.

PART II.

BY IRVING BROWNE.

WHEN the Court of Appeals had been in operation some twenty years, it had become apparent that it was inadequate and defective in several particulars: —

1. It could not keep up with its business. The arrears were very great. It took four years to reach an argument in an ordinary case.

2. It was felt that it was theoretically, if not practically, wrong to allow Supreme Court judges to sit in the Court of Appeals in review of their own decisions.

3. It was thought that the term of eight years was too short.

4. It was believed, however, that there ought to be a limitation of age beyond which a judge might not sit.

5. Much fault was found with the fluctuating composition of the court, by which one half of its members were changed every year.

A constitutional convention having been called in 1867, a new judiciary article, the result of their deliberations, was submitted to the people, adopted by a majority of less than seven thousand in a vote of about half a million, and went into effect, Jan. 1, 1870.

Under that article the Court of Appeals is composed of a chief-judge and six associates, chosen by the electors of the State, and holding for a term of fourteen years, but retiring at seventy years of age, five forming a quorum and the concurrence of four being necessary to a decision. The court has power to appoint and remove its clerk, reporter, and attendants. For the first election such provision was made that the minority party was to be represented by two judges. A commission of appeals was constituted, consisting of five commissioners, four forming a quorum, to dispose of the arrears of the old Court of Appeals. This commission was composed of the last judges of the Court of Appeals, and a fifth appointed by the governor. Its tenure was limited to three years, but afterward extended two years. The Court of Appeals constitutes a part of the Court for the Trial of Impeachments. By the same article, the question of appointing or electing the judges was directed to be submitted to the people, and in 1873 was determined in favor of the elective system by a vote of three hundred and nineteen thousand against one hundred and fifteen thousand.

The first election resulted in the choice of Sanford E. Church, as chief-judge, and William F. Allen, Rufus W. Peckham, Martin Grover, Charles A. Rapallo, Charles Andrews, and Charles J. Folger, as associates; the first five being Democrats, the last two Republicans. Subsequent substitutions made Charles J. Folger, Charles Andrews, and William C. Ruger chief-judges, and Alexander S. Johnson, Theodore Miller, Robert Earl, Samuel Hand, Benjamin F. Tracey, George F. Danforth, Francis M. Finch, Rufus W. Peckham, Jr., John C. Gray, and Denis O'Brien associates. The present court consists of William C. Ruger, chief-judge, and

Messrs. Andrews, Earl, Finch, Peckham, Gray, and O'Brien, associates. All the rest are dead except Messrs. Danforth and Miller, who have been retired by limitation of age.

Sanford Elias Church.

Sanford E. Church was born in 1815. His early schooling was small. He became a member of the Assembly at twenty-seven, and subsequently was twice lieutenant-governor and once comptroller. His was for many years a prominent name as a possible candidate for the presidency; but I believe he never was troubled with the buzzing of the so-called presidential bee, and he helped nominate four candidates. He was not an aspirant for the office of chief-judge, and had not the advantage of previous judicial experience, but he was elected by a majority of ninety thousand. He never was known as a learned lawyer, but he had a broad comprehension and splendid common-sense and sagacity; the calmness, gravity, and dignity of a superior nature; a candor, patience, and magnanimity remarkable in one of such positive convictions. He was a strong and active politician, but not a bitter or vindictive one, and there was nothing unhandsome in his nature or in his conduct. It is a strong testimony to his powers and his purity that although he had never been a judge and had always been a politician, he acquired the reputation of a great magistrate, and was never suspected, not to say accused, of political bias on the bench. He had a cautious, receptive, and candid spirit, with little pride of opinion, and a noble desire to do right. So his innate wisdom, his experience in affairs, his knowledge of men, and his willingness to be instructed in the cause made him a safe and judicious magistrate. He has always seemed to me a man of a type very similar to Chief-Justice Waite. Like him, he was a perfect model of a presiding judge. He was patient, attentive, and courteous, keeping his kind and intelligent eyes always fixed on the speaker, affording especial encouragement to the young or timid, and inspiring confidence and respect. He rarely interrupted counsel, and never tried to shorten their arguments within the limit of the rule, believing that it saved time to hear them out. The value of such a character at the head of a great court is incalculable. It gives stability to the law, and gains respect for its adjudications even from the defeated party.

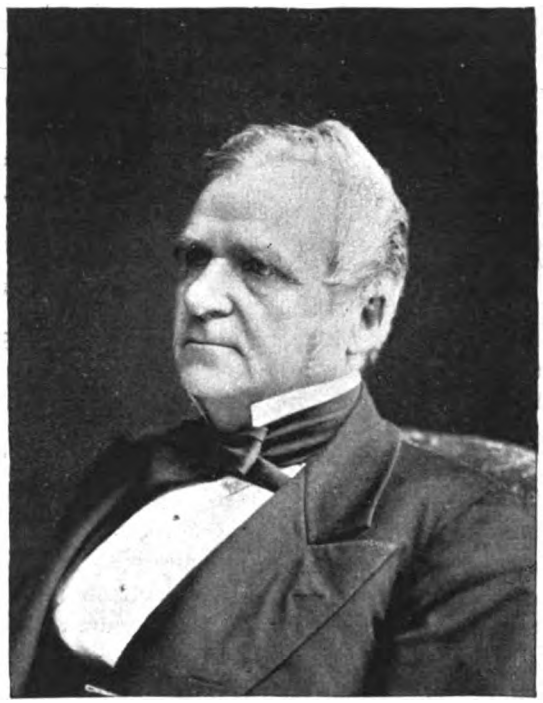
Judge Church wrote in a plain and simple and perfectly clear style, with force of logic and expression. His opinions were never long, almost always remarkably short. One will look in vain in them for any mere display of learning or critical review of authorities. He cited few cases, but showed that he had studied many. He literally *expressed* the law from the authorities; but he loved mainly to deal with questions on principle, and to grapple with the reason and right rather than to balance precedents.

He was of commanding stature, robust physique, and distinguished presence. His head was massive; his countenance strong, sagacious, and benevolent. His manners were not warm nor yet austere, but grave and dignified, impressing one with a sense of his sincerity. But his great frame and energy gave way at last in the hopeless struggle to keep abreast of the calendar. He died in 1880, very suddenly and unexpectedly, at the age of sixty-six, the ink hardly dry on his opinion in Burr *v.* Butt Co., 81 N. Y. 175. He literally wore himself out in the public service; and in the same fruitless struggle perished Allen, Grover, and Peckham. It is sad to reflect on this great career cut off so prematurely by the heartless indifference and stinginess of the State, which can squander money in every foolish direction, but grudges a reasonable and judicious investment in judicial service. A memorial of Chief-Judge Church, from the pen of Judge Folger, may be found in 77 N. Y. Reports, phrased with the most exquisite felicitousness, and justly sympathetic.

Examples of Chief-Judge Church's style, research, and reasoning may be seen in

People *v.* McDonald, 43 N. Y. 62, on larceny, — possession in owner; Burrill *v.* Boardman, 43 N. Y. 254, on illegal suspension; Kinnier *v.* Kinnier, 45 N. Y. 535, on foreign divorce; Newell *v.* Nichols, 75 N. Y. 78, on presumption of survivorship in common disaster; Manhattan Brass, etc. Co. *v.* Thompson, 58 N. Y. 80, on wife's liability on contract for benefit of husband.

William Fitch Allen.



SANFORD E. CHURCH.

Judge Allen was born in Connecticut, in 1808. His mother was a sister of the mother of Chief-Judge Church. He was graduated at Union College in 1826. He was a Democrat, and held many political and judicial offices, including that of comptroller, and once declined the nomination for governor, preferring the judicial post. He was elected a justice of the Supreme Court in 1847, and was re-elected without opposition in 1856, although his district was strongly against him in politics. He sat in the Court of Appeals in 1855 and 1862, and was defeated for that office in 1863. He died in 1878, a few months before he would have been retired by reason of age.

He came to this court with a long judicial experience and with a reputation for learning which was amply fulfilled. He was doubtless one of the most learned of our judges, and was familiar with all branches of the law. I doubt that any judge who ever lived in this State was better equipped and more evenly balanced in general legal learning. He was an expert and ingenious reasoner, and a remarkably trenchant and incisive writer. He is said to have had great power in the consultation-room. One of his brethren once said to me. "We may sometimes doubt that he is right, but it is almost impossible to refute him, and he frequently carries his point by sheer intellectual force and skill in argument." He possessed the rare art of putting vague and unfamiliar ideas in a sinewy, exact, and lucid style, and occasionally illuminated an arid subject with lambent humor (as in the celebrated dog-case, Wiley *v.* Slater, 22 Barb. 506). In spite of the brilliancy of his mind and his dialectical skill, he was a patient investigator, and his numerous opinions indicate vast research.

He had supreme intrepidity and independence. These qualities were nobly illustrated in his celebrated opinion against cumulative sentences in the case of Tweed (People *v.* Liscomb, 60 N. Y. 559), — one of the most unpopular, at the time of its delivery, that were ever uttered, but unanimously concurred in by the court, and in my judgment, although condemned in England and in some of our States, clearly right and just. It has undoubtedly settled the law for this State; and the court long since outlived the contemptible clamor and abuse of Charles O'Conor, Noah Davis, and the hired libeller of "Harper's Weekly," and the ignorant chattering of all the parrot newspapers.

Judge Allen was actively interested in

education, and was a trustee of Union College, and a lecturer in the Albany Law School.

In person he was rather tall and moderately stout; somewhat swarthy; his frame was formed for endurance; his well-rounded head indicated resolution and firmness, and was well balanced between the reflective and the executive faculties. His capacity and patience of labor were extraordinary. His manners were easy, dignified, and considerately courteous. His nature was warm and impulsive, but held under the restraints of reason and religion.

In a very touching memorial of him by Chief-Judge Church, in 70 N. Y., it is well said: "Through an extended life he was an honor to his race, to his profession of the law, and to his judicial office."

From a long study of the opinions of this court, I am inclined to rank Judge Allen with the half-dozen greatest judges who have sat on this bench. His opinions in the Supreme Court are to be found in the first thirty-nine volumes of Barbour, and in the Court of Appeals are so numerous and so prodigal of learning and acute in reasoning that it is difficult to make a choice; but I will refer to Chamberlain *v.* Chamberlain, 43 N. Y. 424, on a bequest to a foreign charitable corporation; Ruloff *v.* People, 45 N. Y. 213, on liability of one of several engaged in the same felony for murder by another during the transaction; Bank of Albion *v.* Burns, 46 N. Y. 171, on wife's mortgage for husband's benefit; Palmer *v.* Dewitt, 46 N. Y. 532, on copyright in drama before publication; Laning *v.* N. Y. Cent. R. Co., 46 N. Y. 521, on master's liability for negligence toward servant; President, etc. *v.* Penn. Coal Co., 46 N. Y. 250, on construction of contract for arbitration.

Martin Grover.

Martin Grover was born in 1811, and had a common-school and academical education. He practised at the bar until 1857, and was acknowledged to be one of the most powerful, shrewd, and adroit advocates in the western part of this State. He was elected to Congress in 1844 as a Democrat, and served one term, in which he ran counter to the course of his party on the vital question of slavery in the Territories, delivered one of the most original, able, and dignified speeches on the subject, and was chairman of that famous meeting of Northern Democrats in which the "Wilmot proviso" had its birth. He served as Supreme Court Justice, by appointment to fill a vacancy, from 1857 to 1859, and was then elected for eight years. In 1867 he was elected to the Court of Appeals for eight years, and sat there until the re-organization in 1870, and then was elected as an associate judge. He died in 1875.

I once wrote of him: "Judge Grover was a man of large professional learning, untiring industry, and an almost unparalleled power of application; of unerring common-sense and a keen appreciation of humor; of quick perception and broad comprehension; of sturdy honesty and boldly independent judgment; of a deep love of right and justice, and a hearty scorn of wrong; holding his opinions with extreme firmness, but candid and reasonable in spirit; sometimes restive under argument, always patient in investigation; of plain manners and blunt demeanor, sacrificing not to the graces and but little to the usages of polite society; of robust and massive frame, heavy in movement but not devoid of a simple dignity; careless in his dress, unostentatious, democratic. Like Othello, he was rude in speech; like Ulysses, he was subtly wise." On reflection, I think this does no more than justice to his essential qualities, but is rather too polite about his manners and demeanor. I especially beg pardon of the Moor. So, too, I think Judge Folger was rather too polite in his memorial of him in 59 N. Y., when he speaks of his "agile and diffusive humor," and says: "His humor was so lively and overmastering that it at times jostled dignity and even decorum. He did not at all

times touch with tender fingers the failings of others." But he probably does him no more than justice when he speaks of him as a "ready and unpaid adviser, a discreetly generous helper, a most lenient creditor," and of "shades in his character there will be where there are great prominences to cast them." His judicial manners were always bad. There is no doubt that Grover's circuit was frequently a circus so far as he was concerned. He was often personal, even to the extent of abuse. He would purposely mispronounce a lawyer's name to annoy him; "Mister Lorrykew," for Larocque, is a well known example. Sometimes he got better than he sent. One such instance I once versified as follows: —

A Western New York judge of sterling mental stuff,
Of shaven upper lip, of manners coarse and rough,
Disdaining all such foppery as clean apparel,
Once with a young attorney sought to pick a quarrel,
And with ill-timed severity in court did lash
Th' offending youth because he sported a mustache, —
Saying, "Young man, that dirty hair about your mouth
You did n't wear till you from Buffalo went South,
And left plain folks like us for the metropolis."

The bashful but deserving youth blushed deep at this,
But held his tongue, and bowing low to the rebuke,
Waited till summing up, when thus revenge he took:
"The point is, gentlemen, whether a custom 's proved,
With reference to which these parties are supposed
T' have contracted, — one, 't is said, to Buffalo,
Peculiar and unknown as farther south you go.
Such case may easily be, for from his Honor's talk
You learn what 's strange to you is common in New York.
With us they let the beard grow on the upper lip·
But this subjects one here to a judicial nip.
No custom 's universal, but customs vary
With each degree of latitude in which you tarry:
A New York judge takes pride in keeping free from dirt;
Not so with judges here, — look at his Honor's shirt!"
The bar, with loud applause greeting this pithy one,
Acknowledged Grover met his match in Fithian.

WILLIAM F. ALLEN.

I think he affected something of rusticity; and there are those who affirm that when at the bar he would come into court with a wisp of hay in his hair which he had placed there to win the rural juror. To his latest day he had a trick of brushing his head with his hand as he entered court, and I have often wondered if he did not do this to divest himself of a possible hay-seed. He wore square-toed boots to the day of his death, — nicely blackened, to be sure, but that was probably because he could not keep them away from the hotel porter; and broadcloth always sat uneasy and wrinkled upon him, and his trousers were always as short as his temper sometimes was. On the bench of the Court of Appeals, being among gentlemen, he was forced to restrain his wonted antics; but his mind was fertile in devices, and he found shrewd ways to worry counsel. He would yawn, or look around and smile (not to say grin) satirically, interrupt, and assume to "run the court." Nobody but a Chief

of Church's patience would have endured his assumption of this function; and it is said that they "had it hot and heavy" in private on the subject. I have seen the Chief visibly amused, sometimes annoyed. I used to wish I could be Chief for just one day, in order to "sit down" on Grover in public for this boorishness. He would say to counsel, "There ain't anything in that point; you'd better skip to the third;" "The Court don't want to hear you any more on this point;" "You have cited forty cases to this point; the Court can't look at them all; you'd better point out, say, half-a-dozen that you set the most store by;" etc. He would sit up all night and read the record, come into court next morning knowing more about it than the counsel, and prod him with pertinent and embarrassing inquiries and suggestions. The worst of it was that he was usually right; but then he was out of his place, and I doubt that anything was gained for justice by this conduct. Once an eminent counsellor said, in the argument of a case in this court, in reference to a supplementary point in manuscript, "All I need say about this is to observe, in the language which his Honor Judge Grover so frequently employs, 'I don't think there's anything in that point.'" This did not seem to amuse Grover, but the rest had evident difficulty to keep their faces straight. But the court beat the counsel on that very point. And yet in spite of all his faults of manner, the bar, including even those who suffered from his thrusts, had a sincere respect for this eccentric character, because they knew him to be honest, independent, learned, and clear-sighted.

More good stories and sayings are told of Grover than of any other judge within my recollection. I have no room for the stories, and one of the sayings will suffice: "When a lawyer is beaten, he has two remedies: one is to appeal; the other is to go down to the tavern and swear at the court."

He wrote many opinions, seldom long, always unembellished but forcible in style, and generally exhibiting learning and research, of which Adams *v.* Perry, 43 N. Y. 487, on perpetuities; Kinne *v.* Ford, 43 N. Y. 587, on sale and delivery of gold coin; Madison Ave. Baptist Church *v.* Baptist Church, etc., 46 N. Y. 131, on sale of lands of religious societies; White *v.* Howard, 46 N. Y. 144, on charitable devises by will made in another State; and Clinton *v.* Myers, 46 N. Y. 511, on right to maintain a dam as against an intervening owner, are good examples.

Rufus Wheeler Peckham.

Judge Peckham was born in 1809, and was educated at Union College. He studied law with Greene C. Bronson and Samuel Beardsley, and then formed a life-long friendship with the latter. On admission he came to Albany to practise, and held his own against such brilliant advocates as Samuel Stevens, Marcus T. Reynolds, and Henry G. Wheaton. At the age of twenty-nine he was appointed by Governor Marcy district attorney of Albany County. He was defeated in 1845 in the Legislature for the office of Attorney-General by John Van Buren by one vote. In 1852 he was elected to Congress as a Democrat, and served one term. He denounced the Nebraska bill, and foretold with astonishing precision the effects which that measure produced. Subsequently he was associated in business with the eloquent Lyman Tremain. In 1857 he was defeated for the office of justice of the Supreme Court; but in 1859 he was elected over Ira Harris, and at the end of eight years re-nominated and re-elected without opposition. In 1870 he became a judge of the new Court of Appeals, and served until 1873, when being broken in health he sailed for Europe with his wife on the steamer Ville du Havre, and they both perished in the wreck of that vessel.

Peckham was not a learned lawyer nor a patient student, but he was well grounded and had a tenacious memory, a clear comprehension, a keen sense of right, independence, courage, and honesty. He had however

an imperious will and strong passions and prejudices. I do not think that he had a judicial mind, and I think that as a circuit judge he acted the advocate upon the bench too much. He honestly believed and openly declared that it was a judge's duty to influence the verdict of the jury as he thought right. His emphatic expressions, powerfully urged, and pointed by what has been called his "spectral forefinger," were all-controlling in the *nisi prius* courts, and the result was many new trials.[1] His career as an appellate judge was short; and his opinions are generally brief, terse, and unadorned, but marked by logical power and directness. He loved principle rather than precedent, and reflected more than he studied. Good examples of his writing, reasoning, and research are to be found in Pixley *v.* Clark, 35 N. Y. 520, on percolation, and his dissent in Tyler *v.* Gardiner, 35 N. Y. 597, on undue influence over a testator; his dissenting opinion in McCord *v.* People, 46 N. Y. 470, on false pretences to induce an infraction of law; and Binnse *v.* Wood, 49 N. Y. 385, on liability of estate of deceased co-surety. For so positive a nature he had a somewhat singular patience. Indeed he was impatient of nothing but fraud and wrong. He was conspicuously high-minded, dealt the blows of an athlete, or drove for the goal of justice without much regard for what might be crushed under his wheels. He was magnanimous too, and being strong, did not resent heavy blows.

MARTIN GROVER.

In manner he was bluff and brusque, but never discourteous. I believe that his somewhat austere exterior hid a warm and loyal heart. He made many temporary enemies, but hosts of life-long and devoted friends.[1]

In person Judge Peckham was the most distinguished man of his day. He had the form of an Apollo, and a face like a Spanish

[1] Judge Peckham presided at the trial at Albany of Gordon for the murder of Thompson. The weapon used was a rough stick employed in baling hay. Convinced of his guilt, the judge made a charge with "horse, foot, and dragoons," and on coming down from the bench accosted John K. Porter with, "Well, John, what did you think of that charge?" Porter replied, "Rufus, I think you have as effectually killed Gordon as he killed poor Thompson, and with just about as rough a weapon!" Gordon was duly convicted and sentenced to be hanged, got a new trial on account of the charge, and escaped with the penalty of murder in the second degree.

[1] When I was a law student, frequenting the State Library at Albany, in 1857, Judge Beardsley was engaged in the argument of the famous case of Curtis *v.* Leavitt. Mr. Peckham drove up with his spanking span, and strode into the library one afternoon, approached Mr. Beardsley, stood for a moment with visible affection and amusement watching the venerable man closely poring over his books and unconscious of his presence, and then exclaimed in deep, hearty tones, "Come, old friend, throw away those books and go and take a trot with me!" The old man relinquished his studies with a sigh, and went off leaning on the arm of his stalwart friend, who supported his feeble steps and guided his feeble sight down the aisle with touching tenderness. This scene was frequently repeated. Whenever I have heard Judge Peckham criticised as to head or heart, I have recalled it.

grandee looking out from a frame of Velasquez. He was erect and soldierly, always elegantly dressed; his carriage was grand and dignified; his complexion was ruddy, his hair gray and waving; his brow and nose were noble, his eyes were dark-gray and piercing; he wore no beard save a grizzled mustache. His tragic fate has kept his memory green. His contemporaries love to call up in the mind's eye that heroic form on the deck of the sinking ship, the central figure of a group of dependent and timorous friends, and to recall his last words, so typical of the grand nature, "If we are to go down, let us go down bravely." His piteous ending won a unanimous expression of sorrow, admiration, and respect from the bench and bar of our State. The Court in their memorial speak of his candor, patience, courtesy, kindness, tenderness, his "manly and generous nature," and say, "his death is felt by us as a family affliction." There is a magnificent portrait of him in the chamber of the court; and a fine one, prefixed to —— New York Reports, is reproduced here.

Charles James Folger.

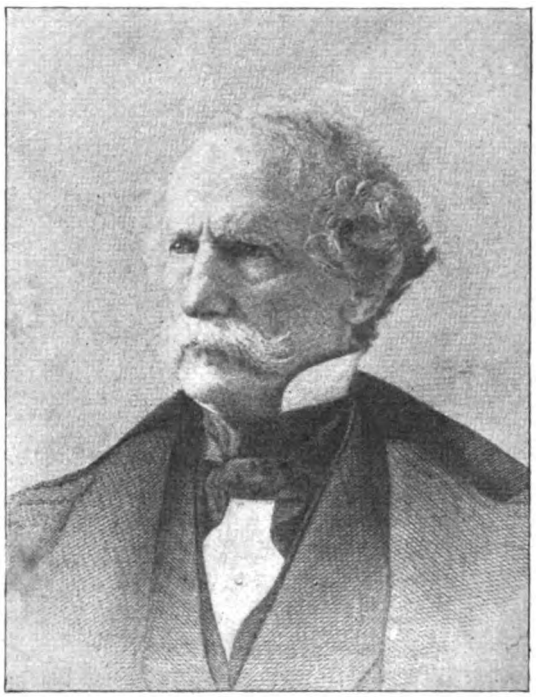
Judge Folger was born in Nantucket in 1818. In 1830 the family removed to Geneva, N. Y., where he always afterward lived. He was graduated at Geneva College, now Hobart College, at the age of eighteen, at the head of his class. Some of his friends used to say that the class consisted of the judge alone; but he always insisted that there was one other, and that the question who was at the head depended on which way the class was counted. In 1844 he was appointed Common Pleas Judge for Ontario County, and in 1851 was elected county judge of that county. He was State Senator from 1861 till 1869, was President *pro tem.* four years, and chairman of the Judiciary Committee during the whole period. In 1869 he resigned to accept the post of assistant treasurer of the United States at New York City, and resigned that place in 1870 upon election to the Court of Appeals. In 1867 he was chairman of the Judiciary Committee of the constitutional convention which devised the remodelled court. On the death of Chief-Judge Church in 1880, he was appointed to fill the vacancy, and in the fall of that year was elected to that place. President Garfield offered him the position of Attorney-General, but he declined it. On President Arthur's accession, he accepted the office of Secretary of the Treasury. He was defeated for governor in 1882. He died in 1884, at the age of sixty-six, worn out in the public service, in a department not the most congenial to him, — a victim to his sense of duty, who gave his life for his country as fully as if he died on the battle-field in defence of her honor or her rights. What I shall say of him may be tinged by personal affection and reverence, for I had the honor and the pleasure of a long and intimate acquaintance and correspondence with him.

There have been greater legal minds in this country and on this bench; but Judge Folger was an extremely accomplished legal scholar, and a profound and equitable judge. In addition he was a grave and wise statesman, an elegant scholar in literature, an affectionate and faithful friend, a noble and unblemished man. There is little need to speak of his character, which was a synonym for dignity, integrity, candor, fearlessness, firmness, and devotion. It is much that a man goes through a long public life without incurring a single hostile imputation; it is more that when he is dead and gone, every survivor, foe as well as friend, will rise up and testify that he never deserved any. Even when he was made the victim of an overwhelming denunciation of political methods and party intriguers, no breath ever tarnished his fair fame. He unquestionably had a marked fitness for political life, and his political career was highly honorable to himself and useful to the State; but he was most fit for a judge, and he was speedily conscious of the mistake he made in yielding to the pressing importunities of

JUDGES OF THE COURT OF APPEALS, 1890.—SECOND DIVISION.

Alton B. Parker. Charles F. Brown.
Irving G. Vann. Joseph Potter. David L. Follett, Chief. George B. Bradley. Albert Haight.

his old friend, President Arthur, and deserting our bench for the National Treasury. The life and the occupation were uncongenial to him; but he was determined to stay because he thought it his duty, and not because he was ambitious or loved office unduly. He once wrote me from Washington: "I am not ambitious. Give me a competency, — nay, a little more, so that I can have pictures and books and horses and friends about me, — and though bounded by a nutshell, I count myself a king of infinite space." Of his unfortunate canvass for governor in 1882, this is not the place to speak in detail. I may say, however, that I believe he knew he was foredoomed to defeat, — although probably he did not dream that his party would so scurvily abandon him, — and gave himself as a sacrifice to his sense of duty. I do not believe that he was in any sense the victim of disappointment. He more than once assured me that if his party could afford the result, he thought he could. I believe, however, that if he had stayed on our bench and not gone to Washington, he would have been President of the United States in 1884.



RUFUS W. PECKHAM.

Of Judge Folger's learning, research, wisdom, and acuteness, and of his original and peculiarly forcible and felicitous style of writing, the pages of our law reports bear most ample witness. I find his opinions quoted in other States with great frequency and respect. No one, however, who has not, like myself, had occasion to delve in the pigeonholes of the reporter, can have any conception of the amount of labor he performed as a judge. Scores of opinions were written by him, apparently simply to satisfy his own mind, and marked "Not to be reported," or "To be reported only in part, if at all." Here, as well as in his administration of national affairs, he evinced his unfailing determination to master everything for himself, and to take nothing on trust. Undoubtedly this trait existed in him to excess, and shortened his life. He was an antiquarian in general and in legal literature; he loved the dusty old folios, and their quaintnesses and archaisms frequently affected his own style. As an example of his literary style, I know nothing finer in his own writing, or more exquisite in literature, than his characterization of Chief-Judge Church in the memorial of the court in 77 New York Reports. Even in his engrossment in the National Treasury he found time to carry on with me a literary correspondence, and to send me many curious results of his wide reading, and many acute reflections suggested by it. He was a great novel-reader, and we used to exchange lists of novels with our estimate of them. Frequently in his letters I find poetical quotations which I cannot trace to their source. In a letter to me, probably the last he ever wrote, he said, —

"I am at home sick, but I can read a book; and doing so this afternoon I strike this, which

may amuse you and lead you to look up the piece [referring to Lucian's Lawsuit of the Vowels]. Had I access to books here, I would search for it; but alas! I can walk but a few steps at a time, and to climb a library step-ladder would be stepping into futurity. The doctors say I must not work, even to write a letter. So I stop."

This in his beautifully legible handwriting, with his unfailing accuracy of punctuation. His classical learning and accuracy are illustrated by the following to me under date of July 2, 1882: —

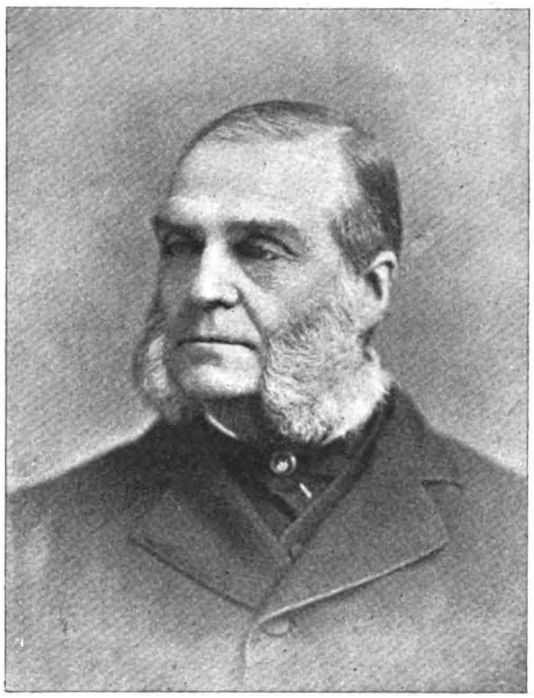
"I write to make to you a correction in my letter to the judges, which appears in the 84th New York. There is an error, not of my making, but of the compositor and proof-reader, in the Latin quotation — or rather, two errors. First, it should not be one line; second, it should not be '*Loetor nam*,' but '*Lætus sum*.'

'*Lætus sum*
Laudari me abs te, pater,
laudato viro.'

That is the correct rendering from a play, 'Hector,' by Cneus Nævius. I have seen it freely rendered thus: —

'My spirits, sire, are raised
Thus to be praised by one the world has praised.'

It is the same sentiment as that in Lord Mansfield's letter to Chief-Justice McKean, to be found in preface to first volume Dallas (Penn.) Reports — 'That sensibility which praise from the praiseworthy never fails to give — '*Laus est laudari a te.*' I did not wish your classical acumen to consider me careless in the use of a quotation, so I write to you to correct the proof, that is, to correct it in your mind. It is too late to correct it in the volume."



CHARLES J. FOLGER.

He was singularly exact in the use of language. I once wrote him that I sometimes flirted with my first love, literature. He answered: —

"Permit me to say that you do not mean that you '*flirt*' with your first love. You 'dally' with her. 'Flirt' has come to mean 'a trifling with.' 'Dalliance' is a tenderer word, implying a longing for and a satisfaction with. 'Flirt' has an evil sense now-a-days."

His love of horses and of philology is shown in the following: —

"In your last number (23, vol. 13) of the 'Albany Law Journal,' at page 244, you cite Comly *v.* Hillgar, Pennsylvania Supreme Court, that a trial of speed of horses for a premium is a horse-race for a wager. Perhaps my love of horses, and fondness for the sport of a trotting contest have warped my judgment, but in Harris *v.* White, of which I have just read the proof for 81st New York, the Court of Appeals, New York, are in conflict with Pennsylvania, I writing an elaborate (if no other kind of an) opinion. In that case I *almost* define judicially what to 'go to harness' means. I also speak of 'pools.'"

Referring to this case again, he wrote: —

"I see that you 'took' some of the phrases in Harris *v.* White. When I penned them, I wondered whether any one would. It has chanced to me several times to find an appreciative reader of an opinion, in some of its minor features, like this I am speaking of; and it gratifies me to have it so, more than to receive expressions of satisfaction with the closeness and force of the logic,

or the profundity of the reasoning, or the breadth of the learning."

Something of his taste in literature may be gleaned from the following: —

"I am fond of lamb; especially of that which (or who) is written with a capital (L), and the Christian name of Charles before it. The essays of Elia are my recourse when the spirits droop and the heart grows sad, as is too often the case in the latter years. 'The Convalescent' is a favorite with me. I have read it often, and now read it again on receiving your letter."

In April, 1882, he wrote: —

"There are some of my opinions in the 85th New York Reports and the halo with which I went below the horizon in the 86th, Cutting *v.* Cutting. In parenthesis, a halo is no halo unless it is somewhat misty and vaporous, so I am not *assumptious* in using the word."

CHARLES A. RAPALLO.

His heart yearned to the last for his old place on the bench. On the 17th of May he wrote: —

"I was in Albany for two hours the other day, regretful that the judges had left. I wished to see them in their silks. I did see their fine new room. How can they help but write ornate opinions?"

Is not this a beautiful picture which the jurist and statesman has unconsciously drawn of his own wisdom, learning, steadfastness, tenderness, and sportiveness?

It is amusing to know that he thought himself lazy! He was naturally conservative, — did not believe in codes, nor in allowing remarriage to the guilty party after divorce.

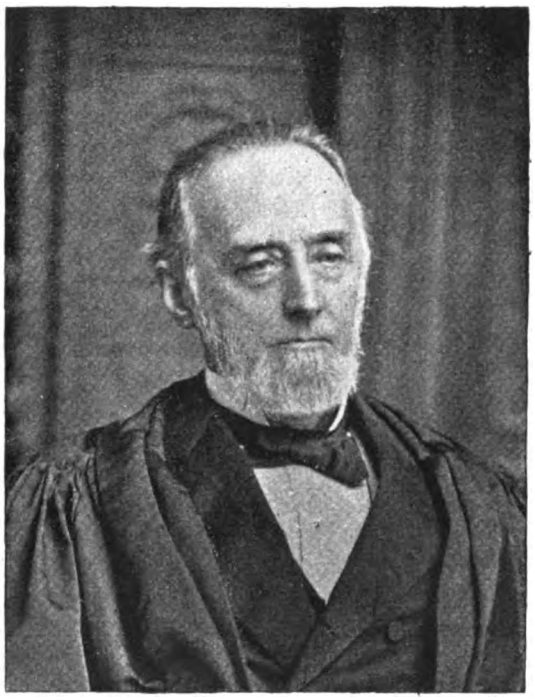
I have fallen heir to Judge Folger's legal scrap-book and commonplace book, — an extensive and very curious collection, mainly consisting in manuscript slips, sometimes three or four deep, written without erasure or blots, in a strong, peculiar, and legible hand, and all accurately indexed. It was principally formed while he was on the bench. It was the source of many of his allusions in correspondence with me, and I find in it two unfinished articles for the "Albany Law Journal," — one on "Names," and the other on convicts earning a deduction from their term of sentence for good behavior. It constitutes a striking evidence of the learning, research, patience, and order of the lamented chief.

Some of his finest opinions which I can recall are in Lange *v.* Benedict, 73 N. Y. 12, on the liability of a judge to respond in damages for an illegal sentence within his jurisdiction; the Brooklyn Bridge Case, 76 N. Y. 475; People *v.* Fields, 58 N. Y. 491, on the capacity of the State to maintain an action under our statutes to recover money of which the city of New York had been defrauded; Coster *v.* Mayor, etc., 43 N. Y. 399, on remoteness of damage.

Judge Folger was an eminently distinguished-looking man, above the middle height, of a massive mould, dark of complexion, his jaw firm and square, his forehead powerful and dignified, his beautiful

dark eyes uniting sadness, humor, and kindness. His movements were easy and dignified. His manners were grave and reserved, but eminently courteous, considerate, and patient. His voice was one of the most melodious and charming that ever fell upon the ear of a friend, and even death has not stilled its echo to me.

Charles A. Rapallo.



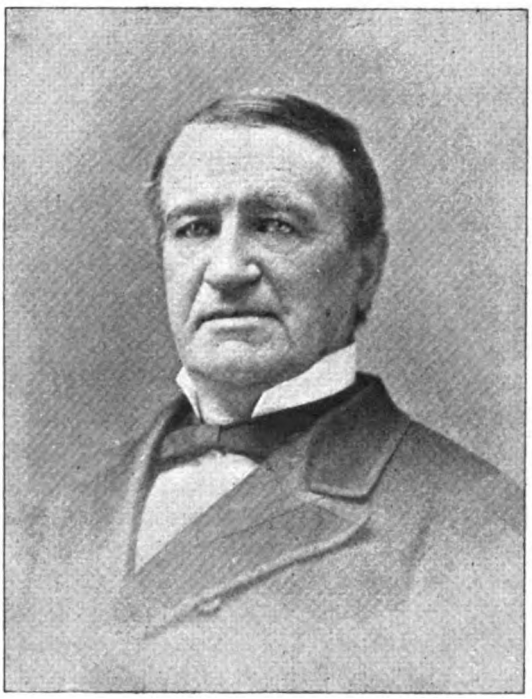
THEODORE MILLER.

Judge Rapallo was born in the city of New York in 1823, and always lived there. His father, Anthony, an Italian, came to this country early in this century, and was prominent as a lawyer and a linguist. The judge's mother was a sister of Hannah Gould, the poetess. The judge was educated exclusively by his father, never attending school or college. He began the study of law at fourteen, in his father's office, and practised in the city until 1870. He was devoted to his profession, and never was engaged in politics nor held any public position. He was elected to this court in 1870, and in 1880 was defeated by Judge Folger for the office of chief-judge. He was re-elected an associate judge without opposition in 1884. He died in 1888, at the age of sixty-five, leaving but one survivor of the original judges elected in 1870.

Judge Rapallo was best known among his brethren of the bench and in the consultation-room. Even in the reports his reputation will never be so great as it deserves, for he was not a brilliant or attractive writer; and yet he probably had the finest legal mind in our State at the time of his death, — a born and intuitive lawyer, who saw quickly and clearly what others groped for, and could state his reasons so forcibly and plainly that the wonder was that there should ever have been any doubt. I do not know that he was at all accomplished outside of the law, and it is certain that he made no figure in the world of society, letters, or politics. In another place I have written, and I cannot do better than to repeat here: —

"It is probable that no judge on the bench was less known to the people by personal association than Judge Rapallo. His reputation was exclusively professional. He lived a retired life, moving and breathing in an atmosphere of judicial investigation. He was not a famous judge, nor before his elevation to the bench was he a remarkably distinguished or well known lawyer; and yet if the opinions of his surviving brethren on that bench could be taken, no doubt they would unanimously and readily pronounce him the ablest of their number. Such, we are inclined to believe, would also be the opinion of the bar, without in any sense underestimating or failing to appreciate the marked learning and accomplishment of his associates. Judge Rapallo had a great brain, sustained by a herculean body, which enabled him to perform enormous labor; and he had such a calm, unemotional, almost stolid way of looking at legal questions as so many logical propositions to be worked out by unerring revolutions of mental processes, that he was as little liable to bias and as little likely to go wrong as any judge who has lived in our times.

He had a robust intellect, which delighted to work things out on principle, rather than delve among precedents to ascertain what other intellects had thought. He was unquestionably a perfectly independent and fearless man, who cared as little for popular opinion and caprice as he did for the shiftings of a weathercock. He was as often as any one, perhaps oftener, a dissenter; possibly somewhat of a judicial iconoclast or agnostic. . . . The people of this State can never understand how much they have owed to the silent, retired, modest man who has gone forever from the bench from which he diffused learning and dispensed equity for seventeen years."



GEORGE F. DANFORTH.

I have no doubt that Judge Rapallo deserves to be ranked with Denio, Comstock, and Allen, the greatest of our judges. His opinions may be judged from Manice *v.* Manice, 43 N. Y. 303, on trusts; the Tweed Case, concerning cumulative sentences, 60 N. Y. 559; Spinetti *v.* Atlas St. Co. 80 N. Y. 71, on "barratry of mariners;" McNiel *v.* Tenth Nat. Bank, 46 N. Y. 325, on pledge of shares by broker; Harris *v.* Frink, 46 N. Y. 24, on emblements; Holland *v.* Alcock, 108 N. Y. 312, on charitable trusts.

In person Judge Rapallo was about the middle height, with the trunk of a Hercules, and a large and grand head; near-sighted, his countenance not especially intellectual, his complexion dark, and his temperament phlegmatic.

It is fortunate for any man if he has said one thing by which he may be remembered. Judge Rapallo said that one thing. He said, "Law is educated Justice."

Theodore Miller.

Judge Miller was born in Hudson, N. Y., in 1816, and has always resided there. He was fitted for the junior year in college, and began the study of the law at the age of sixteen. He was district attorney for two terms. In 1861 he was elected justice of the Supreme Court, and in 1869 was re-elected without opposition. In 1870 he was designated presiding justice of the general term, the appellate branch of the Supreme Court for the third department, comprising twenty-eight counties. In 1874 he was elected to the Court of Appeals in place of Judge Peckham, deceased, by a majority of fifty thousand. In 1886 he was retired by limitation of age. On his retiring, his associates thus addressed him: —

"We have seen you persisting in your work when health was threatened by the unending pressure and strain, and when we thought that you, equally with ourselves, would be better for a needed rest, and we have learned to admire the patient determination which enabled you to do your work thoroughly and accurately in spite of the obstacles interposed. You retire at the close of this year, having completed a longer term of judicial service than that of any judge now upon the bench in this State, with perhaps a single exception. The records of the court show the multitude and difficulty of the questions upon which you have been required to express its ultimate opinion or contend manfully for your own, and testify to the completeness and range of your learning, the patience of your investigations, the

unswerving honesty of your judgment, and the ability and accuracy with which your conclusions have been reached and then expressed. You will carry with you into your retirement our respect and strong regard, and our earnest wishes that the closing years of your life may be contented and prosperous and happy."

For several years before his retiring, failing eyesight debarred him from reading or writing, and compelled him to rely on others' eyes and hands; but he persisted with a heroic and touching patience, and with no falling off in the quality of his judgments. He had an especial reputation in will cases, in criminal cases, and in those numerous and troublesome problems concerning assessments in the city of New York, — cases affording little scope for display, but demanding an anxious and patient consideration of evidence and a comparison and construction of a host of statutes. Very few judges in the history of the State have rendered so much and such intelligent service; none have been more modest, more candid, more patient, and more generally safe and right. He is now living in dignified and easy retirement at Hudson.

The following are among his most important and ablest opinions: Craig *v.* City of Rochester, 39 N. Y. 404, horse-railway in city street — whether an additional burden to land of adjoining owner; Green *v.* Shumway, 39 N. Y. 418, test-oath for voters; In Re N. Y. C. & H. R. R. Co. *v.* Met. Gas Light Co., 63 N. Y. 326, condemnation of lands under water in harbor of New York for piers for railroad purposes; Children's Aid Society *v.* Loveridge, 70 N. Y. 387, undue influence; Bennett *v.* Austin, 81 N. Y. 308, trustee *ex maleficio;* Boardman *v.* Lake Shore & Mich. S. R. Co., 84 N. Y. 157, priority of preferred stock dividends over common stock dividends; In re Petition of Merriam, 84 N. Y. 596, assessment for street improvement in New York City; Greenfield *v.* People, 85 N. Y. 75, case of murder; — evidence; Prichard *v.* Thompson, 95 N. Y. 76, charitable trust; Hobson *v.* Hale, 95 N. Y. 588, suspension of power of alienation; Wilmerding *v.* McKesson, 103 N. Y. 329, liability of executors and trustees; Nat. City Bank *v.* N. Y. Gold Exchange Bank, 101 N. Y. 595, "Black-Friday" case.

George Franklin Danforth.

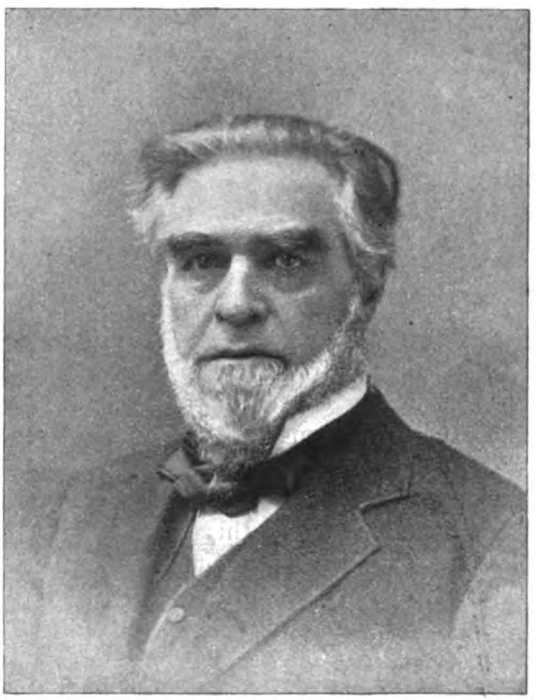
Judge Danforth was born in Boston, Mass., in 1819; was graduated at Union College in 1840; was defeated for the office of associate judge by Judge Earl in 1876, but was elected in 1878. He retired in January, 1879, by reason of age, and as some think, by the unreason of our law in that regard. If all men were like him at seventy there could be no question of the unwisdom of the regulation. He was in great practice at Rochester when he left the bar, and has gone back there to a great practice. He had a wide and deserved reputation for learning when he went on the bench, and his added experience there has ripened him into a most admirable lawyer, fitly equipped for any occasion. His opinions have always been celebrated for learning, and bear marks of independent and original thinking quite remarkable in one so fond of research and so familiar with the books. Judge Danforth is a man of culture outside of the law, and is as much regarded off the bench for his manly qualities and his social bearing as he is esteemed on the bench for his magisterial talents. He was always a hard worker; and the reports of his time are full of his opinions, of which, almost at hazard, I refer to the Story (Elevated Railway) case, 90 N. Y. 122; People *v.* Common Council of Brooklyn, 77 N. Y. 503, as to vacancy in office; People *v.* Sharp, 79 N. Y. 282, the case of the bribery of the New York aldermen; Troy & Boston R. Co. *v.* Boston, etc. Ry. Co., 86 N. Y. 107, on a railroad lease; Van Voorhis *v.* Brintnall, 86 N. Y. 18, on remarriage by a prohibited divorced party out of this State. Judge Danforth is chairman of the Commission now sitting to revise the Judiciary Article of the Constitution.

Samuel Hand.

Samuel Hand, a distinguished Albany lawyer, the reporter of the court, sat a few months by appointment to fill a vacancy in 18—, but was not nominated for election. He gave good promise. He died much lamented, in 1886, at the age of fifty-two. See his opinion in Cowee *v.* Cornell, 75 N. Y. 91, on constructive fraud, as an example of his powers.

Benjamin F. Tracy.

Benjamin F. Tracy, at present Secretary of the Navy, was appointed in place of Judge Andrews, on the latter's appointment as Chief-Judge, in 1881, and sat until 1882. He was a successful judge, and is seen to fine advantage in Story *v.* New York Elevated R. Co., 90 N. Y. 122.



WILLIAM C. RUGER.

William Crawford Ruger.

The Chief-Judge was born in Oneida County, N. Y., — which I believe has produced more distinguished men than any other county in the State, — in 1824, and received an academical education. He was in large practice at Syracuse, and was a moderate Democratic politician. He was elected chief-judge over his neighbor, Judge Andrews, in 1882. More than any other judge in this court, he adheres to the old method of writing opinions, of which Chief-Judge Davies was the best exponent, of detail and elaboration, citation, discussion, and discrimination of many authorities, with a leaning on precedents rather than an evolution of principles. His opinions are, on the average, much the longest of any in the court. They are evidence of a great deal of patient research and careful thought, and I believe are generally regarded with the respect due to the work of a sound and conscientious intellect. The chief is eminently courteous, and presides with dignity, patience, and fairness. His powers may be judged from People *v.* Davenport, 91 N. Y. 574, assessment and statutory construction; People *v.* Home Insurance Co., 92 N.Y. 328, taxation and statutory construction; Baird *v.* Mayor, etc., 96 N. Y. 567, on fraudulent contract of an officer of a municipal corporation; Dwight *v.* Germania Life Ins. Co., 103 N.Y 341, a case of fraud on a life-insurance company; Laur *v.* Metropolitan Elevated R. Co., 104 N. Y. 268, on rights of lot-owner in street; People *v.* O'Brien, 111 N. Y. 1, on the constitutionality of the statute dissolving the Broadway Street Railway Company; Bedlow *v.* N. Y. Floating Dry Dock Co., 112 N. Y. 263, on rights to lands under water in New York harbor; and his dissenting opinion in Edwards *v.* N. Y. & Harlem R. Co., 98 N. Y. 245, on negligence of the landlord in regard to the Madison Square Garden disaster.

Charles Andrews.

Judge Andrews was born in 1827, and received an academical education. He studied and practised law in Syracuse, being member of one firm for nineteen years. He was

district attorney of Onondaga County, and was thrice mayor of Syracuse. He was elected to this court in 1870, and on Chief-Judge Folger's resignation was appointed to his post, but was defeated in his contest for that post by his next-door neighbor, Mr. Ruger. In 1884 he was re-elected associate judge, with Judge Rapallo, without opposition, he being a Republican and the latter a Democrat. He remains in the court, the sole survivor of those elected in 1870.

Judge Andrews went on this bench at the early age of forty-three, without previous judicial experience, and has constantly grown in the estimation of the bar and the public. He has a happy temperament, which has enabled him, without any sacrifice of natural dignity, to go through a trying career without making an enemy. The amenity of his manners is but the reflection of the soundness and sympathy of his nature. His distinguishing characteristics seem to me to be a temperate and candid judgment and a beautiful considerateness. It seems that the natural bent of his mind is toward equity, and this inclination and his large experience have given him a prominent standing as an equity judge. His judgments on constitutional and statutory topics and in will cases are also highly respected. His opinions are well written, without striving for style; and his judgments are accepted as those of a thoughtful, fair, and receptive mind. Examples of his powers may be found in Bertholf *v.* O'Reilly, 74 N. Y. 509, on the constitutionality of the Civil Damage Act; Roberts *v.* Corning, 89 N. Y. 225, on perpetuities; Van Horne *v.* Campbell, 100 N. Y. 287, on executory devises; Avery *v.* Everett, 100 N. Y. 317, on the doctrine of civil death; Hynes *v.* McDermott, 91 N. Y. 451, on proof of marriage from cohabitation.

No man stands higher in the confidence and admiration of our bar, and it is fortunate for the State that some precious years must probably elapse before it can be deprived of the fresh fruits of the mellowed wisdom of this most excellent man and most admirable judge.

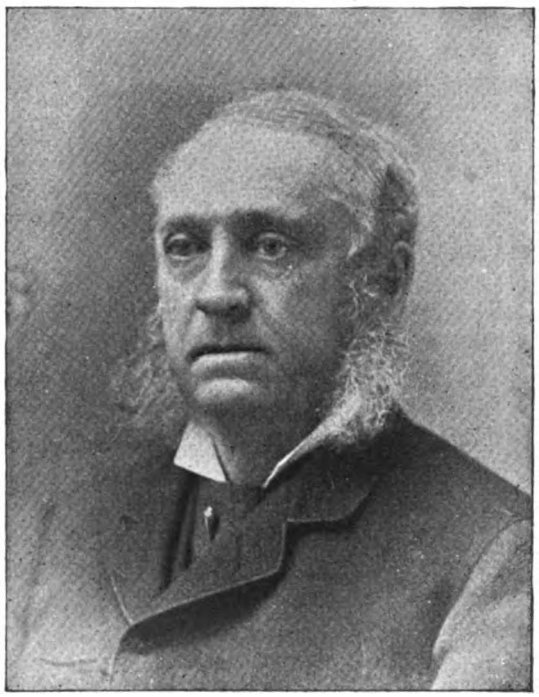
Robert Earl.

Judge Earl was born in 1824, in Herkimer, N. Y., where he has always lived. He entered Union College in the junior class, and was graduated in 1845. Then he was principal of the Herkimer Academy for two years. After admission to the bar he was publisher and editor of the "Herkimer Democrat" for several years. He was supervisor, county judge, and surrogate. He was elected to the Court of Appeals in 1869, and from January to July was chief-judge. Then he was commissioner of appeals for five years. In 1875 he was appointed judge of the Court of Appeals in place of Judge Grover, deceased, and the next year was elected for the full term of fourteen years.

It will thus be seen that Judge Earl has had the longest judicial experience of any of the present incumbents. It would be difficult to find a better equipped magistrate on any bench. He seems equally familiar with all the branches of the law that come before this court, and he has illuminated many of them by a vast number of laborious opinions. Like Judge Andrews, he takes hard work easily, and he has sustained unflinchingly an amount of judicial labor which would break down most men, and part of which has outworn several of his contemporaries. His mind is as alert, buoyant, and vigorous as it was twenty years ago; and his strong memory gives him wonderful facility in dealing with the troublesome question of precedents. He and Judge Andrews are two pillars in this court, strong, shapely, not unadorned, and upon which their associates and the community lean with a reposeful trust. Judge Earl eminently deserves a unanimous re-election; and if the bar could control, no doubt he would have it.

I refer to the following as among Judge Earl's most celebrated opinions: Losee *v.* Buchanan, 51 N. Y. 476, on damage to adjoining premises by explosion of steam-

boiler ; The Elevated Railway Case, 70 N. Y. 327, on the constitutional question ; Stuart *v.* Palmer, 74 N. Y. 283, on "due process" in respect to a local improvement ; the Brooklyn Bridge Case, 76 N. Y. 475 ; the Tenement Act Case, 98 N. Y. 98, concerning the prohibition of the manufacture of cigars in tenements ; Mine *v.* N. Y. Cent., etc. R. Co., 101 N. Y. 98, on recovery of prospective damages ; Ahern *v.* Steele, 115 N. Y. 203, on liability of tenant for nuisance ; Riggs *v.* Palmer, 115 N. Y. 506, on incapacity of murderer to take under the will of his victim ; People *v.* Arensburg, 103 N. Y. 388 (dissenting), on the oleomargarine act.



CHARLES ANDREWS.

Francis Miles Finch.

Judge Finch was born at Ithaca, N. Y., in 1827; was graduated at Yale University ; was elected to the bench in 1881. He was an original trustee of Cornell University, and is now a lecturer at the Law School of that institution. He developed a literary talent at an early age, and has written several poems which are widely known, — "A Smoking-Song," "Nathan Hale," and "The Blue and the Gray," a tender and beautiful lyric, that does as much honor to his heart as to his head. This literary faculty has given him a special distinction on the bench, for his opinions are among the best examples of judicial writing. One always desires to read them more than once, — not to understand them, for they are perfectly lucid, but out of admiration of the perfection of their logical structure and the exquisite felicitousness of their phraseology. I know of nothing more excellent than his statement of facts, which lends interest to the dryest case by its vivid and original method. I have long been accustomed to regard him and Mr. Justice Bradley as the best living judicial writers in this country, — and that means the world. To sustain my estimate I refer to Badger *v.* Badger, 88 N. Y. 546, on evidence of marriage, — the case where a decedent had led a double life ; People *v.* Phil. Fire Ins. Ass'n, 92 N. Y. 311, on regulation of foreign insurance companies ; Will of O'Hara, 95 N. Y. 403, on fraud and undue influence, — charitable trust and perpetuity ; White *v.* Rintoul, 108 N. Y. 223, on statute of frauds, collateral promise ; Kingsland *v.* Mayor, etc., 110 N. Y. 569, on eminent domain, — wharfage rights ; Loew *v.* Vanderpoel, 112 N. Y. 167, construction of a will, — unlawful suspension by trust.

Rufus W. Peckham.

Judge Peckham, a son of the former judge of that name, was born in Albany in 1838, and received an academical education. Studying in the office of his father and Lyman Tremain, he was admitted to the bar in 1859, and was associated with Mr. Tremain in practice from 1860 to 1878. He was elected district attorney of Albany County in 1868, and was counsel of the city of Albany from 1881 to 1883, when he resigned. In 1883 he was elected a justice of

the Supreme Court, and in 1886 a judge of the Court of Appeals. His career at the bar was distinguished, and his conduct of the office of public prosecutor brought him great credit. He was one of the best cross-examiners I have ever known. Eminent success attended him as a circuit judge. Indeed, it was felt by many that his traits, like those of his father, fitted him better for that office than for the more studious duties of the appellate bench; but his later career has been an agreeable surprise even to his friends. With all his father's fearlessness, independence, and mental force, his prejudices are not so strong, and he has larger legal learning and more of the aptitude of the student. His opinions are notable for their vigor and for their research. He has opened for himself a shining and useful career, and is a remarkable refutation of the popular opinion about the non-inheritance of talents. What is here said will be confirmed by a perusal of his judgments in People *v.* Walsh, 41 Albany Law Journal, 4 (dissenting), the elevator case; Matter of McGrau, 111 N. Y. 66, on the capacity of Cornell University to take a devise; and Becker *v.* Koch, 104 N. Y. 394, on the right to impeach one's own witness.

John Clinton Gray.

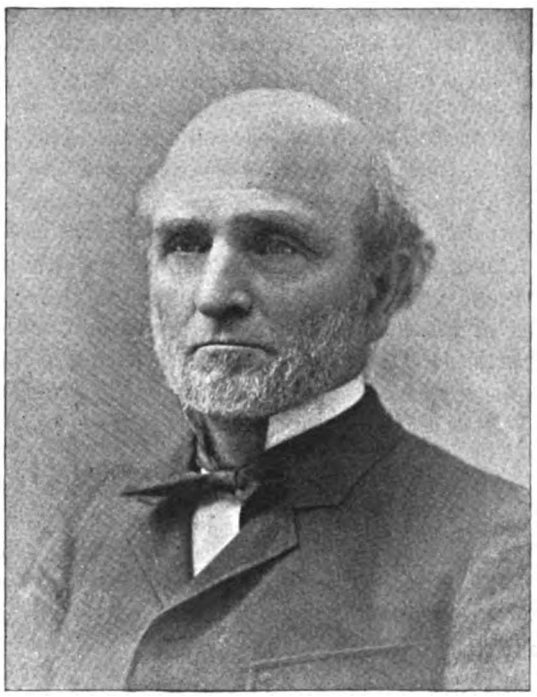
Judge Gray is not forty-seven years old. He was born in the city of New York; educated in Berlin, at the New York University, and at the Harvard Law School; admitted to the bar in Boston; practised in the city of New York from 1866 until his appointment in 1888 to fill the vacancy caused by the death of Judge Rapallo; and was elected for a full term in the same year. He is a cultivated scholar and one of the best writers in the court. He appears to excellent advantage in Leslie *v.* Lorillard, 110 N. Y. 519, on contract in restraint of competition; Beveridge *v.* N. Y. El. R. Co., 112 N. Y. 1, on powers of railroad directors; Hoyt *v.* Hoyt, 112 N. Y. 493, a will case; Post *v.* Weil, 115 N. Y. 361, on question whether a clause in a deed was a condition or a covenant; People *v.* Wemple, 115 N. Y. 302, on constitutional right of judge to compensation after retirement on account of age; and in People *v.* Budd, 117 N. Y. 1, the elevator case (dissenting).

Denis O'Brien.

Judge O'Brien was born in 1837 at Ogdensburg, and had a common school and academic education. He was admitted to the bar in 1861. He was mayor of Watertown in 1878 and 1879, was elected attorney-general in 1883, and re-elected in 1885 as a Democrat. He was elected to this bench in November, 1889, defeating Judge Haight, now of the second division. He has been an active politician, being a member of the Democratic State Committee from 1880 to 1884. His character is excellent, and his mental gifts are of a superior order. He has the judicial temperament, — grave, reflective, and deliberate. Judge O'Brien has his spurs to win as a judge, having been on the bench only six months; but his opinions already pronounced indicate a fair career.

The Commission of Appeals, the membership of which I have already stated, was a highly respectable body of lawyers; but its decisions have never ranked very high, and during the latter part of its existence there was a great deal of dissent, brought about in my opinion mainly through the excess of case-learning over sound judgment in one of the later commissioners. The court in its lack of harmony resembled a chorus of "star" solo-singers, which is frequently very discordant. John H. Reynolds was one of the most acute and ingenious lawyers of his day, but he did not distinguish himself on the bench. Of Robert Earl I have already spoken. The decisions of the Commission are in vols. In one volume there are thirteen cases of dissent, and in vol. 57, of one hundred and fifteen decisions, twenty-three, or just twenty per cent, were pronounced by a divided court. Of these twenty-three, thirteen, or about eleven per cent of the

whole, were decided by a majority of one out of five commissioners. Of these thirteen, six were reversals, so that in five per cent of the entire number one commissioner reversed the Supreme Court of three judges. The dissenting opinions cover seventy-six pages of six hundred and thirty-two, or about thirteen per cent. The Commission decided about one thousand cases in five years, reported in five volumes. During the same period the Court decided about three times as many, embracing fourteen volumes, with a far greater degree of harmony. It is worthy of note that one of the cases in which the Commission was unanimous (Merch. & Trad. Bank *v.* Dakin, 51 N. Y. 519), was one to which the Court decided exactly the contrary (Thurber *v.* Blanck, 50 N. Y. 80)! It is safe to say that the profession want no more commissions.



ROBERT EARL.

The new Court of Appeals was at once called on to construe a new system of jurisprudence, based on the most radical changes. Not only did the questions raised by the Code of Procedure come before it, but the Married Women's Acts of 1848 and 1849, supplemented by those of 1860 and 1862, brought up many puzzling inquiries. These were followed by the numerous laws allowing parties to be witnesses in their own behalf. In all these matters this State was a pioneer of reform and a constantly advancing innovator.

It soon became apparent that the new court could not keep up with its new business. In 1874 appeals were limited to cases involving at least five hundred dollars, exclusive of costs, unless certified by the general term of the Supreme Court to involve important questions of law. But this proved unequal to the emergency. A larger limitation has been urged, but the bar are strongly opposed to any increase.

In 1888 a constitutional amendment was adopted authorizing the governor, on the certificate of the Court of Appeals that there is a necessity therefor, to designate seven judges of the Supreme Court to sit as a separate body in aid of the court until the court shall certify that there is no longer need of their services. Accordingly the governor appointed Messrs. David S. Follett, George B. Bradley, Joseph Potter, Irving G. Vann, Albert Haight, Alton B. Parker, Charles F. Brown, who are known as the second division of the Court of Appeals. These are gentlemen of high character, fine attainments and abilities, and most of them have had long judicial experience. Their Chief is Judge Follett, one of the most accomplished judicial scholars of the State. They have performed a large amount of labor in a very commendable manner. As a whole, the quality of their decisions, I think, is much better than that of the old Commission. But it is apparent that this contrivance is but a makeshift, and that there must be a permanent court, numerous enough to sit all the time by turns or to sit part of the time in divisions, in order to keep up with

the present business, to say nothing of the future. Accordingly three different measures looking to this end were introduced into the present Legislature, the result of which was the appointment of a Commission to revise the Judiciary Article of the Constitution-and recommend changes. This body consists of thirty-eight of the most eminent lawyers of the State, and will probably report a plan to the next Legislature.

The reporting during this period, by Messrs. Hand and Sickels, has been of a good and satisfactory quality. Considering the great amount of labor now thrown upon Mr. Sickels, his work is entitled to commendation for accuracy and promptness.

It would be difficult to find in any court that has ever existed a parallel to the variety, excellence, and importance of the body of law laid down in this court.

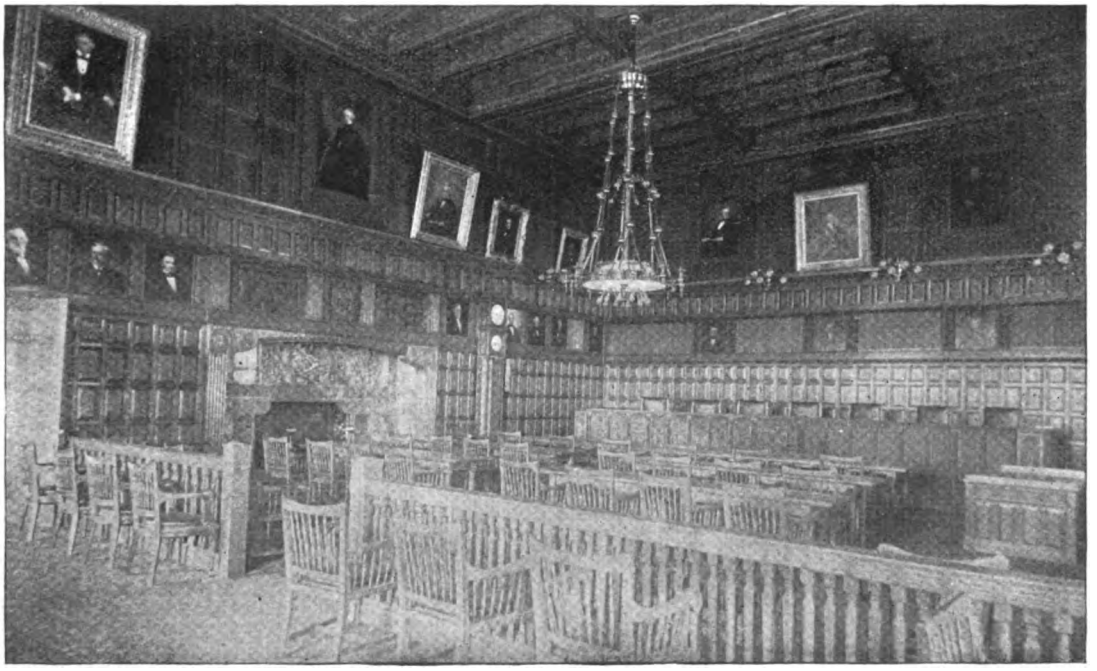
I have given the names of more than one hundred judges, with particulars of many of them, nearly all of whom were first nominated by the people I believe that under a system of appointment by the governor this list would not have been equalled in merit and distinction, and I point to it as a standing refutation of the argument that the people are not fit to name their judges.

The Court of Appeals has the finest quarters of any court in the world, so Lord Coleridge says. They are on the third floor of the Capitol, extending across the eastern front of the south wing and of the centre. The chamber for arguments is on the south-east corner, with three great windows on the east and two on the south, commanding an extensive view of the beautiful Hudson River valley. The chamber is of moderate size, well proportioned and of good acoustic qualities. Its walls are panelled from floor to ceiling in oak, and the ceiling is heavily timbered with oak. The bench is elaborately carved along the front, showing grotesque heads, among other ornaments, which may be symbolical of the successful and unsuccessful suitors or counsel. On the walls are thirty-three portraits of deceased judges of the State, nearly all of this court, but embracing Jay and Nelson. Over the bench hang portraits of Walworth, Kent, Spencer, Church, Jay, and Folger, the three former on the lower row, and the three latter on the upper, and arranged in the order named from left to right. Over the fireplace hangs a superb portrait of the elder Peckham. The fireplace is a magnificent structure of the choicest Mexican onyx. Between the south windows stands a bronze statue, of heroic size, of Chancellor Livingston, the work of our distinguished Albany sculptor, Palmer, and a duplicate of one in the Capitol at Washington. The only unpleasant object (to lawyers) in the room is a tall clock in a carved oaken case. The judges look at it oftener than the lawyers. The judges' consultation-room, libraries, and toilette-rooms are north of the chamber, communicating with it by a door behind the bench. Through this door at ten o'clock the judges enter, in their gowns, while the bar rise and stand until the crier opens court and the judges take their seats. There is a daily calendar of eight causes, and the judges sit until two o'clock. Across the hall, on the south, is a large room for the bar, hung with portraits of great dead lawyers, pre-eminent among them Nicholas Hill, at full length, and in the hall hang full-length portraits of two of the greatest living lawyers, David Dudley Field and William M. Evarts, — men of such stature that they have not been able or have not chosen to get through the court-room door to sit on the bench.

In this court there has always existed a delightful personal harmony, and strong differences of opinion have never interfered with the friendship of its members for one another. The court has always been singularly free from intrigue and unworthy ambition.

In conclusion I will give an extract from a sketch of the Judicial History of New York, which I wrote some years ago for "The Public Service of the State of New York:" —

"In a material view New York is indeed the Empire State. It would be arrogating too much to claim for her the Empire in Law. Fortunately for the happiness of mankind, the best jurisprudence does not depend upon material resources, or great aggregations of population. But owing to the great men who early formed our jurisprudence, New York has made law, not only for herself, but for most of the other States of the Union. Her judgments and those of Massachusetts have always been the most influential upon the nascent jurisprudence of the younger States. Her adjudications have long been listened to with deference even in the mother country, and this has grown rather than lessened down to this time. Her reforms in procedure alone have entitled her to a marked pre-eminence. She has always been creative in the domain of the law. With a decent conservatism, she has at the same time headed the advance of legal reform, and still marches in the van. That the laws which her lawyers have devised, her legislature has enacted, and her judges have construed and enforced, are now ruling a large part of the English-speaking world, and have even been adopted by our venerable mother country, is a prouder and more durable achievement for our State than all her material glory and power. Her judiciary have been the most numerous of any of the States. They have had the largest and the most various interests to protect, and the most intricate legal problems to solve. Great lights have shone from her bench in every period, like beacons visible from afar, illuminating even the shores of foreign lands. In all times the mass of her judges have been just, humane, and God-fearing men, of good report, not greedy of gain, not ambitious of power, not anxious for fame; learned in the law, cultivated in letters, untiring in duty, unswerving from right, passionate lovers of justice and liberty. The names of most of them have been and can be but little known to fame, but their work has been a worthy part of the heritage of which the State is proud. Their reward is in her prosperity, glory, and happiness."



COURT OF APPEALS CHAMBERS.

CUTTER v. POWELL.

(II. Sm. L. C. Temp. 1795.)

'TWAS in Jamaica's bay
The "Governor Parry" lay,
A good ship and well found.
Now Captain Powell, he
Commanded her, and she
For Liverpool was bound.

Said Powell: "I will pay,
Well, thirty guineas, say
(Thirty-one pounds, ten, naught);
That is, provided you
As mate shall duty do
Until we're safe in port."

Then Cutter said, said he:
"Your note promissoree
I do accept, and so
Let's hoist the flowing sail,
And whistle for a gale
For Merry England, ho!"

Alas! old England's shore
Should Cutter ne'er see more,—
He sailed but to his death;
And deep beneath the wave
He found a sailor's grave
(September twentieth).

The voyage was not o'er
Till some nine days or more
October's course had run.
The widow said: "My late
Spouse was your second mate,—
Alas! my only one.

"I pray you give to me,
Who am Cutter's le-
gal representative,
A portion of the pay
That to him on this day
You had agreed to give."

Said Powell: "Cutter died
Before he had complied
With the agreement made;
Which was as mate to do
Duty *the journey through.*
This claim cannot be paid."

And when they went to law
Judges upheld him: "For
If you contract," said they,
"That you 'll do such and such,
And do but half as much,
You naught can make us pay,

"Unless the agreement made,
Or custom of the trade
(And here no custom is),
Provide that you may sue
On a *quantum meru-*
it. This suit we dismiss."

Lays of a Limb of the Law.

TRIAL BY ORDEAL.

ONE of the most remarkable judicial systems of olden times was the trial by ordeal,— a mode of procedure founded on the presumption that, should a person be wrongfully accused, Heaven would interpose and in some marked way make his innocence undeniable. With the exception of China, this test was of almost universal adoption in the Middle Ages; and whilst still surviving amongst the uneducated portion of most civilized communities, is even nowadays largely practised by uncultured races.

So far as its origin is concerned, it may be traced back to remote antiquity; and the bitter water by which conjugal infidelity was revealed — an ordeal pure and simple — will readily occur to the biblical student as an interesting instance in Hebrew legislation and history. Herodotus relates how King Amasis — whose reign immediately preceded the invasion of Cambyses — "was, when a private person, fond of drinking and jesting, and by no means inclined to serious business. As soon, however, as means failed him for the indulgence of his amusements, he used to go about pilfering; and such persons as accused him of having stolen their property, on his denying it, were wont to take him to the oracle of the place, where he was oftentimes convicted, and occasionally acquitted." The Greeks had their ordeals, a good illustration of which occurs in the "Antigone" of Sophocles, where the soldiers offer to prove their innocence in various ways: —

> "Ready with hands to bear the red-hot iron,
> To pass through fire, and by the gods to swear,
> That we nor did the deed, nor do we know
> Who counselled it, nor who performed it."

This mode of purgation, the Scholiast tells us, was in common use at that time.

There was also the water ordeal, and a certain fountain near Ephesus was specially employed for this purpose. As soon as the accused had sworn to her innocence, she entered the water with a tablet affixed to her neck, on which was inscribed her oath. If she were innocent, the water remained stationary; but if guilty, it gradually rose until the tablet floated. Traces of the same system are to be met with in the history of ancient Rome; and amongst notable instances may be quoted that of the vestal Tucca, who proved her purity by carrying water in a sieve, and that of Claudia Quinta, who cleared her character by dragging a ship against the current of the Tiber, after it had run aground and resisted every effort to remove it. But, as Mr. Lea points out in his essay on "The Ordeal," "instances such as these had no influence on the forms and principles of Roman jurisprudence, which was based on reason and not on superstition. With the exception of the use of torture, the accused was not required to exculpate himself. He was presumed to be innocent, and the burden of proof lay not on him, but on the prosecutor."

The ordeal trial prevailed in France from before the time of Charlemagne down to the eleventh century. The ancient Germans, too, were in the habit of resorting to divination; and their superstitious notions, writes Mr. Gibson, led them to invent many methods of purgation or trial now unknown to the law. It should be added, also, that the Germans were specially tardy in throwing off this relic of barbarism; for at a period when most vulgar ordeals were falling into disuse, the nobles of southern Germany established the water ordeal as the mode of deciding doubtful claims on fiefs, and in northern Germany it was instituted for the settlement of conflicting titles to land. Indeed, as recently as the commencement of the present century, the populace of Hela, near Dantzic, twice plunged into the sea an old woman, reputed to be a

sorceress, who, on persistently rising to the surface, was pronounced guilty and beaten to death. Grotius mentions many instances of water ordeal in Bithynia, Sardinia, and other countries, it having been in use in Iceland from a very early period.

In the primitive jurisprudence of Russia ordeal by boiling water was enjoined in cases of minor importance; and in the eleventh century we find burning iron ordered where the matter at stake amounted to more than half a grivna of gold. A curious survival of ordeal superstition still prevails to a very large extent in southern Russia. When a theft is committed in a household, the servants are summoned together, and a sorceress is sent for. Should no confession be made by the guilty party, the sorceress rolls up as many little balls of bread as there are suspected persons present. She then takes one of these balls, and, addressing the nearest servant, uses this formula: "If you have committed the theft, the ball will sink to the bottom of the vase; but if you are innocent, it will float on the water." The accuracy of this trial, however, is seldom tested, as the guilty person invariably confesses before his turn arrives to undergo the ordeal.

Again, in Spain, trial by ordeal was largely practised; and it may be remembered how, during the pontificate of Gregory VII., it was debated whether the Gregorian ritual or the Mozarabic ritual contained the form of worship most acceptable to the Deity. When the chance of deciding this contest amicably seemed hopeless, the nobles resolved to arrange the controversy in their customary manner, and, according to the historian Robertson, the champions — one chosen by either side — met and fought. But in the year 1322, in Castile and Leon, the Council of Palencia threatened with excommunication all concerned in administering the ordeal of fire or water, — a circumstance which is important, as pointing to the disappearance of this mode of trial in Spain.

Furthermore, the practice of trial by ordeal was under the Danish kings substituted for the trial by combat, which, until the close of the ninth century, had been resorted to among the Danes for the detection of guilt and the acquittal of innocence. In Sweden, says Mr. Gibson, the clergy "presided at the trial by ordeal; and it was performed only in the sanctuary, or in the presence of ministers of the church, and according to a solemn ritual." And yet, as he rightly observes, its abolition in Europe was due to the continued remonstrances of the clergy themselves. One form of ordeal practised in Sweden was popularly known as the *trux iarn*, and consisted in the accused carrying a red-hot iron and depositing it in a hole twelve paces from the starting-point. In accordance with the accustomed mode of procedure, the accused fasted on bread and water on Monday and Tuesday, the ordeal being held on Wednesday, previous to which the hand or foot was washed. It was then allowed to touch nothing until it came in contact with the iron, after which it was wrapped up and sealed until Saturday, when it was opened in the presence of the accuser and the judges.

In the year 1815 and 1816 Belgium, says Mr. Lea, was disgraced by ordeal trials performed on unfortunate persons suspected of witchcraft; and in 1728, in Hungary, thirteen persons suspected of a similar offence were, by order of the court, subjected to the ordeal of cold water, and then to that of the balance. Referring to the ordeal of the balance, Mr. Tylor informs us the use of the Bible as a counterpoise is on record as recently as 1759, at Aylesbury in England, where one Susannah Haynokes, accused of witchcraft, was formally weighed against the Bible in the parish church. In Lombardy, ordeal by hot water was a form of procedure much resorted to; and in Burgundy this was also supplemented by the trial of hot iron.

The instances thus quoted show how universally practised throughout Europe in bygone days was the trial by ordeal; and if we would still see it employed with the enthusiastic faith of the Middle Ages, we must turn

to Eastern countries, where, owing to the slow advance of civilization, many of their institutions still retain their primitive form. Indeed, as Mr. Isaac Disraeli remarks, "ordeals are the rude laws of a barbarous people who have not yet obtained a written code, and are not advanced enough in civilization to enter into the refined inquiries, the subtle distinctions, and elaborate investigations which a court of law demands." This is especially true in the case of India at the present day, where the same ordeals are practised as were in use five or six centuries ago. Thus, the guilt or innocence of an accused person is still tested by his "ability to carry red-hot iron, to plunge his hand unhurt in boiling oil, to pass through fire, to remain under water, to swallow consecrated rice, to drink water in which an idol has been immersed, and by various other forms which retain their hold on public veneration." Prof. Monier Williams, too, says that trial by ordeal is recognized by the code of Manu, and quotes the subjoined rules: "Let him cause a man [whose veracity is doubted] to take hold of fire, or dive under water, or touch the hands of his wife and sons, one by one. The man whom the flaming fire burns not and water forces not up, and who suffers no harm, must be instantly held innocent of perjury."

In Japan ordeals extensively prevail; and amongst the many superstitious practices kept up, we are told how the "goo"—a paper inscribed with certain cabalistic characters—is rolled up and swallowed by an accused person, this being commonly supposed to give him no internal rest, if guilty, until he confesses. A similar mode of procedure is practised by the Siamese, and under a variety of forms was prevalent in former years. With it, too, we may compare the mouthful of rice taken by all of a suspected household in India, which the thief's nervous fear often prevents him from swallowing.

Formerly this practice was observed in England with the corsned or trial-slice of consecrated bread or cheese. Even now, says Mr. Tylor, peasants have not forgotten the old formula: "May this bit choke me if I lie!"

In Thibet a popular ordeal consists in both plaintiff and defendant thrusting their arms into a caldron of boiling water containing a black and white stone, victory being assigned to the one who is fortunate enough to obtain the white. Such an even-handed mode of procedure, if generally used, must, as Mr. Lea remarks, "exert a powerful influence in repressing litigation."

Among further curious specimens of ordeal trial mentioned by this author may be noticed those in use in certain parts of Africa. Thus the Kalabarese draw a white and black line on the skull of a chimpanzee, which is then held up before the accused, "when an attraction of the white line towards him indicates his innocence, or an inclination of the black towards him pronounces his guilt." In Madagascar a decoction of the nut of the Tangena—a deadly poison—is administered to the accused. If it acts as an emetic, this is considered a proof of innocence; but if it fail to do so, the guilt of the accused is confirmed. Dr. Livingstone describes a similar ordeal as practised in Africa, and tells us how, "when a man suspects that any of his wives have bewitched him, he sends for the witch-doctor, and all the wives go forth into the field and remain fasting, till that person has made an infusion of the plant called 'foho.' They all drink it, each one holding up her hand to heaven in attestation of her innocence. Those who vomit are considered innocent; but those whom it purges are pronounced guilty, and put to death by burning."

In England trial by ordeal existed from a very early period. When the Anglo-Saxons were unable to decide as to the guilt of an accused person, they invariably esorted to this test, the law requiring that the accuser should swear that he believed the accused to be guilty, and that his oath should be supported by a number of friends who swore to

their belief in his statement and to his general truthfulness. Trials of this kind, however, were often fraudulently conducted. Thus, when William Rufus caused forty Englishmen of good quality and fortune to be tried by the ordeal of hot iron, they all escaped unhurt, and were acquitted. Then there was the ordeal known as the "corsned," or morsel of execration, already alluded to, which consisted of a piece of bread, weighing about an ounce, being given to the accused person, that, if he were guilty, it might cause convulsions and paleness and find no passage, but turn to health and nourishment if he were innocent. The sudden and fatal appeal to this trial by Godwin, Earl of Kent, in the year 1053, when accused of the murder of Ælfred, the brother of Edward the Confessor, ranks among the most curious traditions of English history. Hallam relates that "a citizen of London suspected of murder, having failed in the ordeal of cold water, was hanged by order of Henry II., though he had offered five hundred marks to save his life." It would seem that trial by ordeal was permitted to persons already convicted by the verdict of a jury.

Ordeals were abolished in England about the commencement of Henry III.'s reign. An edict dated Jan. 27, 1219, directs the judges then starting on their circuits to employ other modes of proof, "seeing that the judgment of fire and water is forbidden by the Church of Rome."

Matthew Paris, enumerating the notable occurrences of the first half of the thirteenth century, alludes to the disuse of the ordeal. But it was no easy matter to root out such a deep-rooted superstition, instances of which were of constant occurrence. Thus, the belief that the wounds of a murdered person would bleed afresh at the approach or touch of the murderer long retained its hold on the popular mind; and in a note to the "Fair Maid of Perth," we are told how this bleeding of a corpse was urged as an evidence of guilt in the High Court of Justiciary at Edinburgh as late as the year 1668.

Another of the few ordeals that still linger in popular memory may be seen occasionally in some country village where persons suspected of theft are made to hold a Bible hanging to a key, which is supposed to turn in the hands of the thief, — a survival of the old classic and mediæval ordeal described in Hudibras as

> "The oracle of Sieve and Shears,
> That turns as certain as the Spheres."

But instances of this kind are mostly confined to the uncultured part of the community; for, happily, ordeals have long since had their day, and are now discarded from the laws of the more civilized nations. — *Chambers' Journal.*

THE MELANCHOLY-LOOKING JURYMAN.

(*From "Leaves of a Life," being the Reminiscences of Montagu Williams, Q.C.*[1])

I NUMBERED among my clients one of the shrewdest men I ever met in my life. He was a solicitor in a large criminal practice, who was known, feared, and trusted by all the thieves, burglars, and receivers — especially by the last named — in this great metropolis. A member of the Jewish community, he was an old man of remarkably sharp appearance and of diminutive stature. One Saturday preceding the opening of the sessions of the Central Criminal Court I was sitting in my chambers when a brief was

[1] Published by Houghton, Mifflin, & Co., Boston and New York.

handed to me from the office of the gentleman alluded to, a message accompanying it to the effect that he would meet me for consultation at five o'clock at the chambers of Mr. Montagu Chambers, in Child's Place. I read my instructions and found that the case was as dead a one as could well be imagined. One Solomon Isaacs was charged with receiving a quantity of stolen property, including several cartloads of bristles. . . . When taken into custody, Solomon Isaacs endeavored to escape; he also made a variety of conflicting statements. Thus it was apparent that the case against him was a dead one.

The meeting took place at the appointed hour at my leader's chambers, and on this occasion my little Jewish client was in more excellent spirits than I had ever seen him before. The more my leader and I expressed an opinion adverse to his case, the more delighted he seemed to be. Upon my leader declaring that we had not a leg to stand on, the little fellow was seized with an uncontrollable fit of merriment.

The meeting over, my client accompanied me back to my chambers in King's Bench Walk. As we shook hands at parting, he exclaimed, —

"Not a leg to stand on, eh? Ha! ha! ha! We shall see about that! Be early in court, my boy; the early bird, you know. *Nil desperandum* is my motto. Not a leg to stand on! Ha! ha!" and leaving me speechless with astonishment, he vanished in the darkness with an unearthly kind of chuckle.

On the morning of the trial, acting on my instructions, I made my appearance in court five or ten minutes before the business of the day commenced, and there, seated at the solicitor's table, I found my little friend attentively reading the columns of "The Daily News." I observed, though the circumstance did not particularly engage my attention at the moment, that there was a solitary juryman in the box, who was also occupied with one of the morning papers.

In due time the recorder, Mr. Russell Gurney, came into court, whereupon the clerk of arraigns, as is customary, read over the names of the jurymen. To the astonishment of everybody, there were *thirteen* in the box! Upon the matter being investigated, the man whom I had noticed on entering the court, arose and addressed the Bench.

I should explain that this individual was the most melancholy-looking man I have ever seen. He was dressed entirely in black, and looked the very picture of misery.

"My lord," he said, "I am afraid that I am the cause of this confusion. I am in the list of jurymen for to-morrow; but I have had a great misfortune happen to me. I have lost my wife."

The recorder, who was one of the kindest-hearted men in the world, said he was sorry that the juryman should, under the circumstances, have thought it necessary to be present, and offered at once to release him from any further attendance during the session.

"Thank you, my lord," said the melancholy-looking individual, "but I would rather serve to-day if you will allow me. I think the business of the court will distract my attention and help me for the time being to forget my loss. Perhaps one of the other gentlemen will leave the box now, and will serve for me to-morrow when I have to attend the funeral."

The request was granted, and a gentleman stepped from the box. The jury was then sworn. I noticed that when it came the turn of the melancholy-looking man to take the oath, he did so with his hat on, being sworn on the Old Testament. The prisoner pleaded "Not Guilty," and the trial commenced.

The evidence that was brought forward bore even more heavily upon the accused than I had anticipated. My leader in addressing the jury did the best he could under the circumstances, but entirely failed to produce any effect. The judge, having summed up, asked the jury if they desired him to read over the evidence. Upon the

foreman replying in the negative, his lordship directed them to consider their verdict. They turned round, and after an interval of five or ten minutes, to the surprise of everybody, there were symptoms of disagreement in the box. The judge again asked if he should read over the evidence, adding: "Is there any question you wish to ask, or can I assist you in any other way?"

The foreman, whose temper was apparently ruffled, replied, before any one could stop him, that all except one were agreed. The usher was then sworn, and the jury retired; the last to leave the box being the melancholy-looking man, who carried a portly-looking great-coat on his arm.

Hours passed, and yet no verdict was returned. At five o'clock, the usual hour for the rising of the court, the jury were sent for, and in answer to the usual question, the foreman said there was not the slightest prospect of their agreeing. The recorder, who was then member for Southampton, expressed his intention of going down to the House, and of returning at ten o'clock, observing that even if he had to keep the jury there all night he would never discharge them until they returned a verdict.

At ten o'clock the recorder returned. Still no verdict was forthcoming. The jury were again sent back to their room. Five hours elapsed, and then — namely, at three o'clock in the morning — the usher came into court with the intimation that the jury had agreed. The twelve men dragged their weary steps into the box, their names were called over, and the foreman returned a verdict of "Not Guilty."

I shall never forget the excitement of my little friend, the solicitor. He was wide-awake, sitting in the well, where he had remained all the time, going out neither for bit nor sup. He absolutely danced with delight. "Not a leg to stand on! Not a leg to stand on!" he exclaimed in my ear, and then hurried the prisoner from the dock.

I was, I must confess, staggered at the result of the trial. Having unrobed, I was leaving the court-house, when in the lobby I chanced upon one of the jury. I could not resist the temptation of asking the meaning of so extraordinary a *dénoûement*.

"Lor' bless you, sir," said he, "it was that miserable-looking chap as lost his wife. There never was such an obstinate, disagreeable fellow born. From the first he said he had made up his mind that the prisoner was not guilty, and he said he would never consent to a verdict the other way. When we went to the room he put his great-coat down in a corner, curled himself up on it, and commenced reading the newspaper; when any one spoke to him he said he would n't answer unless they 'd come over to his way of thinking. The wórst of it was, sir, that we had nothing to eat or drink; but this obstinate chap kept eating sandwiches and drinking brandy and water from a great flask he had brought in his pocket; and when we asked him for some he burst out laughing and said he would n't give us a mouthful between us. Well, sir, what was the good of our sticking out? There we was, and the recorder had said he would n't discharge us; so we should have stopped there and starved. One by one gave in until we all agreed to 'Not Guilty.'"

The next morning I had occasion to pass the little solicitor's office, and whom should I see coming out of it but the obstinate juryman. Strange to say, he no longer wore a melancholy expression, and in place of the black clothes of the previous day he was attired in a light tweed suit, such as a tourist affects, and he had a merry, self-satisfied twinkle in the eye.

A FEW MORE CURIOUS PLEAS.

THE article in the March number of the "Green Bag" entitled "Some Curious Pleas" recalled to the writer's mind a collection of similar pleas which he came across in an old English magazine. Some of them will bear repeating, and will form, perhaps, an interesting and amusing appendix to the article already published.

Brougham, defending a rogue charged with stealing a pair of boots, unable to gainsay his client's guilt, demurred to his conviction because the articles appropriated were half-boots, and half-boots were no more boots than a half-guinea was a guinea, or half a loaf a whole one. The objection was overruled by Lord Eskgrove, who with befitting solemnity said: "I am of the opinion that 'boot' is a *nomen generale*, comprehending a half-boot; the moon is always the moon, although she is sometimes a half-moon." Had Brougham proved the boots to be old ones, he would probably have come off as triumphantly as a tramp tried at Warwick for stealing four live fowls. The fowls had been "lifted" in Staffordshire; still the indictment was declared good, it being held that a man committed felony in every county through which he carried stolen property; but when it came out in evidence that the fowls were dead when the thief was taken, he was at once set free on the ground that he could not be charged with stealing four live fowls in Warwickshire.

The specious plea that killing is no murder if the killing be done to serve a political purpose, was put in in a French case. The accused objected to being condemned to death for murdering his wife and child, because capital punishment for political offences was abolished, and he only executed his relations because they were Legitimists; a plea that proved as ineffectual as the argument of the French advocate, that as his client by killing his father and mother had rendered himself an orphan, it was the duty of society to protect the bereaved creature.

A baker's man was charged with embezzling twelve pounds of his master's money. Admitting this fact, he pleaded in extenuation that he had laid out every penny upon religious tracts, which he gave away as he went his round, and actually got off with a gentle intimation from the magistrate that "it was a mistake to take money in a dishonest manner for a religious purpose"!

A plea bad in one sense may be good in another. A man lent another a ladder. After the lapse of a few months he wanted it back again, but the borrower flatly refused to give it up. He thereupon sued him for the value of the ladder. The defendant pleaded that the ladder was borrowed on an express condition, — that he was to return it as soon as he had done with it. He had not done with it, and therefore no action would lie. The plaintiff was nonsuited.

For cool impertinence the answer of a Welsh Railway Company in an action brought by a gentleman for the cost of a conveyance he had taken, after waiting in a station until twenty minutes past one for the departure of a train advertised to start at five minutes past twelve, is unequalled. The company contended that punctuality would be inconvenient to the public, and that the plaintiff had no business to trust to their time-tables, as the irregularity of the train service was notorious. The latter plea was ingenious certainly, but not so daring in its ingenuity as that advanced by certain grocers, who accounted for the presence of iron filings in the tea they sold, by averring that the soil of China was strongly impregnated with iron, and the iron must have been blown upon the leaves before they were gathered.

CAUSES CÉLÈBRES.

XIX.

DESRÜES.

[1777.]

Continued.

ANTOINE-FRANÇOIS DESRÜES was born at Chartres in 1744. He was the son of Michel Desrües, who was an honest and respectable man. Of his early youth we have but little information beyond the fact that he was left an orphan at the age of three, and was cared for by an uncle. His life seems to have been an uneventful one until 1772, when he married Louise Nicolai, a prospective heiress of a portion of the estate of Jacques-Jean-Despeignes-Duplessis, Chevalier and Lord of Caudeville. The marriage consummated, the first care of Desrües appears to have been to get possession of his wife's money; but the Despeignes estate was still in process of settlement, and legal difficulties stood in the way of a speedy liquidation. Desrües was himself on the verge of bankruptcy, but he put his creditors off on the strength of his future prospects. To avoid the most persistent, he secretly left his lodgings in the Rue des Deux-Boules, and took modest apartments in the Rue Beaubourg, in the old Hôtel de Saluees. The rooms were sufficiently large to accommodate comfortably his small family, his servant, and a friend, Bertin by name.

Affairs were in this condition when, in 1774, a gentleman, Saint-Faust de la Motte, a former master of the horse in the royal household, came to Paris for the purpose of trying to effect the sale of an estate which he owned in the neighborhood of Villeneuve-le-Roi-lès-Sens. M. de la Motte addressed himself to M. Jolly, procureur of Parliament, an old friend who had before advised him in such matters.

No purchaser having been found, M. de la Motte departed from Paris, leaving in M. Jolly's hands a power of attorney signed by his wife, in whose name the estate, Buisson-Soüef, then stood, and begging him to effect a sale as soon as possible.

Some months afterward, early in 1775, business matters called Desrües to the procureur's office. According to his invariable custom, Desrües spoke pompously of his magnificent prospects, of the large fortune of the Lord of Caudeville, and of his great projects for the future. M. Jolly recalled the commission which had been intrusted to him by M. de la Motte, and pictured in glowing colors to Desrües the estate of Buisson-Soüef. Desrües elicited further information, seemed inclined to the idea of purchasing it, and promised to return and talk the matter over with the procureur.

M. Jolly immediately wrote to La Motte, who, upon the receipt of the letter, hastily despatched his wife to Paris. Madame de la Motte repaired at once to the procureur's house, and inquired about the purchaser whom M. Jolly thereupon invited to dine with her. Desrües came accompanied by his wife. The parties were introduced; and Desrües spoke in such enthusiastic terms of the Despeignes inheritance, and made himself so agreeable generally that Madame de la Motte was charmed. The result of the interview was an agreement on the part of Desrües to visit at once Buisson-Soüef and examine the estate.

Accompanied by a notary, he made the journey a few days later, and, as the result of his inquiries and examination, offered a round sum of 130,000 livres for the property. As the Despeignes estate had not yet been settled, he could not then determine upon the time he would take possession, but probably at an early day. While M. de

la Motte would have decidedly preferred to receive cash for the estate, he felt that he could not afford to lose such a purchaser, and it was finally agreed that Desrües should pay Madame de la Motte 12,000 livres upon the day the contract was signed, 18,000 livres in three months, and the balance in two yearly payments.

Desrües returned to Paris delighted with his transaction. The times for payment were yet a long way off. His friend, Bertin, would furnish the funds necessary for the first payment; and once in possession of Buisson-Soüef, the future might take care of itself.

Madame de la Motte, eager to conclude the transaction, again repaired to Paris, and on the 22d of December, 1775, obtained from Desrües and his wife a note for 4,200 livres to bind the bargain, and an agreement by which they promised to pay the amount agreed upon, but at a time as yet undetermined, the delay in the settlement of the Despeignes estate rendering the payment of the first 12,000 livres impossible for the present.

A short time after this, Desrües made a second visit to Buisson-Soüef. He announced that there was every prospect of a speedy settlement of the contract; and succeeded in again winning the entire confidence of M. de la Motte, whose faith in the intentions of this purchaser had been somewhat shaken by the long delay.

The note given to bind the bargain was not paid at maturity, and toward the end of March Desrües wrote that it was impossible for him to take it up. The settlement of the Despeignes estate had required all his resources. The De la Mottes were naturally much disturbed. Desrües wrote them reassuring letters, and announced that he should shortly revisit Buisson-Soüef.

On the 28th of May he arrived, accompanied by a servant and his little daughter, a pretty child about three years of age. The new-comers were received with open arms, and every arrangement made for their comfort. On leaving Paris, Desrües had given his wife secret and minute instructions, and had charged Bertin to put his creditors off the scent. His plan had already been arranged as to the persons at Buisson-Soüef, and we shall see with what skill and perseverance he carried it out.

At the first lamentations of Madame de la Motte as to the embarrassment which his delay had caused them, Desrües replied gently but in a peremptory fashion, like a man who was in his own house, who regretted that he could not at once oblige a friend, but was certain of being able to do so in a short time. La Motte, more reassured than his wife, soon recovered his accustomed spirits. He took Desrües aside, and without reproaches, with a sort of embarrassment even, exposed to him his money difficulties, — the household bills, the workmen and farm-hands to pay, repairs to make, and a thousand other expenses. In such cases the good Desrües opened the strings of his purse and paid the bills. The money furnished by Bertin served for these advances, and established the purchaser of Buisson-Soüef all the more firmly on his property. Little by little the De la Mottes came to consider themselves as administrators of the estate for the benefit of Desrües.

By his gentle manner, his acts of charity, and his professed piety, Desrües soon gained the good-will of the entire neighborhood, and no one would allow a word to be spoken against the character of this saintly man.

Once firmly established at Buisson-Soüef, Desrües responded with less alacrity to the incessant demands for money addressed to him by M. de la Motte. Instructed by him, advised in advance of letters written and furnished with the proper responses to the same, the wife of Desrües replied to the questions of M. de la Motte as to the probable conclusion of the transaction.

Upon the receipt of her letters, La Motte wrote a most piteous appeal to M. Jolly. The procureur, overwhelmed with business, kept promising that he would look into the matter. He met Bertin one day at the Palais,

and knowing that he was acquainted with Desrües, he questioned him. "Desrües? Why, he is a perfect gentleman, and will come into possession of a pretty fortune in a few months. He is a little embarrassed pecuniarily just at present; but fortunately I have undertaken the management of his affairs, and I will bring him safely into port."

And M. Jolly wrote reassuringly to M. de la Motte.

La Motte's son was in Paris at a school in the Rue Serpente. After his first visit to Buisson-Soüef, Desrües had sought out and made the acquaintance of this young man. The child — to speak more correctly, for he was but fifteen — was very large and precocious for his age. He would have been taken for twenty at least. An intimacy speedily sprang up between young La Motte and Desrües and his wife, and he spent all his holidays at Desrües's house; and when his mother was in Paris she frequently met him there.

By the direction of her husband, Madame Desrües, on the 13th of July, wrote to M. de la Motte: —

"Your dear son is slightly indisposed. He is dissatisfied with his school, where he learns little or nothing. He ought to be placed in a better school, and one nearer our house, where I could look after him more carefully. Why, when you or Madame de la Motte come to Paris, will you not stay with us? It would be delightful to have you, and would be much less expensive for you."

M. de la Motte contented himself with replying that, as to his son, he thought it might be well to find a place for him nearer Madame Desrües's house, and he gave her *carte blanche* to do as she thought best.

In the autumn Madame Desrües went to pass a fortnight at Buisson-Soüef, leaving Bertin in charge of the house in Paris. She gave Desrües an account of what had taken place during his absence. His creditors were no longer pressing, and the officers of the law no longer frequented the premises.

"Did you do as I told you," asked Desrües, "and place in the hands of M. Prevost, the notary, the contract entered into between Madame de la Motte and ourselves?"

"I did."

"And did he promise to make advances?"

"He promised, but not until he sees you first."

"That is all right, wife; I will go to him when the time comes."

Toward the end of September Desrües departed with his family for Paris. He left numerous friends at and about Buisson-Soüef, who kept him fully informed as to what was taking place there.

When December came, M. de la Motte found himself at the end of money and of patience. Desrües felt that the *dénoûement* was approaching, and he made his preparations to meet it.

He learned at the same time, through Bertin, that Madame de la Motte had resolved to depart for Paris, to terminate the affair. La Motte had written to M. Jolly, —

"My wife departs to end this miserable business. Can you do me the favor to receive her at your house for a few days? If you cannot, will you secure a room for her at some good hotel in your neighborhood?"

Desrües thereupon caused his wife to write a pressing invitation for Madame de la Motte to come directly to their house.

Madame de la Motte replied with a polite refusal.

"Ah!" murmured Desrües, "can it be that she suspects us? I must prevent that. The lady will lodge at my house, or I will never call myself Desrües again."

On the 16th of December, 1776, when Madame de la Motte arrived in Paris, she found Desrües and his wife awaiting her.

Desrües hastened to greet her, saying: "Dear lady, I have good news for you. The settlement of the Despeignes estate is now only a question of a few days, and I am about to borrow upon my prospective share a hundred thousand livres. Ah! it was

time; my creditors are impatient, as if they were not sure of their money twenty times over. But what is this M. de la Motte writes me? You will not stay at our house, but are going to a hotel? My good Marie has prepared a room for you, and she will be much disappointed if you go elsewhere."

"I am gratified at your good news," replied Madame de la Motte, coldly; "and as you say, it was time. M. Jolly has kindly engaged a room for me at a hotel in the Rue du Paon, and I must decline your polite invitation."

"No, I will not permit it," cried Desrües. "You look ill and fatigued, and you will be much better cared for at my house." And in spite of herself, Madame de la Motte was absolutely forced into a carriage, and presently found herself installed in an apartment in Desrües's house in the Rue Beaubourg.

Desrües knew the woman he had to deal with thoroughly; he knew her indolent disposition, and her inclination to avoid exertion of any kind, her horror of receiving visitors and of being disturbed. Upon his order perfect peace and quiet were established in the house; no one was allowed to intrude upon her, and every attention possible was exerted for her comfort.

As a result, Madame de la Motte found herself so perfectly contented that she could scarcely bear to make the effort to write to her husband a few lines in which she repeated the assuring promises made by Desrües.

M. de la Motte, however, wrote letter after letter, imploring his wife to conclude the transaction and return to Buisson-Soüef.

Desrües replied to these letters more frequently than Madame de la Motte.

"Why does she not write me oftener?" demanded the husband. "It is now the 24th of January, and since the 16th of December I have received only four short notes from her. Ink must be dear in Paris!"

Madame de la Motte wrote a short note in reply; Desrües, a long, cordial letter.

On the 25th of January, 1777, Madame de la Motte complained that she had been suffering for several days from nausea and a headache. Her son also seemed to be far from well.

The following days Madame de la Motte did not improve. She rarely left her room. On the 30th of January she was seized with violent vomitings.

"You have eaten too much, dear lady," said Desrües, "and are suffering from indigestion. I will myself compose a draught for you which will relieve you. You know I am something of a physician."

Desrües went to the kitchen, and finding his little daughter there, he ordered her to go to bed; then he spent a full hour alone, preparing the medicine.

The next morning he carried a cup, filled with the preparation, to Madame de la Motte's room. He then sent his wife and daughter from the house on some pretext devised to get them both away. Desrües remained alone with his patient.

About six o'clock in the evening Madame Desrües returned. Some time later Bertin, who since the arrival of Madame de la Motte had been compelled to seek temporary quarters outside the house, came in and inquired eagerly for news of the lady.

"The medicine," replied Desrües, "has produced a most satisfactory effect. Our patient is sleeping peacefully. To-morrow she will be all right."

The three talked together before the fire. At eight o'clock young La Motte arrived, and asked for his mother.

"She is asleep," said Madame Desrües; "she ought not to be disturbed."

The young man insisted upon seeing his mother.

"Well," said Madame Desrües, "go into her chamber, but promise me not to awaken her."

Young La Motte entered the room on tiptoe, followed by Desrües, who placed his finger on his mouth, and shaded the candle

with one hand. As they left the chamber, Desrües said: "I will not ask you to stay to supper, my boy; we have only a picked-up meal, but come on Sunday. To-morrow your mother and I are going to Versailles on a matter of business which concerns you."

The youth returned to his school; Bertin remained to supper. From time to time Desrües went softly to Madame de la Motte's chamber. About ten o'clock, after a visit longer than the others, he returned with his face wreathed with smiles. "Ah!" he said, "the medicine is working like a charm. Ah! I flatter myself I know how to care for the sick."

The next morning, Saturday, Desrües was up early. He intrusted his wife with a number of commissions, and remained alone with the sick woman, as he had done the day before.

About eleven o'clock he left the house, and ran to the corner of the Rue Saint-Martin, where he found a porter whom he took back with him. Entering the kitchen, he pointed out a large heavy trunk, which he assisted the porter to place upon his back. "I want it taken to the Louvre," he said to the man; and leading the way, he left the house, followed by the porter.

On reaching the Louvre, he met his wife, who was coming from the Place des Victoires, and was going to visit the Mouchys. "Ah, wife," he said to her, "since you are going to the Mouchys, ask M. Mouchy if he will allow me to leave this trunk in his studio for twenty-four hours."

Madame Desrües obeyed; and the trunk having been left, she rejoined her husband. She asked for news of Madame de la Motte.

"She has gone to Versailles," replied Desrües.

"Without even bidding me adieu; that was unkind."

"Oh, she was in a great hurry to depart; I have settled everything with her, and we are now absolutely and incontestably the owners of Buisson-Soüef. The gold I counted out to her did her more good even than the medicine."

Bertin supped at the house, and learned with joy that he could return to his chamber. Desrües told him of the departure of Madame de la Motte and the settlement of the affair of Buisson-Soüef. Madame de la Motte had received a portion of the purchase-money, and in a few days a new contract would be signed. "Ah, you should have seen the good lady!" he said. "She had wings on her feet as she went with me to the coach for Versailles. She said: 'I do not wish M. de la Motte to get hold of this money; he will dissipate it, as he has the rest.'"

"So," exclaimed Bertin, "you have received the money from M. Prevost?"

"No," replied Desrües, carelessly; "but I concluded a loan with M. Duclos for a hundred thousand livres."

Madame Desrües gazed at her husband in astonishment, but did not utter a word.

As they were about to rise from the table, young La Motte arrived. He was informed of his mother's departure, and Desrües added that she would write to him shortly, as she had expressed the intention of having him meet her at Versailles. After the boy had gone out, Desrües remarked that he believed that young La Motte was not well; he thought he looked as if he were suffering.

On the 3d of February Desrües made preparations for an early expedition. His wife and Bertin asked what business took him out at such an unusual hour. He smiled mysteriously, asked for his lilac coat, *à l'anglaise*, his gold-headed cane, and his little hat trimmed with braid; and in this irreproachable attire, he departed, with the air of a well-to-do bourgeois who goes to make a call.

For several days he went out in this manner, answering the questions of his wife only with an enigmatical smile, or by these words spoken in a jovial tone: "Madame, mistress of Buisson-Soüef, I am occupying myself with our little affairs."

One morning, as he returned from one of

these mysterious expeditions, all smiles and rubbing his hands, he found a despairing letter from M. de la Motte. The poor man, receiving no news from his wife, began to be seriously uneasy. Desrües handed the letter to his wife, and said to her: "There is a good husband. He must, however, feel reassured by this time, for Madame de la Motte wrote him a letter on the day of her departure for Versailles, and he must have received it ere this."

After his mother's departure, young La Motte called frequently at the house. He had received no letter from Versailles, and could not understand why he heard nothing. On the 10th of February, upon the invitation of Desrües, he came at an early hour. Desrües told him that he had received a letter from his mother; she desired his presence at Versailles, whither Desrües himself would conduct him.

Desrües prepared a cup of chocolate which he gave to the youth, who, after drinking it, was seized with an attack of nausea. He speedily recovered, however, and left the house for his school, promising to return early the next day to go to Versailles with Desrües.

The following morning Madame Desrües was still in bed when young La Motte arrived. Desrües himself prepared the breakfast; and after partaking of it the same symptoms manifested themselves in the boy which had been observed the day before. Desrües, however, hurried his departure; and the youth, making an effort to conquer his illness, gained the street, while Desrües went back to inform his wife of his intended journey.

It was five days before Desrües reappeared in the Rue Beaubourg. He kissed his wife and shook hands with Bertin, whom he found in the house on his return.

"What is the matter with you?" cried Madame Desrües. "Your shirt is soiled, your hat is covered with dust, and your muffler — have you lost it? I have been very uneasy about you."

"Wife, wife, business is business. Come, get me my dinner; I am as hungry as a wolf."

Desrües was very gay, very confiding. He had entirely settled matters with Madame de la Motte; not without difficulty, for the dear woman was very exacting. He described the meeting of the mother and son in the park. She was accompanied by an unknown, — a man about sixty years of age, who had brought her in his carriage, and appeared to be on very intimate terms with her. This man embraced young La Motte with a singular tenderness.

"And had Madame de la Motte recovered from her indisposition?" asked Bertin.

"Oh! what she received from me cured her, — a beautiful medicine consisting of a bag full of louis d'or. When she received them, she said: 'My husband will not get hold of this money.'"

On the 17th of February, in obedience to her husband's instructions, Madame Desrües wrote to M. de la Motte informing him of his wife's departure. She added that young La Motte had been very ill at his school, and it had been necessary to take him away. On the same day Desrües sent his wife to the master of the school to tell him that the young man would not return, his mother having found another place for him.

This done, Desrües repaired to the Rue de la Mortellerie, to the house bearing the sign of "The Pewter Pot," where, as we saw at the commencement of this narrative, a little man by the name of Du Coudray hired a cellar.

On the way thither Desrües bought two bottles of Malaga wine. "Ah! here you are at last, M. du Coudray," cried Madame Masson, who happened to be in the house. "We really did not know what had become of you. That imbecile of a Rogeot has told me the most remarkable stories. He declares that every time he passes the door of your cellar his dog howls mournfully."

"What nonsense!" replied Desrües, laughingly; but his voice trembled slightly. "Here, my dear madame, is a sample of what I have stored in the cellar, — a delicious Malaga

wine, of which I beg you to accept these two bottles. I have come to look after it a little, for I am going into the country and shall be absent for some time."

Desrües descended into the cellar, and remained there alone for a long time; then he came out and directed his steps to the Place de Grève. There he found a laboring man whom he engaged to do some work for him, and leading the way he conducted him back to the cellar. There he pointed out to his companion a large package covered with canvas. "I have there," he said, "a case of fine wines, which are greatly improved by being buried for some months under ground. I wish a hole dug four feet deep, three feet wide, and six feet long."

The man set to work; but the ground was hard and rocky, and but slow progress could be made. While his companion used his pickaxe, Desrües paced the cellar, whistling and singing, and from time to time stopping and sitting down to rest upon the canvas-covered package.

It required more than three hours to complete the excavation. Desrües sought to while away the time by relating amusing stories to the workman. At last the hole was dug, and the two rolled the huge package into it, and the earth was thrown back upon it.

When all was finished, Desrües poured out a glass of wine and gave it to his companion. He then paid him three livres, and reconducted him from the cellar, taking the utmost precaution that he should not be seen by any of the inhabitants of "The Pewter Pot."

Another letter having been received from M. de la Motte in which he displayed increasing uneasiness, it again became necessary to reassure him; and upon her husband's orders, Madame Desrües wrote advising him of the departure of his wife and son for Versailles. "Do not be uneasy," she said; "we expect them back to-day or to-morrow. I wish I could give you more particulars; but as you know, your wife does not make a confidant of any one. Doubtless she will tell you all when she sees you, and I am astonished that she has not written you fully. All that I can say is that she has concluded the business with us, the contract of sale has been signed, and she has received from my husband the sum of 104,600 livres."

This letter did not allay the anxiety of M. de la Motte. Why had his wife not informed him of the conclusion of this important transaction? Why had she concealed from him this journey to Versailles? Had they not succeeded in imposing on her credulity and inexperience in business affairs, to make her enter into some new contract? M. de la Motte wrote at once to M. Jolly and to the master of his son's school, and made known to them his fears.

(To be continued.)

A SATIRE ON ATHENIAN LEGAL METHODS.

THE Athenians, a people versatile in character and gifted with extraordinary quickness of intellect, delighted in the excitement of forensic contests; but this was not the only attraction which rendered the office of dicast, or juror, acceptable to them. Pericles introduced the custom of paying each of them for his attendance, and the demagogue Cleon, whose great object was to ingratiate himself with the populace, trebled the amount; so that the exercise of their judicial functions became, to a large number of the citizens, a means of livelihood as well as of amusement, and they found it more agreeable to meet their gossips on the bench, and listen to the speeches of the suitors or their friends, than devote themselves to the drudgery of their ordinary trades. Hence we find Isocrates complaining that the lower orders at Athens preferred to stay at home and sit as dicasts in the courts, rather than engage in the maritime service of the State. "The real power of the Athenian demus, as he himself knew, lay in the courts of law. There was his throne, there his sceptre. There he found compliment, court, and adulations rained upon him so thick that his imagination began at last to believe what his flatterers assured him, that he was a god, and not a man. And a god in some sense he was, for to no earthly tribunal lay there an appeal from him; his person was irresponsible, his decrees irreversible; and if ever there was a despotism complete in itself, 'pure, unsophisticated, dephlegmated, defecated' despotism, it was that of an Athenian court of judicature."[1]

This passionate fondness of the Athenians for the exercise of their judicial functions, which were such an agreeable source of income to the six thousand dicasts who sat as jurymen and judges in the courts, is satirized by Aristophanes in his comedy of the "Wasps," — one of the most valuable as well as amusing pictures of the character and manners of that remarkable people, which time has spared us. We there see the vices of the people in full bloom, and we cannot but admire the courage of the poet who ventured to bring the subject of "law reform" in such a shape before the sovereign people, and lash the abuses by which the temples of justice at Athens were profaned. He knew well the difficulty of the task he had undertaken, and says:—

> "'T is more than comic art can do, however sharp and witty,
> To cure disease thus bred and born, the plague-spot of our city."

As the coffers of the State were replenished by the fines set upon those who were convicted, and a large portion of the money thus obtained was expended upon public shows and festivals, the temptation to give an unfavorable verdict was almost irresistible, and small was the chance of escape if the accused happened to be wealthy. Thus the chorus of dicast wasps rejoices in the thought that they will soon have Laches before them in court, and — that the general is rich.

> "But hasten, comrades, quickly on! for Laches stands for trial;
> And he has hived a store of wealth, of that there 's no denial."

The plot of this admirable comedy is as follows:

Philocleon is an old gentleman who attends the court of Heliæa as one of the dicasts, or jurymen, and his zeal in the discharge of his official duties amounts to a kind of insanity. He cannot sleep for thinking of the bench, and prefers to his comfortable bed at home a shake-down at the door of the court, that he may secure a good seat in the front row when business commences. There, with his staff in his hand, and his judicial cloak on

[1] Preface to Mitchell's editions of the "Wasps of Aristophanes."

his shoulders, his delight is to sit all day earning his three *oboli*, and having his ears tickled with the gross flattery by which litigant parties at Athens sought to conciliate the favor of the judges. His son Bdelycleon, who is much scandalized at his father's neglect of domestic affairs, determines to prevent him from getting out of the house; and the scene of the play represents the door of his mansion carefully guarded by two slaves, who have strict orders not to allow their master to go abroad. A net is stretched over the courtyard, and all avenues of escape seem to be closed. The cunning old dicast, however, whose legal experience has not been thrown away, makes many attempts, and his head is soon seen peering out of the chimney-pot. When he is dislodged from this, he tries in vain to burst open the door, against which the slaves place themselves. By and by he pretends that he wants to go out in order that he may sell an ass; but his son tells him that he will attend to that business, and brings out the animal for the purpose. Observing, however, that the poor beast can hardly walk, he stops to examine it, and discovers that Philocleon has strapped himself under its belly, and, like another Ulysses, who played the same trick with one of Polyphemus's sheep, is making his escape. He is thrust back into the house, and afterward is seen creeping along the tiles of the roof; but he is there *netted* like a bird, and fairly baffled. Now, however, up comes, buzzing and swarming, a chorus of fellow dicasts, dressed and painted to represent huge wasps, who on their way to the court call upon their learned brother, and express their wonder at not finding him ready to accompany them. This gives rise to some amusing dialogue, in which Philocleon and his friends exhaust the vocabulary of abuse against his gaolers; but at last Bdelycleon proposes an amicable parley, and undertakes to prove that his father has been grossly cozened and deceived, and that the life of a dicast is nothing better than miserable slavery. The old gentleman stoutly asserts that he reigns like a king, and the chorus is appointed umpire to decide which has the best of the argument. The contest then begins, and in the description which Philocleon gives of the sweets of judicial office, Aristophanes exposes its corruptions with unsparing severity.

The following is a sample:—

"The dicast leads a jolly life, who is happier than he?
Though old in age he knows delight, and fares right daintily;
When rising early in the morn to court he takes his way,
The great and powerful at the door for him obsequious stay.
Then some delinquent softly puts his oily palm in mine,
And conscious of his frauds begins with doleful voice to whine,—
'Have pity, if, when you yourself in office were, old fellow,
Perchance you happened to commit some trifling peccadillo;'
And yet he never would have known of my existence here,
Had I not tried the rogue before, and—let him off, I fear.
But when I take my seat in court, with coaxing flattery plied,
Straightway the promises I break which I have made outside;
And listen to the cries of those who loud for mercy pray,
Each striving to avert our wrath in some peculiar way.
Some plead their wretched poverty, and make a piteous case
(Almost as bad as my own plight in this accursed place);
Some tell us tales of other times, and quote of Æsop's wit,
And crack their jokes to make us smile, and say we will acquit;
And if we will not yield, they take their children by the hand,
And, bathed in tears, before the court the little suppliants stand,
While tremblingly the father sues for grace and pardon then,
As though I were a god to grant forgiveness unto men."

Bdelycleon, however, when his turn comes, shows that of the princely revenues of Ath-

ens the greater part is gorged by needy and noisy demagogues, while the dicast has to content himself with a wretched pittance of fivepence a day, and that, in fact, his majesty is kept as poor as a rat by those who profess to be his devoted champions and warmest friends. A new light breaks in upon the chorus, and they supplicate Philocleon to yield to the entreaties of his son, who promises him all kinds of good things, if he will only "purge and live cleanly" for the future. But the ruling passion is still too strong; and since to him, as to Dandin, in Racine's comedy, "Les Plaideurs," "*Sans juger, la vie est un supplice*," Bdelycleon proposes that he shall preside over a domestic forum and try causes at home. This jumps with the old man's humor, and he consents to the arrangement, but insists upon a trial taking place immediately. As luck will have it, the house-dog Labes (meaning Laches) has just run off with and devoured a Sicilian cheese, and the culprit is brought before Philocleon. The prosecutor is another dog (Cleon), and the indictment runs thus: —

> "The dog of Cydathenus doth present
> Dog Labes of Æxone, for that he
> Singly, alone, did swallow and devour
> One whole Sicilian cheese against the peace."

The trial commences; speeches are delivered for the prosecution and the defence, and the result is that the old dicast, for the first time in his life, drops into the box a verdict of acquittal. This completely staggers him, and he asks pardon of the gods for having been guilty of such an unheard of act of mercy. His son, however, reassures him by telling him that he will take care of him, and so the play ends.

The constitution of the courts of law at Athens was radically bad. One of the crying evils of the system was the number of dicasts who sat on every trial. Five hundred seems to have been the smallest number of which any tribunal consisted; but frequently several of these sat together, according to the nature of the case to be tried. Even in their best mood the Athenians came to the hearing of a cause with a disposition like that with which they took their places at the theatre to compare the compositions of rival poets. They were swayed by party feelings and private animosities. In criminal prosecutions the dicasts had, as has been noticed, a direct interest in the conviction of the defendant; for by the confiscation of his property the State was enriched, and thus they themselves were benefited. The consequence was that an odious class of men, the common informers, or *sycophants*, as they were called, were enabled to drive a gainful trade by extorting money from the fears of the wealthy whom they threatened to denounce before the tribunals. — HORTENSIUS.

The Green Bag.

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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.

THE GREEN BAG.

OUR thanks are due to Messrs. E. S. Sterry & Co., of Albany, for their courtesy in allowing us to reproduce their photographs of the First and Second Divisions of the New York Court of Appeals; and thus enabling us to present to our readers the two full-page groups which appear in this number.

AN admirable article on the Supreme Court of Michigan, written by Henry A. Chaney, Esq., of Detroit, will appear in our September number. The article will be profusely illustrated with portraits of past Chief-Justices and the present Bench.

ERRATA. We regret that one or two typographical errors crept into the "Key to Photograph, New York Court of Appeals," published in our July number. Our readers will please make the following changes: First, the reference letter *I* should be changed to *J*; second, in reference No. 8, the name should be *John* K. Porter; third, in reference No. 31 the name should be Henry E. *Davies*.

FROM New York come the following interesting anecdotes: —

Editor of the "Green Bag":

Apropos of the First District Court of New York City, mentioned in the March "Green Bag," a predecessor of Judge Quinn was a jovial Hibernian named Tom Stewart. One December day back in the "fifties" of this century, the following case was before him.

Plaintiff was a manufacturer of tomato ketchup, and had stored three barrels of the raw material in the cellar of defendant. These he had demanded of defendant, but without paying storage; and defendant held them under his lien until, warm weather coming on, the contents of the barrels exploded, smearing the cellar walls and the neighboring goods with undesirable tomato in a high stage of acetous fermentation. Result, a suit for the alleged value of the raw material, with an answer of general denial, and a counterclaim for damages, of vast proportions.

The trial began about 11.30 A.M. There was a recess for lunch, and at 2 P.M. the war recommenced. The utmost latitude was allowed as to the evidence; and the culture and value of the tomato were more fully developed, judicially, than ever before or since in a court of justice. Goddard — father of the present E. Ely Goddard, so well known by his antagonism to Col. E. F. Shepard — was counsel for defendant, and got his innings about 3 o'clock. About 4 P.M. he said, "And now, if it please the Court, we will offer evidence on our counter claim, which if sustained will ruin the plaintiff, who is already on the brink of insolvency." "Stop a moment, Mr. Goddard," exclaimed Stewart; "how many witnesses shall you examine?" "I have from twelve to fifteen ready, your Honor." The gloom of a winter evening was now clothing the court-room with obscurity; and the judge rose, shook himself, whirled his arms wildly about his head, and delivered himself: "I 'm all mixed up. There are no merits in this case anyhow. The plaintiff has destroyed my faith in tomato ketchup forever, and I shall never be able to eat a tomato again, raw or stewed. I dismiss the case: defendant may keep the barrels, and have execution for costs, no stay. This court stands adjourned!"

In the New York Superior Court, before Judge McCunn, a demurrer was once argued as follows: Plaintiff complained on a promissory note for $200. Also, and for a further cause of action that defendant assaulted plaintiff when plaintiff waited on defendant to collect the said note, and kicked him downstairs, to plaintiff's damage in the sum of $1,000. Aggregate judgment demanded, $1,200 with interest. Demurrer by defendant's attorney, "Causes of action have been improperly united." Plaintiff's counsel argued that one cause of action grew out of, and was really a part of, the preceding cause of action, "because, your Honor, if my client had not held the note, and had not waited on defendant for the purpose of collecting it, he would n't have been kicked downstairs!"

McCunn supported the demurrer with leave to amend complaint on payment of costs, and told plaintiff's counsel that nothing but his youth and inexperience prevented a fine for contempt of court.

A Detroit correspondent thus comments on lawyers East and West: —

The item in the June issue of the "Green Bag" on lawyers East and West is, I think, well calculated to mislead members of the bar in older countries than our own; and assuming that another view might be tolerated, if not believed by all, I venture to give it, and for its own value to ask the profession to inquire of their own experience for its accuracy.

It is the commonest mistake to misjudge a community by one person or the bar by one trial. It is true that the Code States may vary from those using the common law, but it is error to think that the best forms are not followed by the best lawyers West as well as East; and it must be remembered that as far west as St. Paul we find some of our very ablest lawyers. Two names occur to me there that would rank well in any State, — Senator Davis and Judge Koon, — and the list could be greatly extended.

If the gentleman had called at Chicago and seen the rapidity with which cases are disposed of, with trials greatly resembling those in New York or Brooklyn, if he had listened a few moments to Jewett, Swett, Dexter, or Senator Doolittle, he would have noticed intellects as keen and minds as alert, practice as close and forms as religiously adhered to as the East would assume or the courts could tolerate.

It is a noted fact that two of the greatest legal minds of the last half century — Ryan and Carpenter — came from the far western Milwaukee, and that Emmons, Matthews, Cooley, and Waite were bred in the West and their works do follow them.

The trouble with our friend's view is, that from a glance at one court-room he judges many; from one light he values the painting; but it is only when we set the best against the best that the race is even. As a matter of fact and history, aside from the larger cities, more dignity, more formal papers, more elaborate court-rooms and offices, more pride in practice, more genius in trials (because the brightest minds are all ambitious), more aspiration, are to be found in the West than the East has known for five decades.

It has been my lot to visit all of the States and compile facts, report and condense trials; and it is surprising how, in recent years, the bar, in book-buying, in reading, in nicely fitted-up surroundings, in dignity of the profession, in ambition for advancement has grown most marvellously west of New York, while in the East — the same in law as with farming — the great majority went elsewhere. A few have succeeded East, — Edmunds and Evarts, Butler and Beach, and men of their class have won and worn their honors worthily far from home. The West is the garden of progress, not alone in agriculture but in law, letters, and inventions. As actual experience is the true test of knowledge, so the wisdom of trials is gained in trying cases: and the West of to-day has tenfold more practice on an average than the East, where a quieter-disposed people and better-settled titles will have less need of litigation. Then, too, it must be remembered that the brightest and brainiest young graduates of the East go Westward to settle, while only the richer and more leisurely disposed remain in Eastern ease and contentment. In our Western cities are settled such men as Brewer, Brown, Broadhead, McDonald, and Russell, men of rare scholastic attainments and superior wisdom. The roll is too long to call further, and need not be extended. The real live law practice in our country is west of Niagara.

J. W. Donovan.

LEGAL ANTIQUITIES.

In the Middle Ages hospitality was considered as a chief virtue, and its exercise was enforced by many laws. The old laws of the Burgundians inflicted a fine of three shillings upon every one who denied to the wanderer the comforts of a bed and fire; while by laws made in much later and more civilized times, to refuse the shelter of the roof to the stranger was punished with a fine of *sixty* shillings. The Slavi evinced their sense of the duties of hospitality by enacting that the goods of the inhospitable person should be burned; and to remove from every one the excuse of poverty, as justifying a denial of hospitable rights, they authorized the landlord *to steal* for the support of his guests. The ancient Bavarian law affixed a heavy penalty on the killing of a stranger, quoting the text: "Ye shall not vex a stranger, nor oppress him." Very dissimilar was the policy of the Welsh law, which permitted three classes of men to be slain with impunity, — the madman, the leper, and the *stranger*.

Laws of England. — The most ancient treatise on this subject now extant is the "Tractatus de Legibus et Consuætudinibus Regni Angliæ," *Ranulph de Glanville*, Henry II.

In 1781 it was no longer death to take a falcon's egg out of the nest, nor was it longer a hanging matter to be thrice guilty of exporting live sheep.

In 1802 upwards of two hundred thousand writs were issued for arrests of debtors in the kingdom, for sums varying from four pence to five hundred pounds and upwards.

In 1803 there were in Newgate jail as prisoners 391 children.

In 1823 prisoners for assize at one county jail were double ironed on first reception, and thus fettered were at night chained down in the bed, the chain being fixed to the floor of the cell and fastened to the leg fetters of the prisoners. This chain was of sufficient length to enable them to raise themselves in bed. The cell was then locked and the prisoners continued thus chained down from seven in the evening till six the next morning. The double irons for the untried prisoners varied in weight from ten to fourteen pounds.

In 1825 the last person was hanged for forgery, — Mr. Mynard. In the same year women were put on the treadmill.

In 1833 sentence of death was passed on a child of nine who had poked a stick through a patched-up pane of glass in a shop window, and thrusting his little hand through the aperture, had stolen fifteen pieces of paint worth two pence The lawyers construed this into "house-breaking," the principal witness being another child of nine who "told" because he had not his share of the paint.

FACETIÆ.

A LIVERPOOL woman, to relieve her husband, who was charged with cutting off the end of her nose, swore before the magistrate that she bit it off herself.

THE following anecdote is told of a lawyer, by the name of Carnes, who lived in South Carolina. He once brought an action for assault and battery in which the counsel for the defence pleaded *molliter manus imposuit.* The proof showed an aggravated assault and battery. When it came Carnes's turn to address the jury, he said: "Gentlemen, you all know I am no Latin scholar, but I think I can translate the gentleman's plea: *molliter*, he mauled; *manus*, the man; *imposuit*, and imposed on him. Now, gentlemen, did you ever hear of such impudence? — to shamefully abuse my client, and then to come into court and brag of it!" The argument was irresistible.

"Now, sir, you say you know the plaintiff's reputation, and you know it to be bad?"

"I do."

"Now tell the jury, on your oath, what reasons you have for making such a statement."

"Well, I can say on oath, sir, that I have met this man in places where I would be ashamed to be seen."

A BARRISTER was defending a man who was tried on a charge of manslaughter. The accused acknowledged his guilt.

"Then there's an end of the case," said the judge.

"How so, my lord?" inquired the counsel for defence.

"The man acknowledges that he is guilty," replied the judge.

"That may be," added the barrister; "but *I* don't acknowledge anything of the kind."

"WHAT a murderous-looking villain the prisoner is!" whispered an old lady in the court-room to her husband. "I'd be afraid to get near him."

"Hush!" warned her husband; "that is n't the prisoner; he has n't been brought in yet."

"It is n't? Who is it then?"

"It 's the judge."

AT the Durham Assizes an action was tried which turned out to be brought by one neighbor against another for a trifling matter. The plaintiff was a deaf old lady; and after a little, the judge suggested that the counsel should get his client to compromise it, and to ask her what she would take to settle it. The counsel thereupon shouted out very loudly to his client, "His lordship wants to know what you will take?" She smilingly replied: "I thank his lordship kindly, and if it 's no inconvenience to him, I 'll take a little *warm ale.*"

In the witness-box.
Judge. You reside —
Witness. With my brother.
Judge. And your brother lives —
Witness. With me.
Judge. Precisely; but you both live—
Witness. Together.

NOTES.

The arrest of Eyraud, the murderer, calls new attention to the details of the "Affaire Gouffe," as the whole case is one of the most phenomenal in the annals of French crime. An interesting feature is the evident sensitiveness of the girl Gabrielle to the influence of those with whom she may chance to be associated, — a sensitiveness so marked as to have given rise to the belief that hypnotism, voluntarily or involuntarily exercised, may account at once for her participation in the murder of Gouffe, and for her return to Paris, and self-accusation before the court at the instance of a Frenchman with whom she became acquainted in California. It is quite certain that this theory will be relied upon for her defence, and the course of the trial will be watched with great interest. That crime may be committed involuntarily as the result of hypnotic suggestion is very generally believed by those familiar with the subject, but this seems to be the first case in which an actual crime has been laid at its door.

"My son," said an old barrister, giving advice to his boy who was just entering upon the practice of his father's profession, "if you have a case where the law is clearly on your side, but justice seems to be clearly against you, urge upon the jury the vast importance of sustaining the law. If, on the other hand, you are in doubt about the law, but your client's case is founded on justice, insist on the necessity of doing justice, though the heavens fall." "But," asked the son, "how shall I manage a case where law and justice are dead against me?" "In that case," replied the old man, "talk round it."

Crowner's 'Quest Law, often amusing, is sometimes disgusting as an exhibition of the utter lack of logic that occasionally makes the verdicts of juries of twelve, objects of ridicule and contempt. The learned Dogberry himself, with Mr. Jack Bunsby to back him, could not have uttered a more solemn stupidity than is reported in the "Railway Review" as coming from a coroner's jury in Philadelphia. An engineer had remained at his post in order to prevent an accident, but his devotion to duty cost him his life. The jury found that the brave fellow's death was due to his own neglect in not leaving the engine when a good opportunity offered. There was evidence that by not taking advantage of that opportunity he had succeeded in stopping his train, and had thus prevented injury to the passengers. But in the minds of the jury the man at the throttle-valve had committed unjustifiable suicide through a wilful and criminal attention to duty.

Recent Deaths.

Judge George Partridge Sanger died suddenly in Swampscott, July 3. Mr. Sanger was born at Dover, Mass., Nov. 27, 1819, being a son of Rev. Ralph Sanger, D.D., Unitarian minister, who graduated at Harvard College in 1808, and of Charlotte [Kingman] Sanger.

He entered Harvard College in 1836, and graduated in 1840. He taught for two years a private school in Portsmouth, N. H. He was appointed proctor in Harvard College in 1842, and then entered the law school.

He was admitted to Suffolk Bar in 1846, and commenced practice in partnership with Stephen H. Phillips, then of Salem, and was subsequently for a short time a partner of his college classmate Charles G. Davis, of Plymouth. In 1849 he became assistant to the Hon. George Lunt, then United States Attorney for the District of Massachusetts; and after Mr. Lunt's retirement he resumed the general practice of law in Boston. He was district attorney for Suffolk County from October, 1853, until the summer of 1854, when he was appointed by Gov. Emory Washburn a judge of the Court of Common Pleas, and so continued until the abolition of that court in 1859, when he resumed practice in Boston. In 1861 he was again appointed district attorney for Suffolk District to fill an unexpired term. He

was elected in the autumn of that year for the remainder of the term of three years, — was re-elected in 1863 and again in 1866 for terms of three years, and in 1869 declined further service in that position in order to give his whole time to the John Hancock Mutual Life Insurance Company of Boston, of which he was president for several years. In June, 1873, he was appointed attorney of the United States for the district of Massachusetts; was re-appointed in 1877, and again in 1882, and remained until the expiration of the latter term, April 1, 1886. After coming to the bar in 1846, he spent much time and labor in *quasi* literary work. From 1848 to 1860 he was editor of the American Almanac. At two different periods he was editor of the Law Reporter, and edited the Statutes at Large of the United States from 1855 to 1873, being volumes 11 to 17 inclusive. In 1860 he was appointed, with Judge William A. Richardson, to prepare for publication the General Statutes of 1860, and by a resolve of the Legislature they were appointed commissioners to prepare and publish an annual Supplement to the General Statutes, which work they performed continuously for twenty-one years, until the General Statutes were superseded by the Public Statutes in 1881.

Hon. Gilman Marston died at Exeter, N. H., July 3. Mr Marston was born at Orford, N. H., 1811. Graduating at Dartmouth in 1837, he taught school for a year and a half at Indianapolis, and then entered upon the study of law, pursuing his studies at Orford, at the Harvard Law School, and in the office of Hubbard & Watts, Boston. He was admitted to the bar in 1841, and at once opened an office in Exeter, where he afterward resided. He was elected to the Legislature in 1845, was twice re-elected, and in 1850 sat in the State Constitutional Convention. In 1859 he was elected to Congress, and was re-elected. Promptly at the outbreak of the Rebellion he tendered his services and was placed in command of the Second New Hampshire, — the "Fighting Second," — which he led into Bull Run, Yorktown, Williamsburg, Fair Oaks, the seven days' battles before Richmond, Malvern Hill, second Bull Run, and Fredericksburg. In this period he was twice wounded, — at the first Bull Run dangerously, and later by the accidental discharge of a pistol in the hands of a boy. In April, 1863, he accepted the office of brigadier-general, tendered him the preceding autumn, and for a year was in charge of an extensive camp of Confederate prisoners at St. Mary's, Md. He was then assigned to the Eighteenth Corps, Army of the James, and participated in the engagements at Bermuda Hundred, Drury's Bluff, Cold Harbor, and Petersburg. Placed in charge of important ports on the James, he contracted miasmatic fever, and in the autumn of 1864 quitted the army on sick leave. Meanwhile he had been placed in nomination for Congress, and in March following was elected for his third term, upon the expiration of which he returned to his legal practice in Exeter. He was elected to the State Legislature in 1872, 1873, 1876, and 1878, and from 1880 until his death he had served continuously in that body. He sat in the Constitutional Convention of 1876; in 1877 he was Republican Congressional nominee, but was defeated by Hon. Frank Jones; in February, 1889, he was appointed United States Senator, from March 4 to Senator Chandler's re-election.

Judge Edward Greely Loring, who recently died at his summer home in Winthrop, was well known all over the country years ago from his connection with the famous Anthony Burns case. In 1854, while holding the position of Judge of Probate and United States Commissioner in Boston, Mr. Loring had remanded the fugitive to slavery. Burns was taken into custody, under a warrant from Commissioner Loring, on the evening of May 24. Two nights later a great meeting was held in Faneuil Hall to protest against the action; and while George R. Russell was presiding and Wendell Phillips was speaking, the announcement came that a mob was attempting to rescue Burns. The meeting dissolved, and the persons composing it hastened to the court-house, made an attack upon the doors, killed one constable, and wounded others. But Burns was sent back into slavery. A great demand then went up for the removal of Judge Loring from the Probate Bench; and in spite of the remonstrance of the official in question that removal was effected. In his remonstrance Judge Loring submitted that he had been appointed United States Commissioner in 1841, while he was practising law, and that in 1847 he was appointed by Governor Briggs

Judge of Probate for Suffolk County; he had held the two offices from that date. He argued that his action was simply a part of his duty. After his removal Judge Loring received from Buchanan the appointment of Judge of the Court of Claims at Washington, and there remained a quarter of a century, resigning in 1877 under the Retiring Act. He was then seventy-five years of age, and was the only Democrat on the bench. Judge Loring was a native of Massachusetts, and was born Jan. 28, 1802. He was a graduate of Harvard College, class of 1821; and his death leaves but one survivor of the fifty-nine members of his class, that survivor being Rev. William Withington.

JUDGE WASHINGTON GILBERT died at Bath, Me., June 11, aged seventy-four. He was one of the leading lawyers of Maine, served in the Legislature, was Judge of Probate eight years, and was a candidate for the Supreme Bench.

EX-CONGRESSMAN HUGH BUCHANAN, of Georgia, died on June 10 at Newnan. He was appointed a Judge of the Superior Court of Georgia in 1872, which position he held till 1880, when he was elected to the Forty-seventh Congress.

REVIEWS.

THE LAW QUARTERLY REVIEW for July is filled, as usual, with interesting matter. The leading article is on "The Law of Conspiracy in England and Ireland," by J. G. Butcher. Henry Bond contributes a paper on "Possession in the Roman Law;" H. W. Elphinstone writes on "The Alienation of Estates Tail," and Horace Nelson on "Marriage and Immovables." The other contents are "The Legal Test of Lunacy," by A. Wood Renton; "The Maritime Conference at Washington," by F. W. Verney; and "A Song of Uses" (in verse), by H. W. C.

THE CENTURY for July has a striking feature in the long-expected debate on "The Single Tax," by Edward Atkinson and Henry George. Mr. Atkinson opens the discussion in a paper on "A Single Tax upon Land;" Mr. George replies in "A Single Tax on Land Values," and there is a rejoinder by Mr. Atkinson.

Another article that marks this number is the beginning of "Prison Series," the first paper being a thrilling account of the life of "A Yankee in Andersonville," by Dr. T. H. Mann, accompanied by a plan, and pictures made from rare photographs.

The first of two papers on "Provence" describes and brilliantly illustrates an unhackneyed region of the Old World; that part of France which is like Italy, — with its splendid Roman remains, its palace of the Popes, and its associations with Petrarch and Laura. Miss Preston, who wrote the article, is the well-known translator of "Mirèio," by the great Provençal poet Mistral. Dr. Edward Eggleston in an illustrated article tells the story of "Nathaniel Bacon, the Patriot of 1676," and prints for the first time certain details obtained from manuscripts recently acquired by the British Museum and the Congressional Library. John Burroughs, who has not lately appeared as often as usual in the magazine, prints a characteristic out-of-door paper entitled "A Taste of Kentucky Blue-grass." The pictures are by a Kentucky artist, W. L. Maclean. Joseph Jefferson, in his charming Autobiography, describes his early experiences in Peru and Panama; he also tells how he revived the play of "Rip Van Winkle," in London, with the literary assistance of Dion Boucicault. He also has an amusing chapter on some English relatives. Mrs. Amelia Gere Mason describes the "Women of the French Salons of the Eighteenth Century;" and the engraver Cole presents us with one of his most exquisitely engraved blocks — the frontispiece of the number — after a painting by Filippino Lippi. The fiction of the number consists of the second part of the anonymous "Anglomaniacs;" the ninth part of Mrs. Barr's "Olivia;" a story, "The Reign of Reason," by Viola Roseboro' (a young Southern writer with a rapidly growing reputation); and a complete novelette, "Little Venice," by Grace Denio Litchfield, with a full-page illustration by Mary Hallock Foote.

WE have received from Mr. George W. Childs a copy of his "Recollections of General Grant, with an account of the presentation of the portraits of Generals Grant, Sherman, and Sheridan,

at the United States Military Academy, New York." The author, from his intimate relations with the subject of this sketch, is better able perhaps, than any other living man, to give his readers a true insight into the character of that distinguished man; and this little book will be read with deep interest and appreciated as the recorded opinion of one who speaks with authority.

THE July number of SCRIBNER'S MAGAZINE begins the eighth volume of that periodical. This issue is especially well suited to the season, containing an article on surf-bathing, by Duffield Osborne, in which he describes the peculiarities and dangers of the sport. W. Hamilton Gibson contributes a charming paper on "Bird-Cradles," which is beautifully illustrated; and Bruce Price writes about "The Suburban House," giving illustrations of houses of all costs from $5,000 upward. The article will be found full of practical hints for those contemplating building a home. Robert Louis Stevenson sends a poem from an obscure island in Polynesia, entitled "The House of Tembinoka;" a prominent physician of New Orleans tells of a voyage which he took in a slaver, many years ago; the editor of the "Evening Post" discusses the citizen's rights to his own reputation; and there is plenty of entertaining fiction in the second instalment of the striking anonymous serial, "Jerry," the short story by the author of "Expiation," and the conclusion of Harold Frederic's successful historical novel.

THE new serial, called "Felicia," by Miss Fanny Murfree, sister to Charles Egbert Craddock, opens the ATLANTIC for July. The scene is laid in one of the smaller American cities. Miss Murfree's pages are full of clever characterizations, and there is an atmosphere about the story which promises well for the future numbers. The very title, "The Town Poor," gives one a sufficiently clear idea of what Miss Jewett's clever pen makes of such a subject. This, with some chapters of Mrs. Deland's "Sidney," concludes the fiction of the number. James Russell Lowell's lines "In a Volume of Sir Thomas Browne," and some verses on Wendell Phillips, represent the poetry, and there is also some charming verse at the end of Dr. Holmes's "Over the Teacups." In this paper of the series the Doctor devotes himself to answering some questions which have been proposed to him by what he calls "brain-tappers;" in other words, persons who are always endeavoring to get the opinions of noted men on all questions, from "Whether oatmeal is preferable to pie as American national food," to "Whether there is any justification for the entertainment of prejudice towards individuals solely because they are Jews;" and one can imagine the Doctor's comments on these somewhat varying topics. Frank Gaylord Cook has a sketch of Richard Henry Lee; Professor Shaler writes about "Science and the African Problem;" and Mr. Albert Bushnell Hart has a paper on "The Status of Athletics in American Colleges."

READERS of the July number of HARPER'S MAGAZINE will find in the second instalment of Daudet's "Port Tarascon" a complete realization of the anticipations aroused by the first chapters. Twenty-four illustrations by the eminent French artists Rossi, Montenard, Myrbach, and Montégut, accompany the article. Among the other illustrated papers are Howard Pyle's quaint account of "A Famous Chapbook Villain" who flourished in the early part of the last century; "Texan Types and Contrasts," by Lee C. Harby, describing certain phases of life and manners near the Mexican border; a paper on "Social Life in Oxford," by Ethel M. Arnold, with portraits of some well known celebrities at the University; and Dr. Henry Lansdell's narrative of a journey through "Baltic Russia," including a visit to Riga, Dorpat, and other places not often seen by English tourists. In "Some Colonial and Revolutionary Letters," by Frederick Daniel, the reader is made acquainted with an interesting collection of old-time letters now in possession of the State of Virginia; L. E. Chittenden continues his reminiscences in an article entitled "Treasury Notes and Notes on the Treasury." Robert S. Peabody, in "Architecture and Democracy," discusses the influences of democratic institutions upon the art of architecture. The recent revival of Paganism in Italian literature is described by Frank Sewall in an article on "Giosue Carducci, and the Hellenic Reaction in Italy." In the department of fiction, besides Daudet's new novel, there are several short stories: "A Poetess," by Mary E. Wilkins; "The Moon-

lighter of County Clare," by Jonathan Sturges; "Two Letters," by Brander Matthews (illustrated); "Truth and Untruth," by Matt Crim; and "The Scarecrow," by S. P. McLean Greene (illustrated). Besides Mr. Aldrich's poem, "Thalia," which occupies the place of honor in the Magazine, there are poems by William Sharp, Matthew Richey Knight, and George Edgar Montgomery.

BOOK NOTICES.

FORMS OF PROCEDURE IN THE COURTS OF ADMIRALTY of the United States of America, together with an Appendix, containing Forms of Maritime Contracts, etc., and the Rules of Practice in Causes of Admiralty, prescribed by the Supreme Court. By EDWARD F. PUGH. T. & J. W. Johnson & Co., Philadelphia, 1890. $5.00 net.

As its name implies, this work is a collection of forms for use in Admiralty Cases. So far as we can judge, from a cursory examination, the forms seem to be carefully drawn and to cover all cases likely to arise. They will undoubtedly be of much assistance to that branch of the profession for which they are designed.

A TREATISE ON FACTS, as Subjects of Inquiry by a Jury. By JAMES RAM. *Fourth* American Edition, with all the notes to previous editions by JOHN TOWNSEND, and additional notes and references by CHARLES F. BEACH, Jr., of the New York Bar. Baker, Voorhis, & Co., New York, 1890. $4.50 net.

It is astonishing that this work, so popular and well known to the profession a few years since, should have been out of print for so long a time. This new edition will be gladly welcomed, and the notes and references by such well-known legal authors as Mr. Townsend and Mr. Beach invest the book with greater value than ever. A voluminous appendix is added, containing much interesting matter quite in harmony with Mr. Ram's treatise and enhancing very materially the interest and practical value of the work. Every lawyer desirous of acquiring the art of trying a cause before a jury will find this book invaluable.

THE CODE OF PROCEDURE OF COLORADO INCLUDING THE AMENDMENTS OF 1889, COPIOUSLY ANNOTATED. Edited by FRANK S. RICE, of the Colorado Bar. Chain, Hardy, & Co., Denver, 1890. $7.50.

This work is by no means a local one, as its name would seem to indicate, but is a practical exegesis of the practice under the reformed procedure in all the Code States of the American Union; and all the decisions of the various jurisdictions involving any principle of code procedure are included in the volume, the citations embracing over 7,000 cases. Every text-writer of reputation in this country, whose treatment of the subject-matter necessarily involved entitles him to rank as an authority, is repeatedly cited, and every practice known to the American bar methodically reviewed. The result is a most exhaustive work, and the author is to be congratulated upon the successful accomplishment of a tedious and laborious task.

AMERICAN STATE REPORTS, Vol. XII. Bancroft-Whitney Company, San Francisco, 1890. $4.00 net.

This latest volume of these admirable reports sustains Mr. A. C. Freeman's reputation for discrimination in the selection of decisions reported, and his annotations are as valuable as ever. Cases are given from California, Florida, Georgia, Indiana, Kentucky, Massachusetts, Minnesota, New York, and Pennsylvania Reports. We would, however, recommend the maker of the "Head-notes" to read Judge Seymour D. Thompson's article on that subject in the May number (1890) of the "Green Bag."

THE SUGGESTION OF INSANITY IN CRIMINAL CASES, and the Trial of the Collateral Issue. By WILLIAM W. CARR. T. & J. W. Johnson & Co., Philadelphia, 1890. $2.00 net.

This book is the outcome of the author's experience in the well-known case of Webber *v.* Commonwealth, in the trial of which he, as counsel, had occasion to make a most thorough study of the subject. The work is particularly valuable to criminal lawyers, on account of the very full citations of the American and English statutes governing the question. The subject is treated under the following heads: "The Care and Control of Lunatics; The Preliminary Issue in the Case of Lunatics charged with Crime; The Preliminary Issue as a Matter of Right or within Judicial Discretion; After Conviction upon the Indictment Issue Awarded as to Mental Condition in Bar of Judgment; The Trial of Collateral Issue as to Insanity; Pleading and Practice."

MEZZOTYPE, BOSTON PHOTOGRAVURE CO.

EDWARD, LORD THURLOW.

The Green Bag.

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REMINISCENCES OF LORD THURLOW.

IN a book published some years since, entitled "The Law," the author, Mr. Cyrus Jay, gives some interesting reminiscences of Lord Thurlow. Many of them were new to the writer, and in the hope that they may prove "Entertaining" to the readers of the "Green Bag," he has transcribed them for their benefit.

Lord Bacon has remarked that they who derive their worth from their ancestors resemble "potatoes, the most valuable part of which is under ground." When one of Lord Thurlow's friends was endeavoring to make out his relationship to the Secretary of Cromwell, whose family had been settled in the county adjoining (Suffolk), he replied, "Sir, there were two Thurlows in that part of the country, — Thurlow the Secretary, and Thurlow the Carrier; I am descended from the latter." We have read of a man who, in prospect of his promotion, being asked concerning his pedigree answered that he was not particularly sure, but had been credibly informed that he had three brothers in the ark. But a distinguished poet of obscure origin surpasses this in his epitaph, —

> "Princes and heralds, by your leave
> Here lie the bones of Matthew Prior,
> The son of Adam and of Eve:
> Can Bourbon or Nassau go higher?"

Perhaps no chancellor ever gave so many church benefices to poor clergymen of real merit as Thurlow. Among other instances of his eccentric goodness the following appears to deserve peculiar notice. A curate who had a numerous family, but no patron among the great, was prompted by his wants and a favorable opportunity which the sudden death of his rector afforded, to make a personal application to Thurlow. The Chancellor was struck with his appearance and address, and after hearing his story, whimsically asked him, "Whom have you to recommend you?" "Only the Lord of Hosts, my lord." "Well," replied Thurlow, instantly, "as it is the first recommendation I have from his Lordship, be assured that I shall attend to it." The living was given to the meritorious applicant.

Lord Thurlow by his natural disposition was utterly disqualified, one would have thought, for discharging the duties of a judge or performing the part of a courtier. His violent and often ungovernable temper, which in its subdued moods deserved the name of surliness or bluntness, seemed to form an insuperable impediment to success in either of these capacities. Yet despite of it Lord Thurlow was a supple and pliant courtier, and although his learning has possibly been overrated, an able and impartial judge. He showed the natural fierceness of his disposition when quite a boy. Dr. Donne, one of the prebendaries of Canterbury Cathedral, held a living somewhere in the neighborhood of Thurlow's father, with whom he became intimate. Having observed that young Thurlow was rough and overbearing, he obtained his father's permission to send him to Canterbury school, with the master of which he had had a quarrel, in the hope that the intractable temper and fearless insolence of the future chancellor would render him a constant source of annoyance to the unfortunate master. This

plan, so creditable to its designer, is said to have succeeded most admirably; and Thurlow realized every expectation that the reverend prebendary had formed respecting his powers of annoyance.

At Cambridge he became notorious for the daring he displayed in setting the discipline of his college at defiance, and in exhibiting a most supreme contempt for the persons and character of those by whom that discipline was maintained and enforced.

Upon one occasion, having been guilty of some act of insubordination, he was summoned before the Dean, who, as a punishment for his offence, desired him to translate a page of the "Spectator" into Greek, and when he had done so to bring the translation to him. The first part of this order Thurlow obeyed; the second he disregarded. He easily performed the task imposed, but to annoy the Dean, whose deficiencies in classical learning were notorious, carried it to one of the tutors. When the Dean heard of this he assembled all the resident Fellows of the College, and sent for Thurlow. Upon Thurlow's entering the room, the Dean thus addressed him: "How durst you, sir, carry your translation to Mr. —— when I desired you to bring it to me?" Thurlow replied, with the greatest composure, that he had done so from no motive of disrespect to the Dean, but really from a compassionate wish not to puzzle him. The enraged Dean immediately desired him to quit the room, and then, turning to the Fellows present, declared that Thurlow ought to be either expelled or rusticated. Some one, however, wisely suggested that if publicity were given to the transaction, the reputation neither of the Dean nor of the college would be much benefited, and that it would be far more prudent to let the matter drop than attract further notice to it. This advice was followed.

With this dean Thurlow appears to have been involved in constant warfare. Upon another occasion, when summoned before him to answer some charge that had been brought against him, Thurlow's demeanor was not quite so respectful as the Dean considered befitted their relative stations, and rather sharply reminded him that he was speaking to the Dean of his college. Thurlow, in no wise abashed at this reproof, assumed a mock reverential air, and in every sentence of his vindication took care to insert "Mr. Dean," until the irate dignitary was compelled to dismiss both the accusation and the accused. At length, however, Thurlow received a friendly recommendation to withdraw himself from the University, in order to prevent the necessity of a formal expulsion. He left Cambridge without a degree.

But Thurlow, though rough, harsh, and violent, was not a bad-hearted man. When he had become chancellor, he sent one morning for his old friend the Dean, who had not forgotten, it is said, their enmity. Upon his entry the Chancellor accosted him. "How d' ye do, Mr. Dean?" "I have quitted that office, my lord," said the reverend divine, rather sullenly; "I am Mr. Dean no longer." "Well, then," said his lordship, "it depends upon yourself whether you be so again. I have a deanery at my disposal to which you are heartily welcome."

Crabbe, soon after he came up to London, a poor penniless adventurer, sent a copy of verses to the Chancellor, with a letter imploring the honor of his patronage. To this application Thurlow made a cold reply, regretting that his avocations did not leave him leisure to read verses. Crabbe, stung with this repulse, addressed to him some strong but not disrespectful lines, intimating that in former times the encouragement of literature had been considered as a duty appertaining to the illustrious station he held. Of this effusion the Chancellor took no notice whatever.

After Crabbe had, through the discriminating goodness of Burke, been relieved from the immediate pressure of distress, he received a note from Thurlow inviting him to breakfast the next morning. He was

received by the Chancellor with more than ordinary courtesy. "The first poem you sent me, sir," said Thurlow, "I ought to have noticed; and I heartily forgive the second." They breakfasted together, and at parting his lordship put a sealed paper into Crabbe's hand, saying, "Accept this trifle, sir, and rely on my embracing an early opportunity to serve you more substantially when I hear you are in orders." The paper contained a bank-note for one hundred pounds. The promise Thurlow made at that time he soon performed. When Crabbe was qualified to hold church preferment, he received an invitation to dine with the Chancellor. After dinner, addressing the poet, his lordship told him that, "by G—, he was as like Parson Adams as twelve to a dozen," and that he should give him two livings in Dorsetshire that had just become vacant.

As Speaker of the House of Lords, Thurlow was distinguished for the dignity with which he enforced the rules of debate. Upon one occasion he called the Duke of Grafton to order, who, incensed at the interruption, insolently reproached the Chancellor with his plebeian origin and recent admission into the peerage. Previous to this time, Thurlow had spoken so frequently that he was listened to by the House with visible impatience. When the Duke had concluded his speech, Thurlow rose from the woolsack, and advanced slowly to the place from whence the Chancellor generally addresses the House; then fixing upon the Duke the look of Jove when he grasps the thunder, he began, in a level voice, that famous speech so familiar to every schoolboy: "I am amazed at the attack which the noble lord has made upon me. Yes, my lords, I am amazed at his grace's speech. The noble Duke cannot look before him, behind him, or on either side of him, without seeing some noble peer who owes his seat in this House to his successful exertions in the profession to which I belong," etc. "The effect of this speech," says Mr. Butler, "both within the walls of Parliament and without them, was prodigious. It gave Lord Thurlow an ascendancy in the House which no chancellor had ever possessed; it invested him in public opinion with a character of independence and honor; and this, although he was ever on the unpopular side of politics, made him always popular with the people.

There is one anecdote recorded of Lord Thurlow which reflects the highest credit upon him. In 1782, when Lord North resigned, the King determined to withhold from him the pension usually granted to a retiring Prime Minister. Thurlow, then Chancellor, represented to his Majesty that Lord North was not opulent, that his father was still living, and that his sons had spent a great deal of money. The King answered, "Lord North is no friend of mine." "That may be," replied Thurlow; "but the world thinks otherwise, and your Majesty's character requires that Lord North should have the usual pension." The King, convinced that his Chancellor was right, at last gave way. This conduct was not forgotten by Lord North. When the coalition ministry came into power in 1783, Lord North became Secretary of State for the Home Department. Fox having resolved to get rid of Thurlow, North received the King's commands to write to the Chancellor, desiring him to surrender the Great Seal. North positively refused to comply with this order, saying, "When I retired last year, Lord Thurlow was the man who prevented my retreat from being inconvenient to me; shall the first act of my return to office be to give Lord Thurlow pain? I will not do it!" The King was amused at Lord North's pertinacity, and observed that while he kept secretaries he certainly was not bound to write his own letters. Lord North persisting, Mr. Fox was at last obliged to undertake the matter himself, although it did not come within his department. Fox discharged this duty, it is said, in a very harsh manner; which is strange, for harshness was foreign to Fox's character, and Thurlow, it is known,

entertained by no means an unfriendly opinion of him.

As a judge, Thurlow has usually been rated very high; but the tendency of modern opinion has been to estimate him somewhat lower. Mr. Butler has described his decrees as strongly marked by depth of legal knowledge and force of expression, and by the overwhelming power with which he propounded the result; but they were, he adds, too often involved in obscurity, and sometimes reason was rather silenced than convinced. This method, as it has been remarked, is precisely that which we might expect in a judge who is indebted to the learning of others for the judgments which he delivers, and who is not himself familiar with the chain of reasoning the conclusion of which constitutes his decree. It is well known that most of his judgments were framed by Mr. Hargrave. Thurlow has been charged with allowing the causes in his court to accumulate; but we doubt if this accumulation was not rather due to the imperfect constitution of the court than imputable to the Chancellor himself. When on the bench, he is said to have restrained with difficulty those forms of expression which, though habitual to him, would hardly have suited the dignity of his office. He disliked, and always checked in his court, any tendency to what is sometimes called eloquence. He once cut short a flowery advocate in the middle of a metaphor and bade him read his brief. His behavior towards the bar was rough and uncouth, but not overbearing. He was probably too conscious of his deficiencies in knowledge of law to have attempted such conduct. On the day before the court rose for the long vacation, the Chancellor was leaving without making the then customary valedictory address to the bar; he had nearly reached the door of his room when a young barrister said to a friend in a loud whisper: "He might at least have said, D—n you!" Whether Thurlow overheard this remark, or whether until that moment the matter had escaped him, we cannot tell; but he returned to his chair and made the usual complimentary speech.

At the Council-board Thurlow was both wayward and timid. Pitt used to declare that he proposed nothing, opposed everything, and agreed in nothing; a character like that which a Spanish historian gave the unfortunate Prince Don Carlos. He was, he said, "Non homo, sed discordia," — not a man, but the spirit of discord personified. Very often matters of state were discussed at the Cabinet dinners; and Thurlow, when the cloth was cleared, refusing to join his colleagues in their deliberations, would get up, quit the table, and stretching himself at full length on three chairs, go to sleep or at least affect to do so. With such a colleague as this it cannot be supposed that Pitt could have much community of feeling. The dislike, however, seems to have been mutual. Thurlow very freely expressed his opinion on Pitt's conduct in supporting the Opposition in the impeachment of Warren Hastings. The grounds on which Mr. Pitt supported the impeachment differed substantially from those on which the Opposition proceeded. Pitt grounded his support on the fact that the conduct which Hastings pursued towards Cheyt-Sing (whom he considered as a criminal, but whom the Whigs regarded as an oppressed Prince) showed an intention of punishing him too severely. This intention, Pitt contended, was criminal; and for this intention he should vote for the impeachment. When Lord Thurlow heard of Pitt's reason for supporting Mr. Burke's motion, he reprobated with vehemency the injustice of grounding an impeachment on a mere intention. "If a girl," he said in his growling style, "had talked law in these terms, it might have been excusable."

SENSIBLE LAWS.

IN an article entitled "What I call Sensible Legislation," a Scotch writer in an English magazine recalls some of the quaint old Scottish laws, and in a humorous way comments on the vast amount of common-sense contained therein. From this interesting paper we make a few extracts which seem to deserve a place in the columns of the "Green Bag."

Let me ask any woman of experience who is a housekeeper (says the author), whether it would not be convenient if she could know the best and worst of her expenditure, — if there were no rise and fall of prices to plunge her into a weekly struggle with the pence-table. Our contemned ancestors did not allow women to be put upon in this way. In the reign of James IV. of Scotland, the magistrates of towns were enjoined "to set prices upon bread, ale, and *all other necessarie things*, wrought and bought." James V. appointed a commissioner "for setting prices on craftsmen's work and stuff, victual and salt." Then the law told every man what price he was to set upon all goods in his shop; now the tradesman is left to make for himself complex calculations, and to discover, through much trouble, what he ought to charge in order to insure an honest living. Queen Mary decreed that prices should be set also on tame and wild fowl. "The black cock," says her Majesty, per statute, "is to be sax pennies, and the tame hen eight pennies."

It is well known what care a father takes to keep his children from uncontrolled rambling on the public highways. The wise spirit of our ancestors perceived this, and James IV. enacted "that no man, spiritual or temporal, pass forth the realm without license, or being abroad, do anything against their license." They were ordered to be good boys; and were kept out of the temptation of strange pie-men and pastry-cooks by the further provision of the statute, which goes on to say: "And that they have out no money, under pain of proscription and rebellion, and be demeaned as traitors."

King James VI. enjoined that "youth going out of the kingdom should abide in the true religion;" and he goes on to order "that such as send their sons abroad, have a special care that their stay may be where the true religion is professed, specially where they want pedagogues; at least where the Inquisition is not; and in case any of these sons haunt the exercise of contrary religion, those that have the charge of them may be straiten'd to find caution, to furnish them no more money except their reasonable expences to bring them home." In that way truth was properly protected.

There is no doubt that a necessity exists in our own day for a judicious supervision of the press. A free press soon becomes irreverent, and takes a pride in setting up the present over the past, and talking dreamily about the future. Our ancestors were saved from all trouble on this score, by the care of their rulers. Their reading was selected for them by their government, as a child's books are chosen carefully by a judicious father. Queen Mary ordained "that no printer presume, attempt, or take upon hand, to print any books, ballads, songs, blasphemations, rhymes, or tragedies, either in Latin or English tongue, in any times to come, until the time the same be seen, viewed, and examined, by some wise and discreat persons deputed thereto; and thereafter a license had and obtained from Our Sovereign Lady, for imprinting of such books, under the pain of confiscation of all the printer's goods, and banishing him of the realm forever."

I believe it is, in the present day, a common thing to ridicule the cockney sportsmen who discharge their guns, through inexpertness, into unoffending bodies of donkeys,

game-keepers, and others; but how much more practical and sensible it would be if we put the cockneys down! By the first of James VI. no man could shoot with or carry guns, under the pain of cutting off the right hand.

We grumble at the overcharge habitually made by cabmen; yet we go on paying. Ferrymen were the cabmen necessary in many places to our forefathers, and they also took advantage of their power over fares. Did our ancestors content themselves with joking and squabbling on the subject? No, indeed, they were practical men. Under an act of Mary's reign, it was decreed that a single person could cross the Forth of Tay for fourpence, a horse should cost fourpence extra, and so forth. Overcharges being made, there was no timid compromise, no shilly-shally. The offender was punished out of hand, — himself with death, and his heirs and assigns with confiscation of his property. Be assured that is the true law for cabmen. Kill them, and confiscate their property.

We make a common talk and nothing more, a common care, a common worry over negligence in servants. Under James I., in case of accidental fire, servants were liable. Fine, corporal punishment, and banishment for three or seven years made it their interest to mind where they (or their masters and mistresses) put the candles.

Paternal oversight protected the amusements of our ancestors. Persons convicted of drunkenness, or haunting of taverns and ale-houses after ten o'clock at night, or any time of day except the time of travel, or for refreshment, paid for the first offence three pounds, or were fastened to a wall for six hours in an iron necklace, or had the six hours in gaol; for the second fault, five pounds, or double allowance of necklace or of gaol; for the next fault, double the last punishment, and after that, confinement till they gave security for good behavior. Robin Hood, Little John, Queens of the May, and Abbots of Unreason were thundered against to good purpose, with a penalty of five years' gaol if they attempted any of their nonsense. As for those nuisances called Jack-in-the Green, and such like, I will give you a bit of an act in the fine old vernacular: "And gif onie women or uthers about Summer Trees sing and makis perturbation to the Queen's lieges in the passage through towns, the women perterbatoures for skufrie of money or utherwise, sall be taken, handled, and put on the cuck-stules of everie burgh." Oh that we had our ancestors to legislate for organ-boys and street-bands!

Under James VI., filial tenderness was promoted by an Act of Parliament, under which children beating or cursing parents were to be put to death "without mercie." But if the offender should be younger than sixteen, his punishment should be left to the discretion of the judge.

To select the dresses of the children is, of course, a parent's duty; and in this respect the kings, in the good time that is gone by, were not remiss. Minute details of the dress legal in each rank are converted into Acts of Parliament. Under James II., it is at last ordained that the king make a pattern of each habit, which shall be thereafter in each rank the standard dress, just as an imperial quart is made to be a standard measure.

Parents know also how much it is good for little boys to eat; so a paternal government controlled the dinners of its subjects. Under Queen Mary it was ordained that "no bishop or earl have more than eight dishes at his table; a lord, abbot, or dean, six; a baron, four; a burgess, three. Only one kind of meat to be in each dish." Penalties considerable. Marriages and public banquets were excepted. James VI. prohibited the dishing up of "foreign drugs or confections;" forbade banquets after baptisms, and ordered that at all dinner-parties doors be left open "for the free ingress of spies." Spies are not unwelcome to a well-regulated people. Why should children shrink from encountering the ever-present eyes of an attentive father?

A LIMB OF THE LAW.

By Eugene J. Hall.

ON a New England farm, at a distance from town,
Where Canada thistles and pebbles were plenty,
Lived in a quiet seclusion Ezekiel Brown,
Unthoughtful of fame until past one-and-twenty.
He was green as a gosling, and little he knew
Of the devious ways of the great world outside
Of the small country town where he flourished and grew,
Whose little affairs were a source of such pride
To the people who lived there, contented to plod
And walk in the ways that their grandfathers trod.

But "Zeke" was progressive, and not like a crab,
To stay and go backward like others about him;
He 'd a wonderful gift from a fellow called "Gab" —
(Where, where is the lawyer who "gets on" without him?)
"Zeke" would sit on a box in the old country store,
And argue and argue, for hours and hours;
To the loftiest flights in debate he would soar.
The shrewdest of talkers succumbed to his powers.
The wondering old Yankees looked on and said, "Pshaw!
He wa'n't made for a farmer, he 's cut for the law."

So often this thought was suggested to him,
That he said to himself, "I 'll jest lay down my hoe
An' leave the old farm, where the prospect is slim
For a man o' my talents ambitious to grow.
It 's better to work in the shade with one's jaw,
Than to sweat in the sun for the dollars and dimes;
An' the very best thing one can say o' the law
Is that business is best in the hardest o' times."
Zeke's soul became filled with a sense of unrest;
He "pulled up his stakes" from the farm and went West.

He came to Chicago, one warm summer day, —
A thrifty young town, "where things went with a hop."
Here he drove in his stakes and determined to stay
And work his way "up from the foot to the top."
His plausible tongue, his intelligent face,
His shrewdness, persistence, and good common-sense
Soon found him a very subordinate place
In the little back office of Peckham & Pence,
Where by struggling and working, with purpose sincere,
He started himself in his famous career.

Here he labored with "Blackstone," with "Washburn" and "Kent,"
Till his brain became weary by constantly reading.
He dozed over "Coke;" weary, long hours he spent
With "Parsons on Contracts" and "Chitty on Pleading."
He went to the law school, where, patient and mild,
The "good old professor" sat in his armchair
(How well we remember the way that he smiled
At the forensic flights of our fancy while there;
How fine his distinctions 'twixt whereas and moreover,
Devises, remainders, replevin and trover!)

Ezekiel said little, but sat there askance,
With his big mouth wide open to catch every word;
In a seedy black coat and old cream-colored pants,
Presenting a picture grotesque and absurd.
Yet the questions he asked the Professor were clever,
And the boys used to say, as they looked at his cheek,
"He 's just loading up for some future endeavor.
Wait and see if the world don't sometime hear from 'Zeke.'"

He was great in "supposing" all sorts of strange cases
Which might have occurred in preposterous places.

Ezekiel at last to the bar was admitted.
He opened an office and hung out his sign;
But like other lawyers was much to be pitied, —
No generous clients appeared in his line.
His friends were but few, and his purse it was slender;
His garments grew threadbare at elbows and knees;
His chops were not juicy, his steak was not tender;
He "chinked in the corners" with crackers and cheese.
But his courage was grand, as he watched for his ship
With a hopeful young heart and a stiff upper lip.

One day a lone widow, with eyes that were red,
With a look that "betokened" she 'd been in a row,
Came into his office and tearfully said:
"Oh, good Mr. Liar, dhey 've pounded me cow.
She hooked up dhe bars an' wint into dhe alley,
An' sthood dhere jist chewin' a wee bit o' hay,
Whin me neighbor, nixt door, Mrs. Michael O'Mally,
Jist up wid her apron and shooed her away.
An' before me boy Dinnis could put on his socks,
She kicked up her heels an' run'd off loike a fox.

"Dhin dhe bad boys dhey chased her an' made her so shcared-loike,
She stuck out her tail, an' she run'd down, down dhe sthrate,
Roight into a dood dhere dhat wuz n't prepared-loike, —
Knocked him into dhe gutther, roight off o' his fate.
His feelin's were hurted. He made such a row
A big blue polace came along wid a shout,
An' dhrove off me poor, pritty shcared little cow,
Put her into dhe pen, an' I can't git her out.
Oh, plaze, Mr. Liar, take pity on me!
Oi 'll do yer wake's wash if ye 'll git me cow free."

When the case in the justice court came to be tried,
Ezekiel was there with his law books at hand.
The scene was pathetic; the lone widow cried,
And "woiped her two oies whin she took to dhe sthand."
Ezekiel arose in behalf of the cow,
With cases to cite from the law books before him.
He told of the wherefore, the when, and the how, —
The old gift of "Gab" seemed to steal softly o'er him;
And he pictured the woes of that cow with such power
That justice and jury all wept for an hour.

Though the statute was clear that a fine be imposed
On owners of all cattle running at large,
The cow was released, and the widow vamosed,
And did his "wake's washin' widout any charge."

This case made Ezekiel the talk of the city,
And clients came to him with feelings of awe.
"Here 's a man," they all thought, "so ingenious and witty,
He clears every client in spite of the law."
Men and women came to him from all sorts of places;
It soon took two smart clerks to docket his cases.

Ezekiel grew famous, his clients all praised him;
He did not protest when they proffered their pelf.
No desperate case ever puzzled or dazed him,
Or shook his omnipotent faith in himself.
He dabbled in corner lots, let nothing slip
Through his fingers worth keeping, his charges were steep.
By the practical use of his marvellous lip,
He climbed from the foot to the top of the heap;
And wondering old Yankees Down East now say, "Fudge!
Who 'd ever 'a' thought he 'd be talked on for judge?"

THE SUPREME COURT OF MICHIGAN.

By Henry A. Chaney.

BY all accounts the jurisprudence of Michigan in her territorial days was much enlivened by the eccentricities of her first Chief-Justice. This was Augustus Brevoort Woodward, who left his surname to the principal avenue of Detroit, and his ineffaceable mark upon that city in the concentric scheme on which he laid it out; it was he also who drafted the act for the establishment of a University which he called the Catholepistemiad of Michigania, and which was to have thirteen professorships, whereof one was to be the Didaxum of Anthropoglossica, and was to embrace, the act said, all the Epistemum relating to language. He was a marvel of personal untidiness, even among pioneers; and his imperious will was such that no mortal man could get along with him unless he submitted to it. He was Chief-Justice from 1805 to 1823; and during the British occupation of Detroit in 1813, he was Proctor's secretary in civil matters, but he bullied Proctor as he had previously bullied Hull. His associates were Frederick Bates and John Griffin, both of Virginia. Bates, who was an older brother of Lincoln's attorney-general, resigned in a year or two, and went to Missouri, where he afterward became Governor. Griffin, who had formerly been a judge in the Indiana Territory, and had asked to be transferred to Michigan, was Woodward's drudge[1] till both resigned in 1823. Bates was followed in 1808 by James Witherell, a man of Massachusetts birth, who had been practising medicine in Vermont. He was a Revolutionary soldier, and as determined as Woodward. He sided with Hull; and as the Governor and Judges made the laws, these two enacted a statute, in Woodward's absence and in spite of Griffin, for the suppression of unauthorized banking, and thereby put an end to the Bank of Detroit, which was one of Woodward's undertakings.[1] The Chief never forgave him; but the inharmonious pair sat on the same bench for a decade and a half. Thirty or forty years later Witherell's son was a judge of the Supreme Court of the State, and his grandson Thomas Witherell Palmer has been United States Senator and Minister to Spain, and is now President of the World's Fair Commission.

When Woodward and Griffin resigned, Witherell became Chief-Justice, and his associates were Solomon Sibley and John Hunt, of Massachusetts, and James Duane Doty, of New York, who had been clerk of the court and seems to have somehow been detailed to hold court in remote counties. He was then a youth of twenty-four; he was afterward Governor of Wisconsin Territory, and when he died, in 1865, he was Governor of Utah by Lincoln's appointment. It was he who once went fishing with Daniel Webster arrayed in Webster's costly court-suit; he had no change of raiment, and Webster rigged him up in the court dress, saying that it would never be of any further use for ceremonial purposes. Sibley remained on the bench until almost the close of the territorial period; it was his son Henry who was the first governor of Minnesota and in 1862 put down the Sioux uprising. Hunt was a competent lawyer, with a crazy delusion that his legs were made of straw. He died in 1827, while still judge, and was succeeded by Henry Chipman, of Vermont, whose father, Nathaniel Chipman, had been Chief-Justice of that State and United States Senator, and whose son Logan has been a conspicuous municipal judge in Detroit, and a representative in Congress. Chipman was a graduate of Middlebury Col-

[1] Cooley's Michigan, p. 150.

[1] Campbell's Michigan, p. 245.

lege, and he began practice and married in South Carolina. Witherell resigned in 1828, when nearly seventy years old, and exchanging places with William Woodbridge, became Secretary of the Territory, so that afterwards, in the occasional absence of Cass, he acted as Governor. Woodbridge was from Connecticut, and was a son-in-law of John Trumbull; he was Governor of Michigan in 1840, and by a coalition between Democrats and Whigs became United States Senator. It was he who suggested to Webster the extradition clause in the Ashburton Treaty.

The last three judges in the territorial list were all appointed by General Jackson. They were George Morell, who will be mentioned farther on; Ross Wilkins, of Pennsylvania, who was afterward and for many years the first district judge in Michigan; and David Irwin, of Virginia, who was to succeed Doty in the special judgeship. Their nominations were sent to the Senate at that stormy session when Van Buren was rejected for minister to England, and it was three months before they were finally confirmed. Indeed the point was made by Thomas Ewing that there were no vacancies to fill, since, under the Ordinance of '87, the judges were entitled to hold office during good behavior. Wilkins, who was probably the last survivor of the territorial bench, was born at Pittsburgh in February, 1799, and was a graduate of Dickinson College in the class of 1818. When Michigan entered the Union, in 1836, he became the United States District Judge; and he held that office, without missing a term of court, until he resigned in December, 1869. He died May 17, 1872. In his earlier years he had been a Methodist class-leader, and he remained a Methodist until he was old, when his religious speculations led him toward the Catholic Church. There was one doctrinal point, however, which still troubled him, as he admitted one day to an old-time Methodist friend, the late William Clay. Mr. Clay was a profound student, and a man of rare skill in dealing with metaphysical subtleties. "Why," said he, unguardedly, "that 's easy enough;" and seating himself with the judge upon a dry-goods box, he made the knotty point so plain that to his own subsequent chagrin his venerable friend found every obstacle removed that had kept him out of the Romish communion, and soon after joined that church.

In addition to these twelve men, two thirds of whom may be called eminent, — at any rate, they are in Appletons' Biographical Cyclopædia, — there were four others who received early appointments to the territorial bench of Michigan,[1] but who did not serve. Two of these were Samuel Huntington, who did not accept, and Return Jonathan Meigs, Jr., who was not confirmed; both were afterward governors of Ohio, and Meigs was also Chief-Justice of that State, United States Senator, and Postmaster-General under Madison. The others were one John Coburn, who preferred a judgeship in Louisiana Territory; and William Sprigg, of whom I know nothing, but suppose to have been a Marylander, as were Tom and Dick of that name who were members of early congresses. Able, however, as most of the judges no doubt were in many ways, such small trace as is left of the jurisprudence of their times does not go far to prove it. In the fall of 1822 the "Detroit Gazette" was full of attacks upon the court, though Woodward was the target for most of the ponderous abuse of its contributors. One feature of the newspaper criticism was the publication of a series of reports entitled "Notes of Trials, Arguments, and Proceedings in the Supreme Court of the Territory of Michigan, September Term, 1821." These notes purported to give the conversations and discussions of the judges with each other and with the bar, even to the exhibition of their disagreements and asperities; and every instalment was headed with the words: —

"A man may see how this world goes with no eyes. Look with thine ears; see how yon

[1] Campbell's Judicial Sketch.

Justice rails upon yon simple thief. Hark, in thine ear: change places; and, handy-dandy, which is the justice, which is the thief?" — *King Lear.*

At a later date Woodbridge was also attacked. But it might perhaps be as unsafe to judge of the court by what the newspapers said, as it would be now.

The admission of Michigan to the Union was one of the political sensations of its time. Her people declared themselves a State, adopted a Constitution, and chose State officers, full fourteen months before they were admitted by Congress. Their choice for executive was Stevens T. Mason, the boy governor, whom Jackson had previously made territorial secretary. Jackson was displeased with him for the promptness with which he had marched the Michigan militia into Lucas County on the outbreak of the Toledo War; and he had sent a young Virginian named Horner to take his place. But no one took much notice of Horner beyond pelting the tavern where he lodged one night with stones, — for which attention the landlord charged him in the bill,[1] — and Mason, who presently became governor by popular election, deported himself thereafter as a State and not a Federal functionary. He appointed a Supreme Court consisting of William A. Fletcher, George Morell, and Epaphroditus Ransom. Morell had been one of the territorial judges for nearly eight years; but he now, like Mason, transferred his allegiance to the State. He was the only one of the territorial judges to sit on the State bench; Chief-Justice Sibley, who was sixty-seven years old, had become deaf; and Wilkins, who had taken part in the various "State's Rights" conventions had also been active in that Ann Arbor gathering of Jacksonian Democrats, known as the "Frostbitten Convention," which met in December, 1836, and assumed, in the name of the people, to accept the terms of admission imposed by Congress; he was rewarded with the position of district judge.

GEORGE MORELL.

Fletcher, the new Chief-Justice, was capable enough; he had practised in Detroit since he came to the Territory in 1820, and in 1825 had served on a commission to revise the laws. When he was made Chief-Justice he was already judge of a circuit that embraced all of the Michigan counties except Wayne; he travelled this circuit, and had two local associates in every county. He had also been Attorney-General. His tastes, however, like the young governor's, were too convivial; and though he lived till 1853, he soon became unfit for judicial life, and left the bench in 1842.[1] While he presided, the bench was lengthened to accommodate four members, and Mason gave the new judgeship to Charles Wiley Whipple.

His successor as Chief-Justice was his associate, George Morell, who was born at

[1] Campbell's Michigan, p. 468.

[1] Cooley's Lenawee Bar; 7 Pioneer Collections, p. 526.

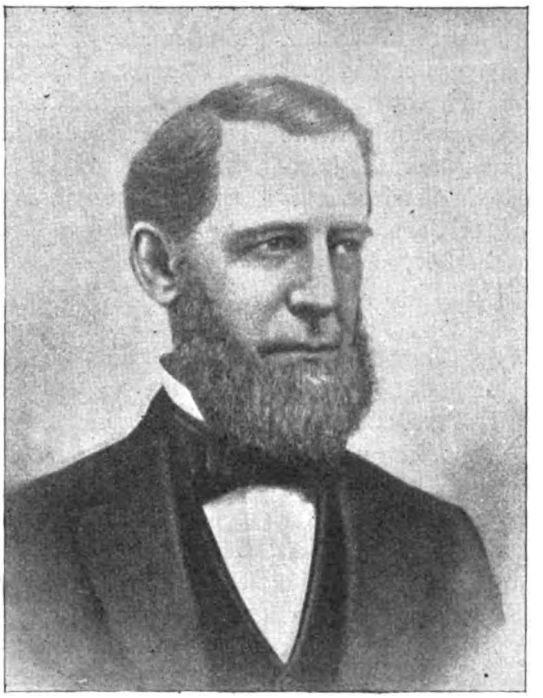
Lenox, Mass., March 22, 1786, and was a graduate of Williams in 1807. He studied law with Walworth and Marcy at Troy in the office of John Russell, and his judicial life began in 1827 in New York, for he was the first to preside as judge in the Otsego County Court. In 1828 he was in the New York Assembly. He died March 3, 1845. His son was one of McClellan's generals in the Peninsula, and commanded a division in Fitz-John Porter's corps at the second Bull's Run. It was he whose care to have his troops in camp by dusk won him the not unfriendly nickname among them of "Granny Sundown." There are but two opinions by Morell, and none at all by Fletcher, in the Michigan Reports, which began only with the year 1843. Morell's are in unimportant cases, and furnish little basis for estimating his capacity, which is well spoken of. The vacancies left in the court by the resignation of Fletcher and the death of Morell were filled by the appointment of Alpheus Felch and Daniel Goodwin, and the chief-justiceship went to Epaphroditus Ransom. Indeed, that dignity attached in those days to the judge whose commission was of earliest date; and where commissions bore the same date, then to the oldest man.

ALPHEUS FELCH.

Ransom was born in February, 1797, at Shelburne Falls in western Massachusetts; but he grew up at Townsend, Windham County, Vt., where he worked in the summer on the farm of his grandfather Fletcher, and either went to school or taught it in the winter. Alphonso Taft was a Townsend boy, and Ransom studied law with the future attorney-general in the office of old Judge Taft, the latter's father. He was graduated in 1823 from the Northampton Law School, and going back to Windham County to practise, was occasionally sent to the Vermont Legislature. It was not until 1834 that he came to Michigan, so that he had been in the Territory but two years when Mason made him judge. In 1847 he was chosen Governor, — a fate which had previously befallen his associate Felch, but has happened to no judge since. He was a Democrat who believed in the Wilmot Proviso; and this disqualified him, in the eyes of his party, for re-nomination. He was sent in 1853 to the lower house of the State Legislature, and is the only governor of Michigan who has had a post-executive experience in legislation. During his gubernatorial term the State Agricultural Society was organized; and he was its first president, besides being active in the introduction of blooded stock. He died at Fort Scott, Kan., in November, 1859, while receiver at the Osage land-office by appointment of President Buchanan. It is one of the old jokes of the country bar that a quizzical farmer named David E. Deming, who was once sitting with him as side judge, conspired with the other side judge to overrule him on some unimportant interlocutory matter, just by way of reminding him that

he had associates whom it would be at least polite to consult occasionally.

It is a notable fact that all four of the judges appointed by Governor Mason became Chief-Justices. After Ransom was made Governor, Whipple presided, and continued to do so until the Constitution of 1850 was adopted and the whole judicial system was changed. Whipple was born in 1805 at Fort Wayne, Ind., and was a son of Major John Whipple. One of the scandals of Woodward's administration was that the Major, in his irritation at one of Woodward's decisions, used some very cursory language to him on the street, and called him a rascal, whereupon Woodward, whose theory seemed to be that he was at all times liable to contempt, fined Whipple fifty dollars; and when Governor Hull exercised his pardoning power by remitting the fine, as he did shortly afterward, the grand jury presented the Governor for his illegal conduct in doing so.[1] This was in 1809, and is a specimen of the kind of cat-hauling that was common at that stage of our political history. The younger Whipple was a West-Pointer, but he studied law and sat through three sessions of the Legislature, being Speaker at that of 1837; he was also secretary of the Constitutional Convention of 1835, and a member of that of 1850.



GEORGE MARTIN.

Alpheus Felch was born in Limerick, Me., Sept. 28, 1806, and having lost both parents before he was three years old, grew up in the family of his grandfather, Abijah Felch, who seems to have seen to it that he lacked nothing in the way of educational opportunities, for he was sent to the famous Phillips Exeter Academy, and was graduated from Bowdoin in 1827, in the same class with John P. Hale. His coming to Michigan was rather accidental; he had begun to practise law in Maine, but finding the climate too hard for him, he started in 1833 for Vicksburg, where his friend Sargent S. Prentiss was living. At Cincinnati the cholera, which raged that year, seized him; and when he recovered he thought Michigan a safer destination than Mississippi. He must have made his mark at once, for he was sent to the first three Legislatures, and in them fought the wildcat banks. As a bank commissioner in 1838, he continued his pursuit of these institutions, brought their frauds to light and shut many of them up. He was Auditor-General for a few weeks in 1842, and then took Judge Fletcher's place. In 1845 the Democrats made him Governor, and in 1847 sent him to the United States Senate. From 1853 to 1856 he was president of that commission which had to adjust the Spanish and Mexican land-claims in California. When he was long past seventy, he became one of the law professors in the State University. His son-in-law, Colonel Grant, is one of the present judges.

Daniel Goodwin was born at Geneva, N. Y., Nov. 24, 1799, and died at the great

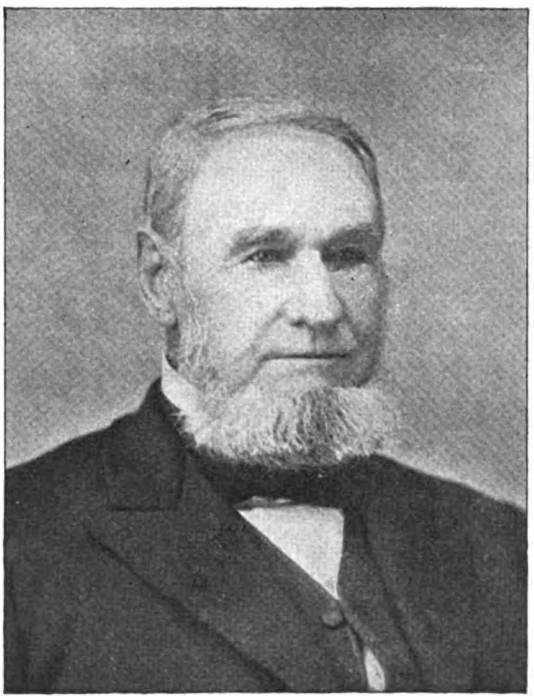
[1] Campbell's Michigan, p. 250; 8 Pioneer Collections, p. 587.

age of eighty-seven, in Detroit, on the 25th of August, 1887. He was a student at Union at the same time with William H. Seward, Sidney Breese, Tayler Lewis, James A. Bayard, and Bishops Doane and Potter, and he was graduated in the same class with Dr. Breckenridge in 1819. He studied law with John C. Spencer, afterwards Secretary of War and of the Treasury, and a nominee of Tyler's to the Supreme Court of the United States, though rejected by the Senate. In 1825 he came to Detroit, where his father, Dr. Daniel Goodwin, a physician, had just died. President Jackson offered him the district judgeship; but Goodwin thought the salary too small, and Wilkins took it. Jackson, however, made Goodwin district attorney. He was a member of the Constitutional Conventions of 1850 and 1867, and was president of the former. He was also in the "Frostbitten Convention" with Wilkins. He resigned from the Supreme Court in 1846, but in 1851 he was made judge of the circuit that included the Upper Peninsula, and he held that post till 1881; his portrait hangs at this day in the handsome court-room at Sault de Ste. Marie. He lived for more than sixty years after consumption had deprived him of the use of one of his lungs. He took part in the prosecution of the famous railroad conspiracy case at Detroit in 1850, in which Governor Seward was the leading counsel for the defence.

Warner Wing followed Felch on the Supreme Bench. He was born at Marietta, Ohio, Sept. 19, 1805, his father having come from Conway, Mass. He studied, like Ransom, at the Northampton Law School, and afterward in the office of Governor Woodbridge. His public life was not very diversified; he was in both branches of the legislature when the State was young; became judge in 1846; was Chief-Justice of the Supreme Court from 1851 to 1856, and resigned that post to become counsel for the Lake Shore & Michigan Southern Railway Company. He and his brother Austin were both able men, and at one time and another were candidates for the United States Senate. They were neither of them politic enough to escape animosities, however, and were defeated accordingly. Warner Wing died at Monroe, March 10, 1876. It was before him that the conspiracy case was tried. This remarkable prosecution grew out of a long series of depredations upon property of the Michigan Central Railroad; trains were pelted with stones and thrown from the track by obstructions; fires were kindled along the line of the road, and finally an attempt was made to burn the depot at Niles, and the main depot at Detroit was actually burned, with a loss of a hundred and fifty thousand dollars. Nearly forty persons, most of whom were residents of Leoni and of Michigan Centre, — small places near where Jackson is now, — were brought to trial as for a conspiracy against the company, and a dozen of them were convicted and sent to the State's prison for terms of from five to ten years. Governor Seward's theory seemed to be that so far as most of these people were concerned in these malicious injuries, their motive was to be revenged for the occasional killing of their stock by trains, and for what seemed to them the ruthless taking of their property by the railroad company in crossing their farms. John Van Arman, afterward a leading criminal lawyer in Chicago, took part in the prosecution, not only as counsel but as detective and witness. He had disguised himself, and mingled among the conspirators to learn their purposes.

George Miles succeeded Goodwin at fifty-seven, and died three or four years later. His parents were New Englanders, but he was born at Amsterdam, N. Y., April 5, 1789. Though self-educated and late in coming to the bar, for he was not admitted until he was thirty-three years old, he became conspicuous, and was district-attorney for Alleghany County, N. Y., before he came to Michigan in 1837. His opinions are said to have strongly resembled those in the early New York reports for ability, con-

ciseness, and close adherence to the points involved. He was overtaken by mortal disease while holding court at Marshall; and his last entry upon his journal, made with an unsteady hand, records that the jury trial then pending was interrupted by his illness.[1] He died a few days afterward, and was succeeded by Abner Pratt. Governor Ransom's place had been taken in 1848 by Sanford M. Green; and the same year an additional judgeship had been created, to which Edward Mundy had been appointed. This was made necessary by the establishment of another circuit. The court, after these changes, consisted of Whipple, Wing, Green, Mundy, and Pratt. All of these, except Mundy, held at some time or other the chief-justiceship.



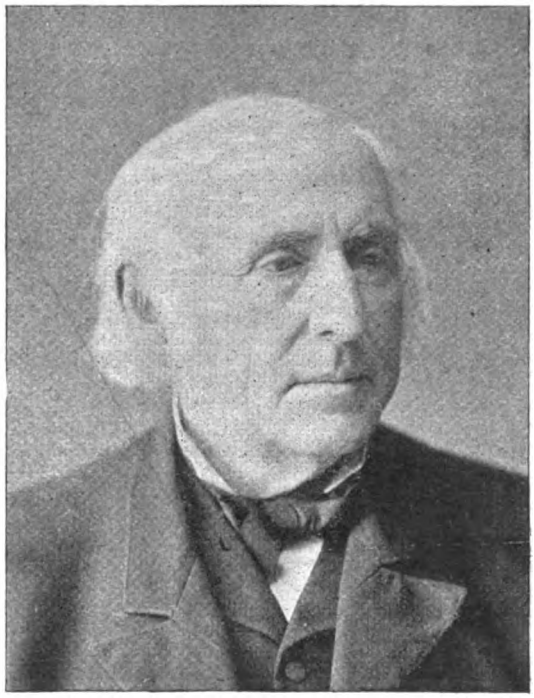
ISAAC PECKHAM CHRISTIANCY.

Sanford Moon Green was born in Grafton, N. Y., May 30, 1807. He came to Michigan and settled in Owosso, when he was thirty years old, but he had practised a little at Rochester, N. Y., before that. He is best known to the present generation of lawyers for his work on Michigan practice; he has also produced a treatise on townships. He made the revision of the statutes in 1846, and his arrangement of them has been the basis for the three later compilations by Cooley, Dewey, and Howell. He was a member of the State Senate for four sessions in the middle forties, and after he ceased to be a judge of the Supreme Court he was circuit judge for twenty-four years more. His career has been much like that of John Worth Edmonds, of New York, who was also a legislator and a judge of distinguished ability and eminence, but is chiefly remembered for his adhesion in later life to spiritualism. Edmonds was, moreover, a philanthropist in respect to criminals. Judge Green's proclivities in a like direction once brought him into sharp collision with the Supreme Court at the very time when that body was at the height of its reputation. He had tried a man for a detestable crime, and in charging the jury he instructed them that in considering the case of their "brother," they must "look down deep into the soul of humanity" and pay no regard to popular prejudice. The jury convicted the fellow, and on reviewing the case the Supreme Court criticised the charge with severity, and said that however imperfect the prevailing mode of administering justice might be, it gave society greater security than the new principle would that was suggested in the charge. The trial judge retorted by newspaper, and said the Supreme Court had no right to pass upon any question that was not raised by the assignments of error. The criticism, however, was revised out of the opinion before it was officially published. In his old age Judge Green has published, through the Appletons, a speculative treatise upon crime and its treatment on the basis of its being a disease.

Abner Pratt, on the other hand, is said to have been prompt, decisive, and bold, and in

[1] 2 Pioneer Collections, p. 201.

dealing with criminals unmercifully severe. He was born in Springfield, Otsego County, N. Y., within five miles of Cherry Valley, May 22, 1801. He grew up on a farm, and his educational opportunities were small. He read law, however, and like his colleague Miles became district attorney while still in New York, and was public prosecutor at Rochester. In 1839 he came to Michigan and settled at Marshall, and the very next year was engaged in a locally famous prosecution in which a Pottawatomie Indian was convicted of murder. The savage had illustrious counsel too. One of them was Charles E. Stuart, who was afterward elected to the United States Senate; the other was Lieut.-Gov. James Wright Gordon, who narrowly escaped the same fate when Woodbridge was chosen. When Pratt was once on circuit in Lenawee, an incorrigible old scamp was brought before him who had been frequently convicted and sentenced before. The judge told him that as he was fifty-three years old, and according to Scripture, was entitled to but seventeen years more, he would save further trouble with him by sentencing him for the whole of that period. But the mature reprobate not only served the sentence out and was released, but he afterwards had four years for larceny in the county of Branch, and still later, two years for burglary in Cheboygan.[1] Pratt had been in the State Senate in 1844–45, before he became judge; he was sent as consul to Honolulu in 1858, and in 1863 he was back again and in the Michigan House of Representatives, where he figured as a fierce Copperhead. He died March 27, 1863.



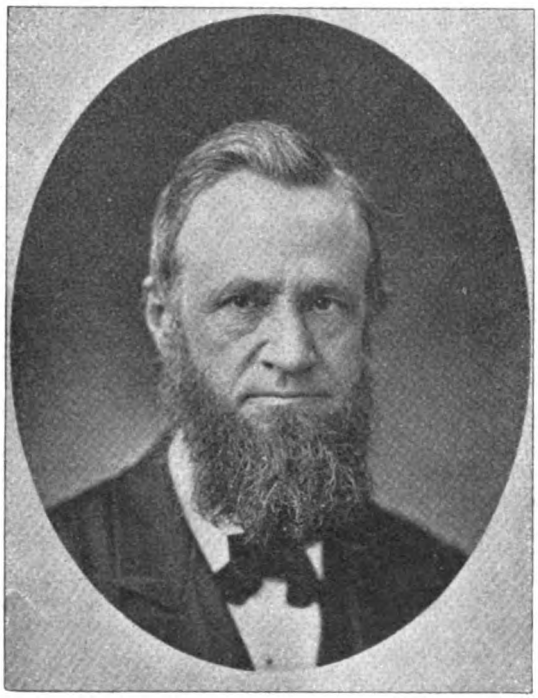
JAMES VALENTINE CAMPBELL.

Edward Mundy was a Jerseyman, born August 14, 1794, and a graduate of Rutgers in the class of 1812. He went to Illinois as early as 1819, and was in practice there, but returned to New Jersey and became a merchant. When he came to Michigan, in 1831, he opened a store at Ann Arbor, and it was not until 1834 that he was admitted to the State bar. He was a delegate to the Constitutional Convention of 1835, was Lieutenant-Governor under Mason and acting Governor in his absence, and was Attorney-General in 1847. He died March 13, 1851, and was succeeded by George Martin, who will be mentioned farther on.

This closes the group of judges who held office under the first Constitution. In 1850 a new Constitution was adopted, and thenceforward the judges were to be chosen by popular vote. For seven years, however, the Supreme Court was to consist of the circuit judges *in banco;* after that it was an independent tribunal made up of four (since 1887, of five) judges elected for eight (now ten) years, one judge going out every two years and acting as chief-justice for the last two years of his term. Of the judges who had served under the Constitution of 1835, Whipple, Wing, Green, Pratt, and Martin

[1] Cooley's Lenawee Bar; 7 Pioneer Collections, p. 532.

continued to serve under that of 1850, each one presiding in a circuit. There were three more circuits; and to these were elected John Skinner Goodrich, Samuel Townsend Douglass, and David Johnson. Goodrich died soon after his election, and Joseph Tarr Copeland took his place. Whipple died in 1855, and was succeeded by Nathaniel Bacon; Wing resigned in 1856, and was followed by E. H. C. Wilson.



THOMAS MCINTYRE COOLEY.

Goodrich, like his brothers Enos and Reuben, who were members of the State Senate in 1853 and 1855 respectively, and both of whom are still living, was born in Clarence, N. Y., a post village near Buffalo, Oct. 7, 1815. His uncle and namesake, Dr. John Skinner, was a son-in-law of Roger Sherman; his brother Aaron was territorial Chief-Justice of Minnesota by appointment of President Taylor. He studied law in the office of John T. Bush, of Buffalo, and after coming to Michigan in 1836 resumed his studies at Pontiac, and was admitted to the bar in 1840. Being skilful in mathematics, he had previously been employed as a civil engineer upon the line of the Port Huron & Lake Michigan Railroad. While on his way to Buffalo in the fall of 1851 to adjust a marine insurance claim for the brothers first named, he was taken sick on the steamer, and on his return he died, October 15, at the Michigan Exchange in Detroit, with his colleague Douglass waiting upon him. It is interesting, after the lapse of nearly forty years, to note that of the three young men who reported the resolutions of respect to his memory that were adopted by the Detroit Bar, one — Jacob M. Howard — became United States Senator; another, — Geo. V. N. Lothrop, — minister to Russia; while the third — George E. Hand, a brother of the philanthropist — lately died insane, at great age, at his old home in Connecticut.

Copeland was born at Newcastle, Maine, May 6, 1813, and settled in 1844 at St. Clair, Mich., where he was county judge for three years before he became a member of the Supreme Court in 1851. When the war broke out he went into it as lieutenant-colonel of the Fifth Cavalry regiment, which he raised, and in the command of which he was followed by Russell A. Alger. When Hooker was at the head of the Army of the Potomac, Copeland was a general in charge of the Michigan cavalry brigade; and these troops under him were the first to occupy Gettysburg before the battle. In 1878 he went to Florida, took up his residence at Orange Park, and became county judge of Clay County.

Douglass was born at Wallingford, Vt., Feb. 28, 1814; but his parents went soon after to Fredonia, N. Y., where he attended the celebrated Fredonia Academy when Henry Chaney was at the head of that Institution. He came to Michigan in 1837, and in 1845 was appointed reporter to the Supreme Court; he was the first of its law reporters. He went into partnership with Henry Nelson Walker, — another Fredonia

boy who had been Chancery reporter and became Attorney-General; and he married a sister of that James V. Campbell who was destined to be one of the most illustrious of his successors on the bench. He was elected judge on an independent nomination; and though personally a Democrat, the Whig candidate, Rufus Hosmer, withdrew in his favor. He was one of the early presidents of the Young Men's Society of Detroit, and was an active member of the Board of Education. Since 1862 he has lived upon Grosse Ile, below Detroit; and though he has kept an office in the city and has since then conducted three of the most obstinate and protracted litigations in the history of Michigan jurisprudence, he has also been an active and zealous agriculturist, and has not scrupled to express a hearty preference for farming as contrasted with the practice of the law. The litigations referred to were the Crane and Reeder case, which for years was a shuttlecock between the Supreme Court and the Circuit;[1] the "Laboratory" case, which involved itself with the politics of Michigan, and set half the inhabitants of the State by the ears;[2] and the case of Perrin *v.* Lepper,[3] which resulted, after a long series of subsidiary and interlocutory proceedings, in the recovery of a fortune from the estate of an unfaithful administrator.

Johnson was a New-Yorker, born at Sangerfield, Oct. 20, 1809, and admitted to the bar in Genesee County. He came to Michigan in 1837, having stopped for a year or so at Painesville, Ohio. He was in the lower house of the Michigan Legislature in 1845–47, and after having been a judge was twice the candidate of the Democratic party against the late Judge Campbell. He died August 28, 1886, at Jackson, where he had lived for forty-eight years.

[1] 21 Mich. 24; 22 Mich. 322; 23 Mich. 92; 25 Mich. 303; 28 Mich. 527; 30 Mich. 459; 35 Mich. 146.

[2] University *v.* Rose, 45 Mich. 284.

[3] 47 Mich. 212: 49 Mich. 342, 347; 56 Mich. 351; 72 Mich. 454.

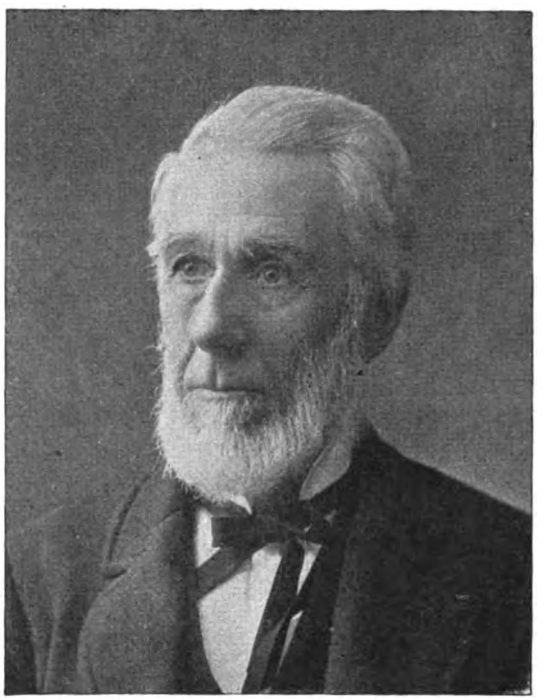
Bacon was born at Ballston, N. Y., July 14, 1802, and was graduated at Union in 1824. He studied law in the office of Thomas Palmer at Ballston Springs, and from 1828 to 1833 practised at Rochester. Then he came to Michigan and settled at Niles, where he was prosecuting attorney in 1847. A temperance man and a Presbyterian elder, he was also an enthusiastic Whig of the anti-slavery kind, and one of the organizers of the Republican party. He was re-elected circuit judge in 1858, and again, after two years' retirement, in 1866, and he died of apoplexy Sept. 9. 1869.

Edward Hancock Custis Wilson was born "on the east shore" of Maryland, near Princess Ann, in Somerset County, August 6, 1820, and he was graduated in 1838 from a Presbyterian institution at Washington, Pa., known as Washington and Jefferson College, where it was not his fault that he was a classmate of Clement L. Vallandigham. He studied law in Somerset County, and moved to Michigan in 1845, where he was prosecuting attorney for Hillsdale County, and for two terms circuit judge. He died at Denver, Nov. 1, 1870.

When it was decided to replace the bench of circuit judges by an independent tribunal, Douglass, Pratt, Green, and Johnson were the Democratic nominees. The Republican party had just come into being, however, and Michigan was its birthplace; the time and circumstances were unpropitious for Democratic candidates. On their defeat they all resigned, that they might the sooner establish themselves in business, for they had been starving on fifteen hundred dollars a year for salary. For the few remaining months of their unexpired terms, Governor Bingham appointed B. F. H. Witherell in place of Douglass, B. F. Graves in place of Pratt, Josiah Turner, in place of Green, and Edwin Lawrence in place of Johnson.

Benjamin Franklin Hawkins Witherell was a son of that James Witherell who nearly fifty years before had been a territorial judge. He was born at Fair Haven, Vt.,

August 4, 1797, and died at Detroit, June 22, 1867. He sat in both branches of the Legislature in the early forties, and was in the Constitutional Convention of 1850. He is said to have passed the only sentence of death ever pronounced in Michigan under a State law; and this was not executed, for the recipient escaped. At the time of his death he was president of the Soldiers' Monument Association, and he had a son who before the war was a lieutenant in the regular army, under Twiggs, and who started North from Texas with such of his command as remained loyal. Judge Witherell was also president of the State Historical Society, and was himself diligent in recording his recollections of local history, upon which, as was supposed, no one was so well informed as he. He had been judge of an early district criminal court which was legislated out of existence while he presided in it; and as he was always pretty hard upon old offenders, his Whig brother-in-law Tom Palmer used to explain the abolition of his office by telling him it was because his sentences were decimating the Democratic party.[1] As the judge himself was a Democrat, and the Legislature also, — indeed, Michigan was not at all a doubtful State, — the dominant party could take the joke, as the narrator says, without wincing.



BENJAMIN FRANKLIN GRAVES.

Judge Graves was to become one of the famous four who are remembered in Michigan as "the great court." He will be commemorated later.

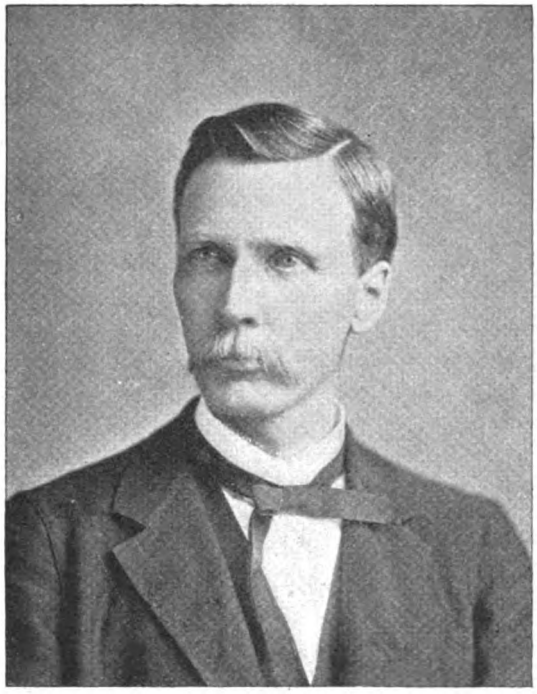
Josiah Turner was another Vermonter, born at New Haven in that State, Sept. 1, 1811, and educated at St. Albans and at Middlebury. He practised a little in his native State, but came to Michigan before 1840, and held some minor offices as a Democrat, winding up with that of county judge. He was among the earliest of the Republicans, and was made probate judge, which post he held till Governor Bingham put him in Green's place. He continued by successive elections to hold the circuit judgeship until 1881, when he was made consul at Amherstburg, Ontario, where he remained undisturbed during the Cleveland administration, — his son and grandson were stiff Democrats, — and he is there still, under the same Secretary who first appointed him. He was Mayor of Owosso in 1864, and a member of the futile Constitutional Convention of 1867.

Edwin Lawrence — a Vermonter again — was born at Middlebury, Feb. 28, 1808. He came early to Michigan, and between 1835 and 1840 published the "Michigan State Journal;" he was a Whig candidate for Congress in 1844 and 1846, and in 1848 he was a representative in the thirteenth Michigan Legislature. He was circuit judge from 1857 to 1869, and died of apoplexy June 26, 1885. In appointing him the governor maintained the equilibrium that would have been disturbed by the retirement of

[1] Senator Palmer's Sketch of the Witherells; 4 Pioneer Collections, p. 109.

Green; for Lawrence was also a spiritualist, and had a sacrilegious way of talking on religious topics. In spite of his gruff demeanor, he was a kindly man, and was well liked even by those who did not agree with his frankly expressed and positive notions.

This brings us to the present régime. The four judges first elected to the independent bench were George Martin, Randolph Manning, Isaac P. Christiancy, and James V. Campbell. Manning died in office, and Thomas M. Cooley, then reporter, was appointed to his place. Martin was followed in 1868 by Graves. Christiancy resigned in 1875, and was succeeded by Isaac Marston, who in turn resigned in 1883 and was followed by Thomas R. Sherwood. In 1889 Col. C. B. Grant was elected in Sherwood's place. Graves refused a renomination in 1883, and was followed by John W. Champlin, the present Chief-Justice. Cooley was defeated in 1885 by Major A. B. Morse, and Major C. D. Long was chosen as a fifth judge in 1887. Judge Campbell died in office in March, 1890, and Governor Luce appointed Captain Cahill to succeed him.

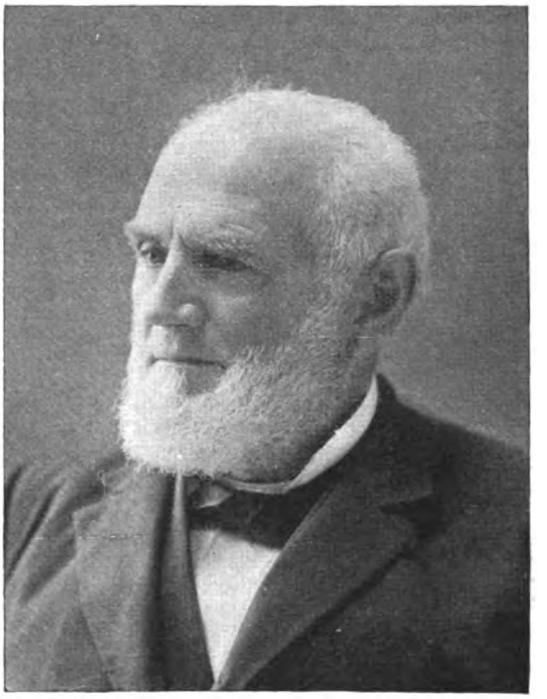


ISAAC MARSTON.

Martin, who had been a member of the court under both preceding dispensations, was the son of a tavern-keeper at Middlebury, Vt., where he was born in 1815 and graduated in 1833, coming to Michigan in 1836 and settling at Grand Rapids. He was prosecuting attorney for a time, but held no other important office until in 1851, at the age of thirty-six, he was made a judge of the Supreme Court to succeed Mundy, and continued for more than sixteen years to hold that post under the two following judicial systems. When the independent court was organized, he drew the chief-justiceship by lot, and afterwards was chosen to that post by his associates, and held it until his death, which took place Dec. 15, 1867, sixteen days before the close of his term. He had extraordinary gifts, and with them the vices that were common to many of his predecessors and contemporaries,—intemperance and unthrift. The late Judge Campbell said of him not long before his own death, that he thought he had never known a man more naturally a lawyer than Judge Martin; that his mind was specially adapted to appreciate and apply legal distinctions, and that in elegance and clearness his opinions would compare with any that had ever been written. It is not inconsistent with this that he was indolent, and keen to detect in a record some technical defect that would enable him to get rid of the case without taking the trouble to study it. But he was wonderfully clear, and he was sometimes epigrammatic, as when he said, in Twitchell *v.* Blodgett, that he could not allow to judicial doubts more potency than to legislative certainty. For three years before his death he was so unfit to work that he filed but few opinions. Among them the most elaborate were those in which he dis-

sented from the judgment of the court upon the questions of negro suffrage[1] and the soldier's right to vote;[2] and in these he sought to accommodate the State Constitution to the dictates of natural justice. His place in the court was taken by his former colleague Graves.

Manning was born at Plainfield, N. J., May 19, 1804. He studied law in New York City, and on coming to Michigan in 1832 he settled at Pontiac. He was on the judiciary committee in the Constitutional Convention of 1835; in 1837 he was State Senator; from 1838 to 1840 he was Secretary of State, and he was chosen Chancellor in 1842, to succeed Elon Farnsworth, whose previous discharge of the duties of that office won him the compliments of Kent.[3] Manning, however, was not cut out for a chancellor; he was, as Judge Cooley says, "a good man and an able lawyer, but altogether too strict and technical in his practice for an equity judge; and he made his court so unpopular that it was abolished by law."[4] He followed Douglass as reporter, and published one volume. He died August 31, 1864.



THOMAS RUSSELL SHERWOOD.

Isaac Peckham Christiancy was born at Johnstown, N. Y., March 12, 1812, and came to Monroe, Mich., in 1836. He was prosecuting attorney from 1841 to 1846, and a member of the State Senate at the sessions of 1850 and 1851; but his usefulness at this period was in the line of politics, for he was an active Free-soiler, took a leading part in the national convention of that party at Buffalo in 1848, was its candidate for governor in 1852, and was "the leader and prime mover[1] in the political combination of the Whig and Free-soil parties in 1854 from which sprang the Republican party." When the Republican party came into being, he was a delegate to its first national convention, which was held at Philadelphia in 1856. For the purposes of one of these early campaigns, he bought the "Monroe Commercial," and edited it for a few weeks. When he had been for seventeen years a judge, he was made United States Senator in 1875, in place of Zachariah Chandler, who had been his Whig competitor for the governorship in 1852. He became at once a conspicuous figure in the Senate; but in 1879 he was sent as minister to Peru, and was there in the midst of her bloody but ineffective struggle with Chili. Indeed, with other members of the Diplomatic Corps, he was under the Chilian fire for two hours at Miraflores, just before the capture of Lima; and his despatches to Secretary Evarts contain a graphic and thrilling description of the disorders that attended that event. Since his return he has lived quietly at Lansing,

[1] People *v.* Dean, 14 Mich. 406.
[2] Twitchell *v.* Blodgett, 13 Mich. 186.
[3] 4 Kent's Commentaries, 163.
[4] Cooley's Lenawee Bar; 7 Pioneer Collections, 529

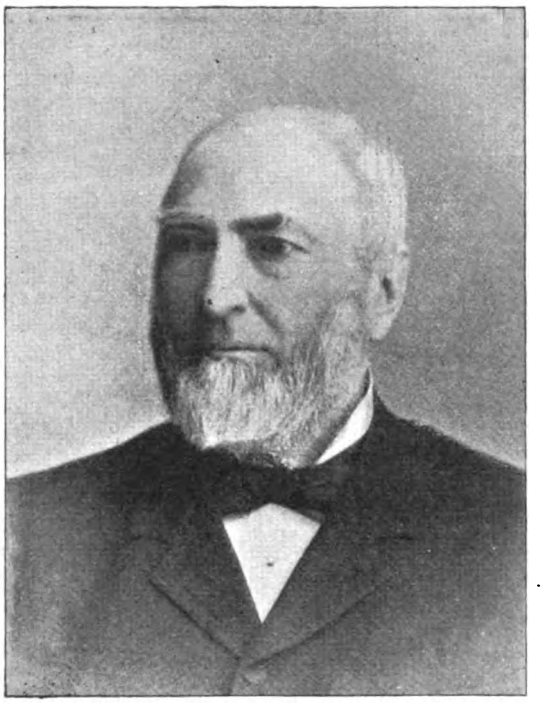
[1] Bingham's Michigan Biographies.

and has occasionally appeared as counsel before the Supreme Court.

James Valentine Campbell was born at Buffalo, Feb. 25, 1823, but he was brought to Michigan when three years old. His father, Henry Munroe Campbell, had been a county judge in New York, and held the same position afterwards in Michigan. The son was graduated in 1841 from the now extinct St. Paul's College at Flushing, L. I., when Dr. Muhlenberg was president of it. At twenty-one he was admitted to the bar, and practised in partnership with Walker and Douglass, the chancery and law reporters heretofore mentioned. But Campbell has the credit of having done much of the work on Walker's Chancery Report. He was at various times in the Detroit Board of Education, and in 1848 was president of the Young Men's Society when that organization, with its library, was the chief engine of culture in Detroit. Thirty-five years later he was president of the Public Library Commission. He was intimately connected with the government of the University of Michigan, in earlier years, as secretary of its faculty; and when the law school was opened through his exertions in 1858, he became Marshall professor of law, and continued to hold that post for twenty-five years. That same year he began his judicial career, which never closed until the morning of March 26, 1890, when, while sitting in his library awaiting breakfast, the great change came so silently and suddenly upon him that those who were with him in the same room did not at first perceive it. Like Chief-Justice Jay he was a devoted churchman, and his sagacity solved many an ecclesiastical perplexity. When he died a great store of local knowledge was sealed up, for there was no man living, probably, so well acquainted with the personal and political history and antiquities of Detroit. In 1876 he published a history of Michigan, which is occasionally referred to in this article; and at the State's semi-centennial in 1886 he produced the sketch of its judicial history to which reference is also made. He was an easy, rapid, fluent, and forcible speaker, and the speed with which he wrote his opinions was the wonder of his colleagues. Like General Grant, whom he knew and appreciated, he was absolutely free from any impurities or profanities in speech, — they were offensive to him. But he could characterize a man in graphic phrase, as when he once said of the General himself, that "a dog could n't wag his tail in a crowd but Grant would see him;" or of a certain tedious lawyer, that "he would dance all day long in a peck measure;" or of an official who kept to himself the distribution of several appointments, that "—— wanted to say grace over the whole barrel of pork;" or of a certain statesman, that "he was an old granny, and So-and-so was the right kind of a man to write his biography." His classic face, his venerable appearance (for he was gray before he was thirty), his purity of life and speech, his overflowing knowledge, and his strict religious observance were apt to lead people to idealize him in a sentimental sort of way that did not do justice to his firmness of purpose, his keen perception of the rascalities of the world, and the merciless severity he could show to any kind of meanness. It was discovered at an early date that he was abundantly able to hold his own; as when, while at the bar, his adversary, Levi Bishop, was once begging for a postponement on account of the absence of eminent counsel, Alex. D. Fraser, "whom we regard," he said, "as our right bower. I suppose," the speaker quizzically added, "that my Sunday-school friend will hardly know what that means." "I have always understood," retorted Campbell, "that it meant the greatest knave in the pack." The humor that was clearly apparent in his conversation, his after-dinner speeches, and his unofficial writings was not of the kind that stung, however, nor was it boisterously merry, but sparkling and delicate.

Thomas McIntyre Cooley, who is the son of a farmer, was born at Attica, N. Y., Jan.

6, 1824, studied law at Palmyra in the office of Theron R. Strong, and when twenty years old came to Michigan. Within the next ten or twelve years he had been a member of three different law-firms; had lived in three different towns; had edited, as a Free-soil newspaper, the "Adrian Watchtower;" had engaged in farming; had held some minor law-offices, and having removed to Toledo, Ohio, had there been defeated for the district judgeship. In 1857 he became compiler of the General Statutes; in 1858, State reporter and Jay professor of law at Ann Arbor; and in 1864, on the death of Judge Manning, he took his place in the Supreme Court, where he remained until twenty-one years afterward he was defeated by one of those inexplicable convulsions of the popular vote that will now and then deprive the State of the services of its ablest citizens. Meanwhile he had published his text-books on Constitutional Limitations, Taxation and Torts, besides editions of Blackstone and of Story on the Constitution, and, like his colleague Judge Campbell, had written a history of Michigan. His defeat was a good thing for himself and for the national government, for it led indirectly to the wider field of usefulness which he has since occupied in his unique and responsible position as chairman of the Inter-State Commerce Commission, where the most daring experiment in constitutional law has been intrusted to the first constitutional lawyer in the country. He had a brief but instructive preliminary training for this task in his work as a member of that Board of Arbitration which met in 1882 to consider the question of freight-rates to the different Atlantic ports, and in his temporary control and management of the Wabash Railway, as receiver, under the order of Judge Gresham. Nothing less than the most unsparing industry would have enabled any man to accomplish as much as he has; and the busier he has been the more readily has he undertaken additional tasks. His literary style, as one may know from his books, is the perfection of clearness; and he has a keen and incisive humor that is well illustrated in his sketch of the Lenawee County Bar, heretofore cited.



JOHN WAYNE CHAMPLIN.

Benjamin Franklin Graves was a farmer's boy, born Oct. 18, 1817, at Rochester, N. Y. A fit of sickness that disabled him from muscular exertion set him to studying law, and he was admitted to practice in 1841. He was journal clerk of the New York Senate in the winter of 1841–42, and in 1843 he went to Battle Creek, Michigan, where he has since lived. Like Cooley and Christiancy, he was a Free-soiler in 1848; the repeal of the Missouri Compromise and the scheme of slavery extension made him a Republican, and since he left the bench he has always been seen at the annual banquets of that powerful political organization, the Michigan Club, of which he is a distinguished member. As Pratt's successor he sat for a few months in the old Supreme Court, and on the re-organization of that

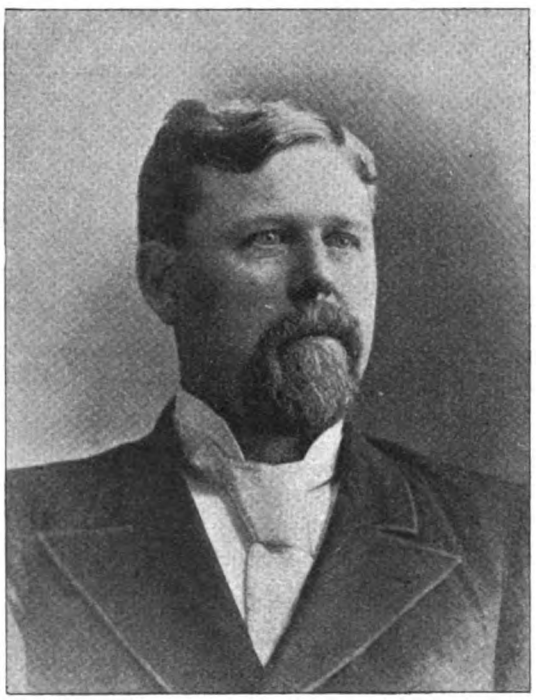
tribunal he continued in the Circuit, the lawyers of which have not yet forgotten the gait at which they had to go to keep up with business as he drove it. He spared neither himself nor them; he wrote his charges, kept voluminous notes of his trials in his own handwriting, and held frequent night sessions, — a practice he resumed in after-years when he was Chief-Justice. This over-exertion invited paralysis, and he resigned from the Circuit in 1866 only to be chosen in the following year to succeed Chief-Justice Martin in the Supreme Court. Eight years later he was the nominee of both political parties, but at the expiration of sixteen years he declined to be again a candidate. During the time when his associates were Christiancy, Campbell, and Cooley, — between 1867 and 1875, — the court reached the acme of its fame; and about that time a certain legal editor, who is now a distinguished judge himself, wrote me that he believed there was no court in the country of equal ability.

ALLEN BENTON MORSE.

Isaac Marston, the only judge of foreign birth and the first to have been graduated from the law school of the University of Michigan, was born at Poyntzpass, County Armagh, Ireland, Jan. 2, 1839; was baptized into the Church of England, and having lost his father was brought up by his mother, who apprenticed him to a grocer, for whom he worked when between the ages of thirteen and sixteen. Then he emigrated and came to Michigan, where he hired out as a farm-laborer and got a little schooling. He was graduated from the Law School in 1861 after two years' study, and after setting up a country office and losing all his books by fire, he went to Bay City, where he became justice of the peace, city attorney, and prosecuting attorney, and in 1872 was in the Legislature during a short extra session. Being a very active and conspicuous member, and looking even younger than he was, he acquired the political nickname of "the boy from Bay." In 1874 he was Attorney-General for nine months to fill a vacancy, and discharged his duties so effectively that it was taken for granted that the next State convention would nominate him. No pains were taken, however, to insure this result; and when written ballots were collected in the confusion just before adjournment, it was found that a rural prosecutor named Smith had the majority, for no better reason, apparently, than that his name was easier to spell. This mischance of course helped to make Marston judge a few months later, when Christiancy resigned. But judicial work was not altogether to his taste; he preferred the rough-and-tumble of the bar, and after eight years of service he resigned in 1883 at the age of forty-four, — an age at which few men could now hope to attain the honors which he was already tired of. He has since practised in Detroit.

One of Judge Marston's acts while Attorney-General should be recorded here as a

contribution to the literature of the subject. He administered the *coup de grâce* to code agitation. It may be remarked that at a very early period in its history the State of Michigan had felt — saving the presence of Mr. Browne — that it had had enough of codes. The first complete and methodical arrangement of its laws appeared in 1827, and was produced by a commission, of which Fletcher was a member. It was a code of considerable merit. But when the State was organized, something different was needed; and this time the task was committed to the Chief-Justice alone, who had to get an extension of time within which to finish it. The work was really done, it is said, by a clerk in his office; and when it finally appeared it was in the shape of a Revision of the Statutes, elaborately arranged and so thoroughly subdivided that no one could make a reference to it without using some such multiplicate formula as "part 3, title vi, chapter 1, section 3, subdivisions 4–6." This elegant feature was contributed by E. Burke Harrington, who was one of the commissioners designated to approve the work, and who had, as Judge Campbell says, "a profound admiration for the complicated divisions and subdivisions of the New York Revised Statutes."[1] He was the first of the Michigan Chancery reporters. But unhappily Fletcher had not paid much attention to the instructions he had received from the Legislature, and the principal business of that body at its next session, and indeed for some years after, was to make good his shortcomings. This process soon reduced the Revised Statutes of 1838 to original chaos, and within a few years another revision was ordered, which was made by Sanford M. Green, who executed his task with such care, skill, and judgment that it has been the basis for every successive compilation of the laws since then. Green's work was not final, however; Judge Campbell records that it "was somewhat mangled by the zeal of certain so-called reformers whose impartial ignorance of law enabled them to proceed with a degree of confidence not usually shown by competent legislators."[1] Now, all this experimenting had cost a vast deal of money just when the State could least afford to be extravagant, and had thereby created so much feeling that when the Constitutional Convention sat in 1850, that body prohibited any more general revisions. But in 1873 State Senator Nathan G. King, who had been in his youth a law partner of Hammond and Hogeboom at Albany, had a joint resolution adopted directing the Governor to appoint a commission on codification. Governor Bagley referred the subject to Attorney-General Marston, who reported that the framing of a code would not only be a breach of the constitutional prohibition of general revisions, but it would violate that other provision in the Constitution which leaves it solely to



CHARLES DEAN LONG.

[1] Campbell's Judicial Sketch.

[1] Campbell's Michigan, p. 510.

the Supreme Court to prescribe all rules of practice. Michigan must therefore change her Constitution before she can codify.

Thomas Russell Sherwood, who was elected upon the resignation of Marston, was a Greenbacker, and came into the court in consequence of that fusion with the Democrats which lost the State to the Republicans in 1882. He was born in Pleasant Valley, N. Y., March 28, 1827, and after his admission to the bar in 1851 practised for a year at Port Jervis. Then he came to Kalamazoo, a beautiful place which, with the dimensions of a city, maintained until within a few years a village organization, and claimed the distinction of being the biggest village known. Here he was twice the municipal attorney, and in 1878 an unsuccessful candidate for Congress. A man of generous proportions and of great vitality, he was celebrated at the bar for his apparently unlimited capacity for energetic work, which he would prolong when occasion demanded far into the night, to the great weariness of his associate counsel. Aggressive as an advocate, he was patient and kindly as a judge, and was well liked accordingly. By the close of his term political power in the State had again shifted, and he failed of re-election. It is one of the oddest of odd coincidences that when he entered the court-room to take his seat for the first time upon the bench, court being already in session, the question in argument at the moment was the testamentary capacity of a Greenbacker.

This brings us to the present court, consisting of Chief-Justice Champlin and his associates Morse, Long, Grant, and Cahill. It may almost be called a military tribunal, for the puisne judges have all smelled powder, and two of them, Morse and Long, wear empty sleeves and have left their right arms on Southern fields. The Chief-Justice, to be sure, was not a soldier, but his brother Stephen was a Union general. When the court was somewhat different in its make-up, but after the crippled veterans had been elected, some irritated lawyer who had doubtless lost his case followed Judge Grover's advice to such persons the length of remarking rather bitterly that "the court now consisted of two lawyers, two one-armed soldiers, and another fellow." This came to the ears of Morse, who dryly observed that Long and he, at least, knew where to place themselves in such a classification.

John Wayne Champlin, like Judge Sherwood, is a native of Ulster County, N. Y. being born at Kingston, Feb. 17, 1831. He was a farmer's son, and had an academic education, beginning life as a civil engineer; he also studied medicine and has no small skill in surgery, so that the probability is that in his case, as well as in those of Judges Miller and Dillon, a good doctor was spoiled to make a chief-justice. It is not strange that with such a training he is accustomed to glut his taste for light reading with such giddy literature as the "Popular Science Monthly." He was admitted to the Bar of Grand Rapids in 1855; and in 1857 he drafted the charter of that city, which he has also served as recorder, city attorney, and mayor. He counts politically as a Democrat; but when he was urged to remove the Republican clerk of the court, he refused to do so, holding, as he once said, that "we are not political men here."

Allen Benton Morse, the first native Michigander to be chosen to the court, was born in Otisco, Jan. 7, 1839; and having been named for Fog-Horn Allen and Old Bullion, it will be correctly inferred that his father, John L. Morse, was a Democrat,—that is, he was until 1848, when he became a Barnburner, and so, naturally, in 1854, a Republican, which he still remains. He himself has held various minor judicial positions in Michigan, and also in Iowa, where he now lives. His son, the judge, was also a Republican to begin with; but he reversed his father's order of political evolution, being moved thereto, as he says, because he could not stand the San Domingo scheme. He took a partial course at the State Agricultural College, where he was accounted good

in mathematics, English literature, and botany; and with his taste for Nature he is something of a hunter and a good deal of a fisherman. In 1866, a year after his admission to the bar, the Republicans made him prosecuting attorney; the Democrats afterward sent him to the State Senate and ran him for Attorney-General. He has been lately looked upon as the hope of his adopted party in the coming campaign for governor. He was a very gallant soldier, entering the army in 1861 as a private in the Sixteenth Michigan, and fighting in the Peninsula and at Antietam and Chickamauga, and losing his arm at Mission Ridge. He was in Morell's division of Fitz-John Porter's corps at Second Bull's Run; and he is one who plainly says that "they did n't treat Pope right."

CLAUDIUS BUCHANAN GRANT.

Charles Dean Long was born at Grand Blanc, Genesee County, Mich., June 14, 1841. He had a common-school training and was prepared for the university, when the war broke out, and he enlisted as a private in the Eighth Michigan. His war record is short, for in the fight at Wilmington Island, Ga., on the 16th of April, 1862, he lost his arm and received in the groin a wound from which he has never recovered. He is the picture of robust health, and no one would imagine that this hurt, received now nearly thirty years ago, has to be dressed twice every day, and that if it closes, as it sometimes does, he is sure to be ill. The summer following his injury he entered a law office; in 1864 he was made county clerk, and held that post for four successive terms; in 1874 he was elected prosecuting attorney, and served six years in that capacity. He was one of the four census supervisors of Michigan in 1880, and had thirty counties and 413 enumerators under him; and in 1885 he was department commander of the Grand Army of the Republic for Michigan.

Claudius Buchanan Grant, who was born Oct. 25, 1835, at Lebanon, Maine, came to Michigan as accidentally, almost, as his father-in-law Governor Felch. He was thinking of going to college, and some one suggested the University of Michigan, which he found to offer the opportunities that he desired. He was graduated from that institution in 1859, taught for a while, and then went into the war as a captain in the Twentieth Michigan. He was with Burnside at Fredericksburg; and when that commander led his Ninth Corps to the West, he followed its fortunes in Kentucky and before Vicksburg and at Knoxville, and in 1864, having risen in rank, he went through the bloody Wilderness campaign under his great namesake. He was admitted to the bar in 1866, and began practice with Governor Felch; he was recorder of Ann Arbor and also postmaster, and at the sessions of 1871 and 1873 he was a conspicuous member of the Legislature; from 1872 to 1880 he was a regent of the State University, and having removed to the Upper Peninsula he became

prosecuting attorney for Houghton County in 1876. He was chosen circuit judge in 1881 and again in 1887, and finally yielded with reluctance to a loud and repeated summons to a seat in the Supreme Court. He preferred the trial bench himself.

Edward Cahill, born in Kalamazoo, August 3, 1843, lost his father before he was twelve years old, and his schooling appears to have been broken up by the necessity of doing something toward earning a living. He, however, attended the common schools and the preparatory department of Kalamazoo College, but served as a page at three successive annual sessions of the Legislature in 1857, '58, and '59, and learned typesetting in the offices of the local papers. When the war came on, he enlisted as a private in the Eighty-ninth Illinois, and being discharged for disability raised a company for the First Michigan Colored Infantry and became a captain. He was admitted to practice in 1866, and practised four years in Ionia County, and two in Chicago, after which he came to Lansing, where he has since lived. His office-holding has been limited; he was a circuit court commissioner for Ionia County and twice prosecuting attorney for Ingham. When he was appointed to the bench he was a member of the anomalous Board of Pardons, which, in effect, may even revise the action of the Supreme Court; and in that particular, at least, he may be said to have descended rather than risen.

This ends the judicial roll. But it would be an oversight to make no mention here of Mr. Moses R. Taylor, the courtly old gentleman who for ten years has acted as crier for this tribunal. A Jerseyman of a good family, and possessing an extraordinary gift for keen observation and an accurate memory for the minutest details, he will no less amaze than interest one by the display of these faculties in his casual reminiscences. He knew the Jersey statesmen back to Southard's time, and I am not sure but to Elias Boudinot's; he remembers the fat, unwieldy figure of Joseph Bonaparte, and the leghorn bonnets of his daughters; the trim, dapper, and brilliant young lawyer, "Jo Bradley;" the Penningtons, and old Chief-Justice Hornblower; the whole of John Sergeant's family of Philadelphia, and the remarkable marriages whereby his daughters connected it with leaders who were conspicuous on both sides in the Civil War; the stump-speaking and campaign songs for Clay and Frelinghuysen, and many other things and people that live again in his vivid recollection. I undertook to tell Judge Campbell once how interesting Taylor was, and the judge said: "Ask him if he knew Garret D. Wall." I did not know who Garret D. Wall was, myself, but I put the question and got the prompt reply: "The last time I saw old General Wall, he was on a ferry-boat at Philadelphia," etc. This confirmed me in the conviction that no man worth knowing ever lived in the Jerseys but Moses Taylor had some time come in contact with him.

It would be an unfinished sketch of the Supreme Court that failed to note some of the waymarks of jurisprudence that it has set up along its path. It has been so mighty a bulwark of personal liberty as to provoke the reproach that it really shielded the guilty; it has so insisted upon the doctrine of local self-government for even the smallest municipality that Judge Chipman, the present Democratic Congressman from Detroit, once told me that he himself was less of a States-rights man than Campbell and Cooley were; it has refused to interfere with political action, or to relieve the people from the responsibility for their own negligence or folly in matters of popular election; it has, but gradually and with seeming reluctance, loosened the common-law tutelage of married women, and brought itself to recognize their independent powers; it has demonstrated the difference between a liquor tax and a license; it has declared the exemption of the executive from the process of mandamus; it has established the high school as a feature of the common school system, and entitled, like the primaries, to

support by taxation; it has protected the wills of even cranky testators; it has, after a long struggle, held municipal corporations liable for municipal injuries; it has made public records public; it has gone so far in its scrutiny of statutes as to invert the usual rule that nothing less than an explicit conflict with the Constitution would warrant the decision that an act was unconstitutional, and it has repeatedly nullified enactments because they were out of harmony with the spirit of the fundamental law. This is a tremendous power, but no one can say that there are not the largest opportunities for its beneficial use. Such an opportunity arose in 1870, when the court wiped out the act that authorized townships to pledge their credit and tax themselves in aid of railroad enterprises. Their decision[1] was in unmistakable conflict with the rulings in eighteen States out of twenty, and it has been expressly disapproved by the Supreme Court of the United States, but it has remained for twenty years the firmly settled law of Michigan. It cannot be denied, on the other hand, that the spirit of the Constitution is apt at times to be but a shadowy guide, and that it will not always appear alike to all judges. When, in 1882, the State had had a tax-law drafted by a commission, and had called a special session of the Legislature to consider it, the court were equally divided upon its constitutionality, and so the judgment below was left undisturbed. This judgment was that the law was valid; but presently another circuit judge declared it invalid, and the Supreme Court were again equally divided as before; the result was that the law was valid in one circuit and void in another. This was a scandal in jurisprudence; and in commenting on it Judge Cooley incidentally said it seemed to him that on constitutional questions the court was drifting to the position that those statutes were constitutional which suited them, and those were void which did not.[1] The practical nullification of this tax-law, however, seemed to meet general approval; it was a sufficiently symmetrical piece of codification, but bade fair to be, in its operation, a very ruthless measure.

EDWARD CAHILL.

It may be entertaining, if not useful, to record here an episode or two that bear on the question of judicial head-notes. In 1881 the State printer, who conducted a sprightly paper at the capital, conceived the mistaken notion that prompt and very full reports of the decisions of the court would make his paper interesting; and by way of increasing the benefit he proposed to confer upon his readers, he had an act passed requiring the judges to write their own head-notes, intending to print them promptly before they could appear anywhere else. The only notice the court took of this statute was in the sending of a polite note from Chief-Justice Marston to Governor Jerome, explaining that as it was inconsistent with the Constitution they could

[1] People *v.* Salem, 20 Mich. 452.

[1] State Tax-law Cases, 54 Mich. 447.

pay no attention to it. The Constitution, said the Chief-Justice, authorized the court to appoint a reporter; and as the composition of syllabi had time out of mind been the only duty of any consequence that pertained to such a functionary, the act, if valid, would destroy the whole force of the provision. The judges, therefore, would not write head-notes upon compulsion; but for some time Judge Cooley furnished syllabi for his opinions, because he did not like those that were then published in the "Northwestern Reporter," which at that time did not do as good work as it does now. Of course, as official reporter, I got the benefit of this, for it lightened my own work considerably, and I need hardly say that I never assumed to alter in any respect a judge's interpretation of his own views. I did not, on the other hand, care to absorb the credit for his work, nor perhaps to take the responsibility for it, and so I carefully credited every judicial syllabus to its author. A later experience showed that this sort of honesty was also the best policy. It was the custom to send advance sheets of the reports to the judges, and for a while Judge Cooley, in particular, was in the habit of revising his own opinions in galleys. It thus became possible to detect and remedy occasional editorial errors before final publication. I was once obliged to be absent for the greater part of a term, and one of the judges good-naturedly furnished me with his own head-notes to a number of the opinions he himself had filed while I was gone. When the volume in which they were afterward printed was going through the press, I received a letter from another judge criticising rather sharply the two head-notes that constituted the entire syllabus to a certain short opinion. He said I seemed to have missed the point in both of these head-notes. On looking up the case I found it was one of those for which I had the learned author's own notes, which I had printed *verbatim;* so that I had nothing to say except that the notes were not mine, but those of the judge who wrote the opinion. Naturally, I never heard anything more about it. This incident, aside from its ridiculous features, helps to suggest the reason why judicial head-notes are not found to be altogether satisfactory. It is not that the work of a reporter calls for any special qualification. Any one who can see a point ought to be able to state it. Nor can it be supposed that the judge who did not write the opinion knew what it meant better than the one who did; nor that either of them was unskilled in the art of expression, for both had previously done excellent work in reporting. The reason seems to be that in making a head-note the judge is apt to exercise the same freedom that he used in writing his opinion, and instead of limiting himself to that document, to go outside of it, so that however correct in law his note may be, it is not borne out by the opinion. The reporter knows that he has no business to do this, and so he sets down nothing that is not expressed in the language of the opinion or necessarily to be inferred from it. But the advance of co-operative reporting renders the phenomena and the speculations upon it of small consequence. I have known the judicial head-note to serve at least one good turn, and that was by way of a corrective upon the opinion. One of our judges once told me that he had tested an opinion of his by writing a syllabus to it; and being satisfied from the bald statements of the syllabus that the law therein laid down was bad, he rewrote the opinion.

JUDICIAL REMUNERATION.

THE "Scottish Law Review," in an article under the above title, says: —

"Cheap justice is an ambiguous commodity. If it be meant that causes are decided soundly at a small cost to the suitors, that is an invaluable boon; but if they are not decided soundly, such justice is dear at any price. An unsound judge can never be cheap. It is no answer to say that he will be right pretty often, and that when he is wrong his error can be put right on appeal. But that implies, in these latter cases, the additional cost (in time and trouble as well as money) of the appeal, and the extra cost of a more numerous court of review. Besides, the loser may be unable to afford an appeal, and on such a person the loss of the case will fall more hardly than on a richer man. The truth is, that the fewer the courts of a country are, the better; and the better they are, the fewer of them will be needed. If judges are well paid, justice may be cheap; if they are ill paid, the average product will probably be bad. Adequate remuneration is the best bait to catch good judges, and the surest incentive to produce good work."

Some interesting data are given as to the salaries received by the judges in Great Britain and Ireland, a comparison of which with the salaries paid our administrators of the law in this country may well furnish food for reflection.

The thirteen judges of Scotland receive £49,400 among them, or an average of £3,800 each. In England there are thirty-four judges, counting Lords Watson and Morris as English judges. The Lord Chancellor receives £10,000 per annum; the Lord Chief-Justice, £8,000; the three Lords Ordinary of Appeal and the Master of the Rolls, £6,000 each; and the remaining twenty-eight judges of first instance and of appeal, £5,000 each; in all, £182,000, or, on the average, £5,353 each. In Ireland there are twenty-two judges who receive among them £81,300, or £3,695 on the average each. The diversities of salary are great. The Lord Chancellor receives £8,000 per annum; the Chief-Justice, £5,000; the Chief-Baron, £4,600; the Master of the Rolls, the three Lords Justices of Appeal, and the Vice-Chancellor, £4,000 each; the two judges of the Bankruptcy Court, £2,000 each; the Admiralty judge, £1,200; and the remaining eleven judges, £3,500 each.

There are in England fifty-seven County Court judges. By a statute passed in 1888 their remuneration was fixed at £1,500 per annum and travelling expenses; and all are paid alike save some few whose salaries had, for special reasons, been previously fixed at £1,800 and £1,650, but whose successors are to be brought to the £1,500 platform. Edinburgh and Glasgow are the only two towns in the British Empire where judges of equal rank discharging the same functions are paid unequal salaries. There are also twenty-six metropolitan police magistrates; the senior receives £1,800 a year and a knighthood, the rest £1,500 per annum. There are also scattered throughout England numerous recorders and stipendiary magistrates, and in some instances a County Court judge is also a recorder.

In Ireland there are twenty-three County Court judges and chairmen of Quarter Sessions, with salaries ranging from £1,200 to £1,800 per annum.

In India the salary of a judge of the Supreme Court ranges from £4,500 to £7,200; in the more important parts of Australia from £1,700 to £3,500, though in western Australia it descends to £700; in Canada the range is from £800, for a province of the importance of the County of Inverness or Dumfries, to £1,644; in Jamaica from £1,000 to £2,000; and in New Zealand from £1,500 to £1,700.

In continental Europe judicial salaries are, like ordinary incomes, small. As a typical instance one may take Germany, — a country

where minds are big and means are small, and where a prudent parsimony makes a penny go as far almost as twopence-halfpenny go in England. A German local judge in the lowest and second courts of first instance has from £120 to £300. The salary of the president of a local court of the second instance ranges from £325 to £525. The head of the Court of Appeal has £700 and an official residence; divisional presidents have from £375 to £495; and puisne judges from £240 to £330. In the Imperial or highest Court of Appeal the ordinary judges have £600 a year, and the president £1,250 and an official residence. In France (with 18,650 judges) the salaries of the nine classes of local judges range from £75 to £320; in Austria and Holland the local judges receive from £150 to £250; in Russia from £244 to £350; in Belgium, £120; in Switzerland, £180; and in Italy (in an honest way), £100.

WHIPPING AS A PUNISHMENT.

THE first mention of whipping as a punishment occurs in the fifth chapter of Exodus, where we find that Pharaoh whipped the officers of the Israelites, when they did not furnish the required number of bricks which they were compelled to make every day.

In ancient times the Romans carried whipping, as a punishment, farther than any other nation, and their judges were surrounded with an array of divers kinds of whips well calculated to affright the offender who might be brought before them. The mildest form of whip was a flat leather strap, called the *ferula;* and one of the most severe was the *flagellum*, which was made of plaited ox-hide and almost as hard as iron.

Not only was flagellation in various forms used as a judicial punishment, but it was also a common practice to punish slaves by the same means. The Roman ladies were greater offenders and even more given to the practice of whipping their slaves than the men; for in the reign of the emperor Adrian a Roman lady was banished for five years for undue cruelty to her slaves. The practice of whipping was in fact so prevalent that it furnished Plautus, in several cases, with incidents for his plots. Thus, in his "Epicidus," a slave, who is the principal character in the play, concludes that his master has discovered all his schemes, since he saw him in the morning purchasing a new scourge at the shop where they were sold.

From ancient times the use of whipping can be traced through the Middle Ages, down to, comparatively speaking, more modern times, when it is easier to find records of the use of the rod.

In Queen Elizabeth's time the whipping-post was an established institution in almost every village in England, the municipal records of the time informing us that the usual fee to the executioner for administering the punishment was "fourpence a head." In addition to whipping being thought an excellent corrective for crime, the authorities of a certain town in Huntingdonshire must have considered the use of the lash as a sort of universal specific as well, for the corporation records of this town mention that they paid eight-pence "to Thomas Hawkins for whipping two people y' had the small-pox."

In France and Holland whipping does not seem to have been so generally practised. The last woman who was publicly whipped in France by judicial decree was Jeanne St. Remi de Valois, Comtesse de la Motte, for her share in the abstraction of that diamond necklace which has given point to so many stories.

In connection with the history of flagel-

lation in France may be mentioned the custom which prevailed there (and also in Italy) in olden times of ladies visiting their acquaintances while still in bed on the morning of the "Festival of the Innocents," and whipping them for any injuries, either real or fancied, which the victims may have done to the fair flagellants during the past year. One of the explanations given for the rise of this practice is as follows: On that day it was the custom to whip up children in the morning, "that the memory of Herod's murder of the innocents might stick the closer, and in a moderate proportion to act the crueltie again in kinde." There is a story based upon this practice in the tales of the Queen of Navarre.

Among the Eastern nations the rod in various forms plays a prominent part, and from what we read China might be said to be almost governed by it. Japan is singularly free from the practice of whipping, but makes up for it by having a remarkably sanguinary criminal code.

Russia is, however, *par excellence* a home of the whip and the rod, the Russians having been governed from time immemorial by the use of the lash.

Many of the Russian monarchs were adepts in the use of the whip, and were also particularly ingenious in making things unpleasant for those around them. Catherine II. was so particularly fond of this variety of punishment (which she often administered in person), that it amounted almost to a passion with her. It is related that she carried this craze so far that one time the ladies of the court had to come to the Winter Palace with their dresses so adjusted that the Empress could whip them at once if she should feel so inclined.

While the instruments of torture used in Russia were of great variety, the most formidable "punisher" was the knout, an instrument of Tartar origin, and of which descriptions differ. In its ordinary form it appears to be a heavy leather thong, about eight feet in length, attached to a handle two feet long, the lash being concave, thus making two sharp edges along its entire length; and when it fell on the criminal's back it would cut him like a flexible double-edged sword. "Running the gauntlet" was also employed, but principally in the army. In this the offender had to pass through a long lane of soldiers, each of whom gave the offender a stroke with a pliant switch. Peter the Great limited the number of blows to be given to twelve thousand; but unless it were intended to kill the victim, they seldom gave more than two thousand at a time. When the offender was sentenced to a greater number of strokes than this, the punishment was extended over several days, for the reason above stated.

Whipping, after dropping out of sight for a time in England, was reintroduced in 1867, in order to put a check on crimes of violence. The law was so framed that the judges might add flogging at discretion to the imprisonment to which the offenders were also sentenced. The first instance of this punishment being used was at Leeds, where two men received twenty-five lashes each before entering their five and ten years' penal servitude for garotting. The whip used in this instance was the cat-o-nine-tails.

The whipping-post is also still used in some parts of this country, notably at New Castle, Delaware, where the "cat" is still administered for minor offences. Judging from a whipping that the writer once witnessed, it appears to be a very mild form of punishment. — *American Notes and Queries.*

CAUSES CÉLÈBRES.

XIX.

DESRÜES.

[1777.]

Continued.

IMMEDIATELY upon his return to Paris, after his journey to Versailles, Desrües proceeded to take such steps as he considered necessary to establish fully his claim to Buisson-Soüef. He knew that M. de la Motte would not relinquish the estate without a struggle; and with an ingenuity worthy of a better cause, he so arranged matters that, as the result of his scheming, he was enabled to place in the hands of M. Prevost, a notary, an instrument reciting the sale of Buisson; in which the payment of 104,600 livres by Desrües was acknowledged, and all prior contracts made in the matter were annulled. This instrument was signed by Desrües and his wife, and bore also a third signature: "Marie Perier, wife of Saint-Faust de la Motte."

Thus strongly fortified, Desrües felt that he had only to demand the property of M. de la Motte; and on the 1st of March the little man presented himself at Buisson-Soüef.

On seeing him, M. de la Motte cried, "In the name of God, M. Desrües, tell me what you have done with my wife and son."

"What have I done, my dear sir? Nothing that I know of. My wife and I advised you of their departure for Versailles. I have not the honor to be the guardian of your wife or of your son. I have no doubt that they are both well."

"I do not believe it," replied M. de la Motte, angrily; "I do not believe this tale. No, this journey to Versailles could not have entered her mind. My poor wife loves me too dearly to disappear thus, without a word to tell me of her plans. We never did anything without consulting each other. Some terrible thing has happened to them, I feel it. Wretch, answer me! what have you done with my wife and son?"

"M. de la Motte," replied Desrües, gently, "grief has affected your mind. But to business. I am legally and incontestably the proprietor of Buisson-Soüef."

La Motte made a movement of indignation.

"Yes," repeated Desrües, firmly, "I am the only master here. But [glancing at those who stood near] God, who sees the depths of my heart, knows that I am not a man to take advantage of your embarrassment. Everything here belongs to me, but I know too well how much I owe to myself to drive out the old master. No, M. de la Motte, I do not wish to cause you pain. Unjust as you have been towards me, you shall remain here as long as you please. I swear, before God, and before all those here present, that I will allow you 3,000 livres a year, and I will care for you as for a brother."

"May the devil take you, infamous scoundrel!" cried La Motte, beside himself with rage. "Restore my wife and my son, you wretch! As for this estate, do not dare to lay a finger on it. Nothing shall go out of my hands until you present my wife and my son to me!"

"You will see them both, my poor man, in good health, I hope, and before long."

La Motte advanced threateningly toward Desrües. Two of the witnesses of this scene interposed. "Come, calm yourself!" said one of them. "M. Desrües himself conducted your wife and son to Versailles. It seems to me that nothing can be easier than to find a trace of them. It concerned the purchase of a position in the War Department, did it not?"

"Yes, my dear sir," said Desrües.

"Where did you leave them?"

"On the terrace, near the lake."

"What were you doing on the terrace, and why did you not accompany them farther?"

"Through pure discretion. We went there at the request of Madame de la Motte to meet a gentleman, who, at the moment we arrived, alighted from a carriage. He saluted Madame de la Motte affectionately, and manifested an extraordinary friendship for the son. In a few moments all three entered the carriage. Madame de la Motte and her son bade me adieu, and they then drove off. I was greatly astonished, and followed the carriage. I saw it enter the courtyard of a magnificent house. I rang the bell and I asked for Madame de la Motte; the servant replied that he did not know what I meant."

This story, told in the most natural manner possible, only served to increase the anger of M. de la Motte, and Desrües did not seek to prolong the interview.

"Your interest," said Corad, one of the many friends Desrües had made at Buisson-Soüef, "is to find Madame de la Motte as quickly as possible. With her present everything will be made clear and indisputable; without her they will attack the genuineness of the instrument under which you claim."

Desrües, greatly disturbed, returned to Paris. His plans had been checked; but he was not a man to give up the contest, and this partial defeat only served to redouble his energy.

On his part, M. de la Motte, as soon as he learned that Desrües had departed for Paris, resolved to visit the city himself. He arrived there on the 4th of May, and, curiously enough, took lodgings in the Rue de la Mortellerie, only a few steps from "The Pewter Pot." All his efforts to discover any traces of his wife and son proving fruitless, he finally determined to place the matter in the hands of the police.

Desrües, however, scented the coming storm. He said to his wife and Bertin: "This miserable woman has played me a pretty trick, and her disappearance may cause me no end of annoyance. I must find her, dead or alive. I know about where she must be at this moment, and I am going to seek for her."

He packed up a few articles of clothing, and on the morning of the 5th of May he departed, announcing that he was going to Versailles and Palaiseau. Instead of doing as he had stated, he went directly to Lyons, where he arrived on the evening of May 7. He caused himself to be driven to the Hôtel Blanc, in the Rue de l'Arsenal. There he registered as Desportes, a merchant of Paris, stating, as he did so, that he had come to Lyons to purchase goods.

Early in the morning of the following day the false Desportes went out, and returned in about an hour. "A tall lady," he said to one of the servants, "dressed in black, will call for me shortly. Show her to my room. I have important business with her."

About nine o'clock a tall lady, dressed in black, presented herself and asked for M. Desportes. She appeared, in fact, uncommonly tall for a woman, and her face was carefully concealed. She was conducted to the apartment occupied by M. Desportes, and remained there for about an hour.

After the departure of this lady, Desrües went out himself and made several purchases, — among them a number of lady's dresses, which he had sent to his room at the hotel.

In the afternoon of the same day a tall lady, dressed in black, presented herself at the house of M. Pourra, a notary. On being introduced into his office, she said in a low voice, in which a certain hoarseness was observable, as if the speaker were suffering from a severe cold: "Monsieur, I have been recommended to you by M. Bergasse. I am on my way to Provence, and have only stopped at Lyons for a moment, to execute certain papers necessary for the termination of a transaction which I consummated in Paris. I wish to send to my husband, M. Saint-Faust de la Motte, a power of attorney."

The instrument having been drawn up and executed, the lady withdrew, after desiring M. Pourra to forward the same to Buisson-Soüef.

On the same evening Desrües announced to the clerk of the hotel that he had completed his business and should depart that night.

What was taking place at Paris during the absence of the little man? The complaint of M. de la Motte seemed sufficiently grave to authorize a search of Desrües's house. The commissary Mutel, who had charge of the investigation, vainly sought throughout the premises for some trace of a double crime. He seized all Desrües's papers, and obliged his wife to submit to a lengthy examination.

While there seems to be no doubt that Madame Desrües was entirely ignorant of her husband's crime, it is evident that she had been fully instructed by him as to what course she should pursue, and like an obedient wife, she followed those instructions to the letter.

To the questions put to her, she replied that her husband had gone to Versailles and to Palaiseau to seek for Madame de la Motte and her son. She told the story of the departure of that lady immediately after signing the deed of sale. Madame de la Motte had taken with her all her wearing-apparel, and had wrapped up the money she received in a nightdress.

"Then you saw Madame de la Motte depart for Versailles?"

"I saw her, and bade her adieu."

"And you saw the money paid to Madame de la Motte."

"Yes, Monsieur; about 100,000 livres were counted out by my husband on the table in the salon. I was lying down, as I did not feel well that day."

"And you doubtless saw Madame de la Motte sign the instrument, since you signed it yourself?"

"No, Monsieur; the curtains of my bed were drawn. Madame de la Motte brought two papers to the bed for me to sign."

"How do you account for the disappearance of Madame de la Motte?"

"I do not understand it. She said, 'I do not wish my husband to spend this money, as he has already spent 100,000 livres of mine. He is a spendthrift, and I wish to make some provision for my son.'"

The commissary Mutel withdrew. He did not judge it best as yet to arrest Desrües's wife. He contented himself with keeping a close watch upon the house.

The Lieutenant-Criminel at Châtelet also thought it necessary first to find Desrües. There was doubtless fraud somewhere in this transaction, but nothing proved that there had been any crime. For a few days matters seemed to be at a stand-still; but on the 13th of March the Lieutenant-General of police received from Buisson-Soüef the instrument which had been forwarded there by M. Pourra, the notary at Lyons. At Châtelet the power of attorney, drawn up at Lyons, seemed at first a reassuring proof of the existence of the two persons sought. M. de la Motte, however, insisted that his wife was incapable of acting in this manner; and besides, no letter accompanied the instrument.

While the authorities were hesitating, the police announced the presence of Desrües in Paris. The little man had returned tranquilly to his domicile in the Rue Beaubourg. He was scarcely installed there, when the commissary Mutel arrived at the house, accompanied by two police-officers, to arrest him.

Interrogated by the Procureur du Roi at Châtelet, Desrües seemed greatly surprised at being suspected of the suppression of Madame de la Motte and her son. He stated, in the most innocent manner, that at the moment when he was most troubled at the non-appearance of that lady, whose continued absence was most prejudicial to his interests, he received a letter from her post-marked Lyons, in which she announced her arrival in that city. Happy at seeing the veil raised which had so long concealed Madame

de la Motte from the eyes of all, he at once started to join her. On the 7th he arrived at the Hôtel Blanc. On the 8th, early in the morning, he went to the post-office; and there the first person he saw was Madame de la Motte herself.

"She appeared," added Desrües, "surprised and vexed at seeing me. 'Ah! Madame,' I said, approaching her, 'you have placed me in a strange and painful position! My enemies accuse me of your death and that of your son.' I entreated her to accompany me to some place where we could talk more freely, and after persistent urging she consented to come to my room at the hotel. There I demonstrated to her that she ought to relieve me from my embarrassing situation, and that she might save my life by some authenticated act proving her existence. That she refused to do. I persuaded her, finally, to send a power of attorney to M. de la Motte, in order that this unhappy affair of Buisson-Soüef might be finally terminated. She did, in fact, go to a notary, and executed the instrument. After that I did not see her again."

On the next day, the 25th of March, Desrües was again brought before the Procureur du Roi.

"You have, doubtless," said the Procureur, "kept the letter which Madame de la Motte sent to you from Lyons?"

"No, Monsieur; it was only a few lines, and was not signed."

"Desrües, you are lying! You killed that woman and her son. You substituted another woman at Lyons, to deceive justice."

"Ah, Monsieur, God knows my innocence, and he will make it appear."

On the 18th of April an investigation was made in Lyons. No one could be found who had seen a woman there early in March resembling Madame de la Motte. If she had been there, she must have attracted attention, for her figure was almost gigantic, she being five feet eight inches in height. The notary Pourra and his wife, the employés of the Hôtel Blanc, and all who had seen the false Desportes and the veiled lady were sent to Paris to be confronted with Desrües.

Desrües had in the mean time been kept in solitary confinement. He asked and obtained permission to see his wife. The next day a letter was received by a certain M. Dubois, with whom Desrües had had some business transactions, purporting to have been sent at the instance of Madame de la Motte.

On the 10th of April an order was issued for the arrest of Madame Desrües. The commissary Mutel, to whom was intrusted the execution of the order, made a new and more careful search of the premises. He fonnd a gold watch which Bertin identified as having belonged to young De la Motte. How did this watch happen to be in Desrües's house? Madame Desrües said: "All that I know about it is that I saw the watch in a writing-desk two days after my husband's return from Versailles. Desrües told me that he had bought a better one for the young man."

Madame Desrües was conducted to Grand-Châtelet. As for Desrües, although in solitary confinement, he was not idle in his prison; he wrote letters to his friends at Buisson-Souef. "This wretch," he said, speaking of M. de la Motte, "has circulated the most outrageous stories concerning me. It is unfortunate for me that I ever knew him." And he narrated with his usual prolixity his relations with the De la Mottes. These epistles, destined to pass under the eyes of his judges, were filled with pious expressions, with protestations of innocence, and a firm reliance on Divine Providence.

The affair was pushed as rapidly as possible, conformably to the pressing orders of the Procureur-General; but it was necessarily retarded by the absence of important witnesses from Lyons. There were also lacking the two *corps de dèlit*. An investigation was commenced a little later at Versailles, to discover traces of young De la Motte; but on that side it was impossible to discover anything.

Suddenly a strange rumor ran through Paris that the mysteries of this sinister affair were becoming highly interesting. It was said, on every side, that the dead body of Madame de la Motte was buried in a cellar in the Rue de la Mortellerie.

The reader has not forgotten Mevret, the man of the Rue des Haudriettes, the creditor who followed with a suspicious look the little man and his cart. On first hearing of the crimes imputed to Desrües, Mevret attached great importance to the encounter of that day. When he learned that they were unable to find the bodies of the two victims, and when he compared the dates of their disappearance with that of his meeting with Desrües, he could not refrain from crying out: "I know where Madame de la Motte is. She is buried in the Rue de la Mortellerie."

On her part, Madame Masson, the proprietor of "The Pewter Pot," who had not seen the lessee of her cellar for a long time, and who knew, from Rogeot, that his dog howled and scratched at the cellar door, had the idea that her Du Coudray could be no other than Desrües. She did what Mevret ought to have done, — she notified the commissary of police of her quarter.

(*To be continued.*)

A NICE QUESTION.

By A. J. Eddy.

A FEW days ago several lawyers — all well known at the Chicago Bar — were discussing a matter which, in the minds of some present, involved a nice point in professional courtesy and ethics; and the different and conflicting opinions expressed warranted the writer in believing that a more general discussion of the question would be of interest.

In the turn the discussion took, the question was considered in two phases, so to speak, —

First. How far is it permissible and proper for opposing parties to pending litigation to confer together and arrive at a settlement without the intervention of their attorneys of record?

Second. How far is it permissible and proper for an attorney on one side to approach or confer with the opposite party relative to a settlement without the intervention of his attorney?

In this day of innumerable suits and contingent fees, these questions are of considerable and of increasing importance; and attorneys for both plaintiffs and defendants should consider them in all their bearings, lest on the one hand they fail to fully protect their clients, or on the other hand to lay themselves open to charges of unprofessional and discourteous conduct, either horn of the dilemma being equally sharp and fatal to professional success and reputation.

It is obvious that difficulties of this kind arise mainly from two classes of cases: (1) Those taken upon contingent fees; (2) Those taken upon shares.

There can be no question that agreements for contingent fees and cases on shares stand in the way of compromise and settlement, and encourage litigation. In every case where the fees of the plaintiff's attorney depend upon his success, either in court or in extorting from the defendant a much larger sum than the plaintiff himself would have been willing to take, it is absolutely essential that the parties should be kept apart, — at swords' points, so to speak. The writer recalls several instances where the plaintiff's attorney, when he learned that the defendant had personally or by his agent — not his attorney, and without the knowledge of his

attorney — called on the plaintiff to see if their differences could not be satisfactorily and amicably settled, bitterly denounced the defendant for what he had a perfect right to do, and denounced the defendant's attorney for permitting — as he supposed — such damnable plots and counter-plots to effect a settlement, and, incidentally, deprive the speculative attorney of his prospective fee or dividend. The administration of justice has come to a pretty pass when attorneys — mere agents employed to perform certain professional services — assume to dictate to their principals, to insist that actions shall not be compromised, settled, or abandoned without their interference. It is as if a physician should insist that a patient should keep sick for his benefit.

"*The law encourages the amicable adjustment of disputes.*"

This deserves a place among the maxims of the law. But unfortunately contingent fees do not "encourage the amicable adjustment of disputes;" on the contrary, they stand between the parties and prevent all amicable overtures. They are productive of unreasonable and extortionate demands and of litigation. Let it be freely admitted that they often work good, — that they often succeed in obtaining for the poor and ignorant more than they could secure by their individual efforts. Admit all that can be said in favor of contingent fees, it must at the same time be granted that they are productive of grave abuses, not the least of which is a meddlesome and officious interference between the parties whenever friendly overtures are made.

In answer to the first question propounded, we assert that *it is the undoubted right of parties between whom differences exist, and whether litigation is pending or not, to confer together at any time and compromise or settle their differences, and they may do this with or without the intervention of any of their employes, agents, or attorneys.*

If an attorney or any other party has any valid lien or claim upon the cause of action or judgment, it is his duty to give notice to the other party and assert his rights, and in such case his rights must be respected in the settlement. But if his rights, real or fancied, simply grow out of a personal agreement between him and his client, — an agreement which perhaps is of such a nature that the law would not enforce it — then the other party is in no wise bound to take notice of either him or his agreement.

We go further, and say that parties should make more strenuous efforts than they do to settle their differences. They should take every opportunity to confer in a friendly manner with one another. They should not permit either attorneys or officious friends and busybodies to keep them apart. They should not permit either anger or pique to stand in the way of full investigation and fair compromise. A quietus would be put upon a large proportion of the litigation in our large cities if all the manufacturing and railway companies, mill-owners, and large employers generally, would in every case, especially personal-injury cases, persistently insist upon settlement with the claimant himself or herself, and ignore the intervention of any agent or attorney, *unless the claimant directed the defendant to confer with his, the claimant's, attorney.* It is the claimant's right to speak for himself or through his attorney. But in four fifths of the cases the claimant is lost sight of till the day of trial. Either his attorney keeps close watch and guard over him, or the defendant unwisely refrains from all interference or overtures, and leaves the matter in the hands of his attorney. We venture to say that fully one half the personal-injury cases on the calendars of our courts could be settled and cleared off, if the defendants personally or by their agents — not attorneys — would see the plaintiffs personally, and endeavor to arrive at an amicable adjustment; and further we would predict that the sum total paid in settlement of all cases settled would be fifty per cent less than the sum total of the judgments that will be ultimately recovered, and

the settlements would still be more advantageous to the claimants than the judgments obtained after long contests, and which probably have to be divided with attorneys. But what a howl of righteous indignation would go up from the attorneys of the various plaintiffs, who would have to rely for compensation upon the doubtful responsibility of their clients instead of a good fat judgment!

We come now to the consideration of the *second* question: What part may attorneys take in compromising and settling cases?

As a golden rule it may be laid down that *attorneys should deal with adverse parties only through their attorneys.*

The attorney who follows that rule throughout his professional career will be above suspicion of intrigue or unfair dealing, at least in so far as the settlement of cases is concerned.

It is an attorney's province and duty to advise his client what to do, whether to settle or litigate; and it is the client's privilege to follow the advice or not, as he sees fit. It is an attorney's duty to keep his client advised at all times, from the first presentation of the claim to judgment and appeal, as to the chances and possibilities of the litigation so far as he can judge of the same; and it is the client's privilege to act at any time upon the information properly afforded him by his attorney. The client may at any time see the opposing party and effect a settlement. With that settlement the attorney who wishes to be above the slightest suspicion, should have absolutely nothing to do, *unless his intervention should be necessary to protect his client from fraud or conspiracy in the settlement*, and this is quite an important exception.

It may not at first sight seem clear why an attorney as the agent of his client may not do what the client or any other agent of his, not an attorney, may do. But the position of an attorney is a peculiar one. His knowledge of the law and of people, his powers as a persuasive reasoner, and so on, give him a decided advantage over men who are not lawyers, and in his zeal for his client he may say things that will bring about a settlement highly disadvantageous to the opposing party, and one which a court might set aside as fraudulent. And there are many other considerations which it would be superfluous to mention.

It does not follow from the rule that an attorney should make no attempt at settlement, except through opposing counsel, that he is to be in real or feigned ignorance of what his client does. Not at all. It is his duty, if the case warrants it, to advise his client to settle; and if his client informs him that he can settle with the opposite party, it is the attorney's duty to advise his client as to the necessary steps to take to effect a settlement and obtain a release, and it is his duty to draw all necessary papers; but a keen sense of professional honor will keep him away from the opposite party, and he will keep the opposite party away from him. He should act solely as the adviser of his client, and assume that the other party is acting under the advice of his attorney. He has a right to assume that, and has no right to assume that the other party intends to act unfairly with his attorney.

If, however, anything has passed between the attorneys which apprises the attorney for the defendant, say of the true relations between the plaintiff and his attorney, and he knows, or has reason to believe, that the plaintiff will act treacherously with his attorney, then the defendant's attorney will act with still greater caution in all he does lest he places it in the power of an unscrupulous party to do a professional brother a wrong. But simply because he happens to know that attorney for plaintiff has entered into a peculiar agreement with his client from which he may suffer, does not alter in the slightest degree his duty to *his* client, or the right of his client to effect a settlement; but in so far as he can, he should protect the proper rights of a professional brother; that is demanded by professional courtesy.

The Green Bag.

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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.

THE GREEN BAG.

IN our October number we shall publish an exceedingly interesting article on the Supreme Court of Connecticut, written by Leonard M. Daggett, Esq., of New Haven. The illustrations will include excellent portraits of Judges Thomas S. Williams, Henry M. Waite, Thomas B. Butler, Origen S. Seymour, John D. Parks, Charles B. Andrews, Stephen M. Mitchell, Joel Hinman, Elisha Carpenter, Dwight Loomis, John Hooker, Edward W. Seymour, and David Torrance.

THE "Green Bag" for July states, as a fact, that the answer given by a law student to the question, "What is an accommodation note?" was, "One which the maker does n't have to pay until he is ready to." Actual fact is said to be stranger than fiction, and is often much more humorous on account of its reality. While we cheerfully agree that this answer is one of the funniest on record (and submit that daily experience lends to it the similitude of truth), we tender the following, also actual facts, for the consideration of those who read the vacation issues of this humble periodical. If anything more innocently ingenious can be produced, let it be produced. If the gentlemen who originated the answers chance to see them reproduced, let them not be offended, for they have written two of the most humorous things of the century.

Question. Explain the maxim, *Falsa demonstratio non nocet.*

Answer. If I shake my fist at a man who is within my reach, that is an assault, though I do not touch him, because he is within reach and I may carry out my threat and hurt him. But if he is across the street, and so out of my reach, that is not an assault, for *falsa demonstratio non nocet.*

Question. What duty does the owner of premises owe to one whom he invites to come upon the premises?

Answer The duty of lateral support.— *Canadian Law Times.*

THE following from a Harrisburg, Penn., correspondent cannot fail to interest our readers: —

Editor of the "Green Bag":

The extract from Judge Jeremiah S. Black's famous dissenting opinion from the judgment of the Supreme Court of Pennsylvania in Hole *v.* Rittenhouse, 1 Casey, 491, given in Mr. Hensel's excellent sketch of the great jurist, recalls to mind an instance of judicial sparring between Judge Black and Judge Moses Hampton of the District Court of Allegheny County at Pittsburg, which occurred about the same time, and which may be read with interest by the patrons of the "Green Bag."

The case of Wilson *v* Steamboat Tuscarora, 1 Casey, 317, in which Edwin M. Stanton was concerned for the defendant in error, tried in the District Court at Pittsburg, before Judge Moses Hampton, and decided on a reserved point, was reversed because the question of law was not properly reserved.

The opinion of the Supreme Court was written by Judge Black, and his criticism of the manner of reserving questions of law prevailing at that time in the District Court was severe and rasping. Among other things offensive to Judge Hampton, he said: "It is impossible for us to sustain such a proceeding as this. . . . In a common-law action every disputed fact must be determined by the jury, and not by the judge who presides at the trial. This is an inflexible rule of law, which we cannot change until we can overthrow the Constitution. . . . It is in vain to say that the facts in this case are not disputed. . . . The pleadings put them in dispute. . . . Among the children of Israel it was the *hard* causes that were brought to Moses, and not those which were plain."

Shortly after this opinion was written the case of The Commonwealth *v.* Hays, 1 Pitts. Rep. 316, an action upon the bond of a public officer, was tried before P. J. Moses Hampton, and a question of law

reserved and decided. After delivering the opinion, Judge Hampton read the following:

Note for Counsel. — "If the counsel should be of the opinion that the question of law has not been reserved in such a manner as to meet the rule laid down by the Supreme Court, they can draw up a formal bill of exceptions, presenting the questions more distinctly, and it will be sealed by the court. . . . I make this suggestion by way of caution, inasmuch as my brother Williams and myself have both been unfortunate, it seems, in our mode of reserving questions. The Supreme Court recently reversed a judgment entered by myself, because the question was not properly reserved. . . . The counsel on both sides understood distinctly the question of law, and argued it with great ability both in this court and in the Supreme Court. Yet Mr. Justice Black, in delivering the opinion of that court, says: 'This was an issue of fact. A jury was called to try it, and each party produced whatever evidence he had to sustain the issue on his part. But the jury to whom the evidence was given were discharged by the court without giving a verdict, or even hinting an opinion on any part of it except the amount of the plaintiff's loss.' In another place he says: 'We review here nothing but what appears on the record. This record is blank.' That must have been a strange kind of blank, indeed, if the learned judge found in it all he thinks he did. Yet it must all be there, for he says they review nothing but what appears on the record. He has discovered far more in that blank record than either this court or the learned counsel ever dreamt of. . . .

"In another part of the opinion, he says: 'Among the children of Israel it was the hard causes that were brought to Moses, not those which were plain.' I have looked carefully into the practice of that distinguished Supreme Judge of Israel, for some light on the subject of reserving questions, but have not been able to find a solitary case, during his administration of justice for a period of forty years in the wilderness, in which he reversed the judgment of the inferior courts because the questions were not properly reserved. Nor can I find, after the most careful examination of the 'Lamentations of Jeremiah,' any complaint against the judges of Israel for not reserving their questions of law in a more formal manner. . . .

"In another part of the learned Judge's review of this blank record, he says: 'We can easily see how this practice crept into the District Court of Allegheny County.' On what page of the blank record this information is contained is more than I can discover. Yet it must all be there, because we are assured that the Supreme Court reviews 'nothing but what appears on the record.' . . . No complaint was ever uttered by the old Supreme Bench on that subject. But this same learned judge, in a recent opinion delivered by him in the case of Hole *v.* Rittenhouse, has explained the reason of the present difficulty about reserved questions. He says: 'But now, new lords, new laws, is the order of the day. The majority of this court changes on the average once every nine years, without counting the changes by death or resignation.' Thus we see that the difficulty has not arisen from any deviation by this court from the practice of either the children of Israel in the wilderness, or of any of our predecessors on this bench; and the warning voice of the learned judge given in his opinion in Barney Hole's case tended to confirm my former convictions, that the best method of avoiding all the evils growing out of these modern innovations so apt to spring from the frequent changes of the judges is to cling more closely to the ancient doctrine of *stare decisis*, so strongly recommended by Judge Black. A speedy return, therefore, to the practice of Chief-Justice Moses in the wilderness and of the old Bench of the Supreme Court, in deciding all the 'hard causes' brought up to them, without regard to the technical form in which they are reserved, would be the best practical illustration of this valuable precept." — T. S. H.

AN Indianapolis correspondent favors us with the following communication on the subject of "Citations":—

Editor of the "Green Bag":

Judge Thompson, of St. Louis, has said something in the "Green Bag" about "reporting." Permit me, through the same medium, to say something about works of citation of cases.

Simon Greenleaf, I believe, was the pioneer in this class of works, when he got out his "Overruled Cases" in 1838. This was a general work, covering all the English and American reports, of "Cases Overruled, Denied, and Doubted, Arranged Alphabetically by the Plaintiff's Name." Successive editions of this work were printed; and in 1856 Mr. John Townsend revised, enlarged, and published a fourth edition of the work. The author and editor undertook to give the particular point upon which the case given was overruled; so that it would be unnecessary to refer to the report when the case was doubted, denied, or overruled. At that early day, as compared with now, the labor of preparing such a volume was a comparatively light one.

In 1873 Mr. Melville M. Bigelow gave us "An Index of the Cases Overruled, Revised, Denied, Doubted, Modified, Limited, Explained, and Distinguished by the Courts of America, England, and Ireland." In 1887 Mr. Charles F. Williams compiled a supplement for this volume. In this work it was attempted to show in what particular case a

given case was denied, doubted, overruled, etc.; but no reference is made to a case cited, either with express or implied approval. In this respect it was like Greenleaf's work.

In 1878 Cockroft, of Chicago, began the publication of "An Unabridged Table of Cases" of all the reports in America, showing in what volumes of reports a particular case had been subsequently cited, and giving also an alphabetical list of all cases reported. No attempt was made in this work to show what had been said of or done with regard to a case, beyond saying that it had been subsequently cited, giving the name of the case, book, and page where cited. The first volume covers 727 pages, and goes as far as "Bizzell." The work proceeded no farther. No attempt was made to give English cases when cited in an American decision. In this there was a manifest defect in the work.

In 1882 Rapalje & Lawrence published a table of all American and English cases, covering the decisions published in 1881, which had been cited in the reports of cases for that year, undertaking to show exactly what was said of or done with all cases referred to in the opinions of the court reported that year. No table of cases merely reported was given. To say the least, the adoption of the plan of merely giving those cases cited in decisions reported for that year was a very singular one, and one from which failure might be expected.

Waite's table of citations of New York was probably the pioneer where confined to a particular State. This was in 1872. This work gave no foreign cases cited in the New York reports, nor any table of cases merely reported in that State. Robert Desty's California citations appeared in 1874, in which he merely gave a case, where cited, and the particular point upon which cited. Foreign citations were given, but no table of California cases merely reported.

From this time on, tables of citations came from the press quite rapidly. Some of them are very queer specimens. So far as I have been able to observe, tables of citations have been published in the following States: California, Connecticut, Georgia, Illinois, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New York, North Carolina, Ohio, Pennsylvania, Texas, and Wisconsin. There are several tables of Federal citations; and one of England, constructed on quite a limited plan.

In few States are there tables of cases reported given with those cited. A moment's reflection will show the advantage of giving a table of cases reported. Often the name of a case is known, but not the volume wherein reported. Such a table will enable the person hunting to find it. It is also a source of gratification to an attorney, when running a case down, to know that it has not been overlooked; and he feels more assured that it has not been if he finds it noted with those cited.

In several States the exact point upon which a case is cited is given. This entails great labor upon the compiler, — a labor out of all proportion with the benefit to the practitioner. So the same is true of the practice of marking a case as doubted, overruled, explained, and the like; for such statements convey no information to the attorney. In all these instances the practising attorney prefers to, and will, if prudent and careful, look up just what was said about the particular case cited from the report itself.

A very absurd practice is to arrange the cases cited according to the numerical order of the reports. Thus the cases cited from volume one of the series of reports of the State are arranged alphabetically, and the report and page where subsequently cited are given. This is far less convenient than arranging all the cases cited in alphabetical order. Such tables have been prepared for Georgia and Michigan (Fitch's).

Talbot's "Citations of Michigan" is a very intricate and absurd affair. It is in three parts. The first part consists of Michigan cases cited, and is arranged in double alphabetical order. Thus Adair *v.* Adair is arranged under the head of "A. A.;" Abbot *v.* Godfrey, under "A. G." The second part is arranged in the same order, but consists of Michigan cases not cited. The third part is arranged in the same order, of foreign cases cited in Michigan reports. How much better this work would have been if all these cases had been thrown together in single alphabetical order!

Shepard's Wisconsin table of cases has all the foreign cases arranged under the particular State from which cited; placing also the Federal and English cases cited under two separate heads. This arrangement is very awkward.

Albion W. Tourgee's "Digest of Cited Cases" of North Carolina is a monument of labor. All North Carolina civil cases cited are arranged in alphabetical order, and likewise are separately arranged all the criminal cases cited. No attention is paid to foreign cases. With each case cited is a short syllabus of the cases, and along with the syllabus is a citation of authorities relied upon by the court to support the decision. Below this syllabus are the cases, with book and page, where the case given has been subsequently cited; and if there are more points than one in the syllabus, they are numbered and a corresponding number attached to the name of the case where subsequently cited. These syllabi are numbered consecutively; and an index attached to the book gives the particular syllabus where a particular subject is discussed. Thus the work serves both as an index to the reports and a work of citations.

Dale & Lehmann's "Overruled Cases" is an English work. No case is noticed unless it has been

commented upon. Cases that have been merely cited in an opinion, without comment, are ignored. The first volume contains an alphabetical list of cases, and a citation of the reports and pages where they have been commented upon or discussed. The second volume is a regular digest, arranged by subjects; and the comments upon a particular case are copied under the appropriate head. In the first volume is a reference to the page in the second book where the particular case is discussed. In some respects this is an admirable work. With it it is possible to tell the exact status of a case that has been discussed, without reference to the report; but beyond this it does not go.

A work on citations should contain a complete table of cases reported, and a complete list of all cases cited, both American and English. It is not necessary to give the name of the case where a case is cited, but only the book and page where it will be found. By thus doing, space and labor will be saved. Designating a case as overruled, doubted, etc., is really an unnecessary labor, and of but little value. In almost every respect Cockroft's Table of Cases was an admirable one. It was increased in bulk by unnecessarily giving the names of the cases where a case was cited. The present work in use in Indiana is the best I know of. It gives all Indiana cases reported in the American Decisions and Reports.

It is to be regretted that so few lawyers fully appreciate the value of a table of citations. It is among the most, if not *the* most, valuable book in a lawyer's office. It gives you almost unerringly the status of every case, or enables you to trace its status. If you find a case very nearly in point, it is possible to follow up this case where cited in subsequent reports, and find a case directly in point. Suppose you have a foreign case, found cited in a text-book for instance, and it supports you, but you have not been able to find anything of the rule announced in it in your own reports; by taking a table containing foreign citations, you may find this foreign case cited in your own reports, and thus not only learn how your own court regards it, but even discover a case well in point which your search had failed to reveal.

A work citing all the cases reported in America and *all* the citation of cases made in our reports would be of great and incalculable value. It would do much to harmonize the future decisions of our courts, and serve to reveal the many inaccurate decisions. It would tend to show the value of each case, and how it is considered by other courts. Such a work would be a great undertaking, but not beyond the possible; nor would it be as laborious and costly as several enterprises already pushed to a successful end. Who will undertake it?

W. W. Thornton.

LEGAL ANTIQUITIES.

Edward VI. repealed all former laws against vagabonds, and passed an act by which all vagabonds, who were described as able-bodied men or women loitering, wandering, and not seeking work, or leaving it when obtained, were liable, on apprehension by their master from whom they had run, to be marked with a V, and to be the slaves of such master for two years. Should they run away again, they were to be branded with an S, and become their master's slaves for life. Iron rings might be riveted about the necks of slaves, who might also be punished by their masters, at will, with beating and with chains. Bread and water, or broken food, was to be their only diet. Unclaimed vagabonds were to be arrested and to become the slaves of the parishes to which they belonged; and the work of all slaves might be let, sold, or bequeathed. Impotent and needy folk were to be duly cared for by the parishes in which they were born, or in which they had dwelt for three years, and collections were to be made in church every Sunday towards a relief fund.

Queen Elizabeth was even more severe towards vagrants. In a commission issued to Sir Thomas Wilford, she commanded him "to repair to all common highways near to the city which any vagrant persons do haunt, and with the assistance of justices and constables, to apprehend all such vagrant and suspected persons, and them to deliver to the said justices, by them to be committed and examined of the causes of their wandering; and, finding them notoriously culpable in their unlawful manner of life, as incorrigible, and so certified by the said justices, to cause to be executed upon the gallows or gibbet some of them that are so found most notorious and incorrigible offenders."

FACETIÆ.

Not long since an attorney at a county court deemed it necessary to impugn the respectability of a Mr. Butterworth, but the witness he relied on proved a good deal too much for him. The legal gentleman commenced thus:—

"Do you know Mr. Butterworth?"

"Yes, I do."

"Well, then, now tell us what is Butterworth?"

The witness looked him full in the face; then, assuming an innocent and unconcerned expression, he replied, much to the delight of a crowded court: "Thirty cents a pound, although I have paid as high as —"

"That will do, sir; you can stand down, we shall not want you again."

JUDGE BATES, of Missouri, was a monomaniac on the subject of tax titles, and while on the bench of the Land Court resorted to every conceivable plan to overthrow a title predicated upon a tax sale. In an action of ejectment pending in his court, the plaintiff relied upon a tax title; and when he introduced his deed in evidence, the judge scrutinized it very closely, and found the land described as "N. E. qr., of S. E. qr., of S. 4, T. 40;" and the following colloquy took place: —

"Mr. Counsel, what do the letters N. E. in this deed stand for?"

"*North East*, if your Honor please."

"North East, North East? What evidence is there before the court to show that they mean any such thing?"

"The letters N. E. are usually used by surveyors to designate the point of the compass."

"How is this court to know that they were not intended to represent 'New England,' or 'New Edition,' or 'Nothing Extra,' or any other words to which the initials may be applicable?

"The point raised by your Honor is new, and I am not prepared to give any additional explanation."

"The objection to the introduction of the deed is sustained upon the ground of uncertainty in the description of the premises. Plaintiff nonsuited."

"I WISH to ask this court," said a lawyer who had been called to the witness-box to testify as an expert, "if I am compelled to come into this case, in which I have no personal interest, and give a legal opinion for nothing?"

"Yes, yes, certainly," replied the mild-mannered judge; "give it for what it is worth."

PRISONER. I don't think there will be any need of your addressing the jury.

LAWYER. Why not?

PRISONER. My insanity will be instantly plain to them when they see that I have retained you to conduct my case! — *Puck.*

POLICE MAGISTRATE. Did you see the beginning of this trouble?

WITNESS. Yes, sir; I saw the very commencement. It was about two years ago.

MAGISTRATE. Two years ago?

WITNESS. Yes, sir. The parson said, "Wilt thou have this man to be thy wedded husband?" and she said, "I will."

NOTES.

AN American lawyer, addressing a lay audience on the necessity of codification, makes the following startling statement: "You will find the common law in 6,000 volumes of law reports, which average 700 pages to the volume, making 4,200,000 pages. If you read fifty pages every day in the year for 230 years, you will have read this judge-made law down to the time you began your course of reading. But during your long course of reading, the judges have been engaged in making this kind of law at the rate of 16,000 cases a year; so that after you have read 230 years, you will find the volumes of reports that have accumulated since you began to read, exceed by many times the number you have read." — *The Jurist.*

THE "British Medical Journal" says: "The danger of kissing a greasy book, so often tendered in police and law courts to a witness about to be sworn, is at last appreciated by some officials and in some quarters. We see it stated that when the Duke of Fife appeared lately at Stratford in a prosecution, the Testament on which the witness took the oath was enveloped in some clean white paper for his use, — a precaution which might with advantage be more generally adopted."

ELECTRICITY has been used for the first, and, it is sincerely to be hoped, for the last time, as a means of capital punishment. The scenes attending the execution of Kemmler were painful in the extreme, and could have afforded little

satisfaction to the advocates of this new method of vindicating the majesty of the law. We heartily agree with Dr. George F. Shrady, editor of the "Medical Record," who expresses himself as follows: "The experiences in the Kemmler case, in spite of all the precautions taken, have shown many difficulties in the way of the adoption of the method. It is far from simple in its application. It requires elaborate and careful preparation; it multiplies machinery which, without expert manipulation, is liable to fail in its working, and bring about disastrous results; it may be a source of danger to the executioners and spectators; it increases the expense of executions; but worse than all in the necessary preparation of the victim, there is crowded upon him in a few seconds an amount of horror and suspense which has no comparison with any other forms of rapid demolition save those of being thrust into the muzzle of a loaded cannon or dynamite bomb. When it is assured that the ends of justice and humanity are not reached by the contrivance in question, and when it must be admitted that even this method cannot be divested either of cruelty or barbarity, the way seems to be open for the discussion of the abolition of capital punishment altogether. From physical, humanitarian, and judicial standpoints, the time is ripe for its consideration. We venture to predict that public opinion will soon banish the death-chair as it has done the rope, and that imprisonment for life will be the only proper punishment meted to a murderer."

If Kemmler's death results in the abolition of capital punishment, a good end will have been accomplished, even though the means may have been of doubtful expediency.

REVIEWS.

THE JURIDICAL REVIEW for July is an unusually interesting number. J. G. Bourinot contributes the second part of his article on "The Federal Constitution of Canada." Dr. Edward F. Willoughby writes on "The Criminal Responsibility of the Insane." Articles on "Foreign Companies under the French Law," by C. A. Kennerley Hall; "The *De Facto* Principle in Jurisprudence," and "The Work of the West Indian Commissioners," by A. Wood Renton, make up the other contents. An admirable portrait of Lord Selborne is given as a frontispiece.

SCRIBNER'S MAGAZINE for August is a fiction number, containing six short stories, five of them illustrated. As is usual in this magazine, a number of entirely new writers are brought forward with stories of striking originality. They show great variety of scene and subject, and include a newspaper story, a tale of army life, a California story, a Maine woods story, and a New York City story, besides Mr. Bunner's capital burlesque modernization of Sterne's "Sentimental Journey." There is also the beginning of Part Second of the remarkable anonymous serial, "Jerry," which brings the hero to manhood and opens his adventurous career. In this new phase of the novel the writer exhibits virile characteristics which were not demanded in the pathetic descriptions of Jerry's youth. The fiction idea of the number is further carried out in the very richly illustrated article by the Blashfields on "The Paris of the Three Musketeers." The veteran London publisher and close friend of Stanley, Mr. Edward Marston, tells, with striking illustrations made at Cairo, "How Stanley wrote his Book." There are also poems by Thomas Bailey Aldrich and Andrew Lang.

IT is because "The Anglomaniacs" presents a novel aspect of New York life with uncommon pith and wit that the third part, in the August number of the CENTURY, will be probably that portion of the magazine to which most readers will first turn; and they will find this instalment quite as interesting as those which have preceded it. In the new chapter of Mrs. Barr's striking novel "Friend Olivia," the heroine sets sail for America with her father, who goes in search of religious freedom and converts. The short story of the number is entitled "The Emancipation of Joseph Peloubet," by John Elliott Curran. Few readers will reach the end of the second paper by Dr. T. H. Mann on his experiences as "A Yankee in Andersonville" without being profoundly touched by the pathos of his helpless journey to his home in Boston. The realistic pictures, made from photographs, add to the interest of the narrative of life in the prison-pens at Andersonville and Florence. Another article

bearing briefly on the history of the war, is Miss S. E. Blackwell's statement, in "Open Letters," of "The Case of Miss Carroll," whose claims for services to the Union are still unconsidered by Congress. In the tenth part of "The Autobiography of Joseph Jefferson," the comedian writes most entertainingly of John Brougham, Edwin Adams, Charles Fechter, George Holland, and of other favorites who have not long been absent from the stage. Another illustrated feature of the number that is pervaded by an artistic personality is the fifth instalment of John La Farge's "Letters from Japan." There is also a decided literary quality in Mrs. Amelia Gere Mason's fourth paper on "The Women of the French Salons," which treats more particularly of the salons of the eighteenth century. John Muir, who writes too seldom in these days, contributes an important paper on "The Treasures of the Yosemite." The article is richly illustrated, and there are maps to indicate the boundaries of the proposed enlargement of the Yosemite Park. Other illustrated features of the number are W. J. Stillman's paper on the "Italian Old Masters," Sandro Botticelli, with three full-page engravings by Cole; an entertaining account by Gustave Kobbé of "The Perils and Romance of Whaling;" and the second part of Harriet W. Preston's "Provençal Pilgrimage," illustrated by Pennell. President Eliot of Harvard contributes "The Forgotten Millions," a study of the common American mode of life, as typified by the permanent native population of Mt. Desert.

"For the sake of the American author who is now robbed, for the sake of the foreign author who is now plundered, for the sake of that vast body of people who read books in the United States, and upon whom we now force all the worst and cheapest stuff that the presses of the world pour forth, a bill for international copyright ought to be passed. Most of all, it ought to be passed for the sake of the country's honor and good name." So writes Henry Cabot Lodge on "International Copyright" in the August Atlantic. His article is worth studying. "The Use and Limits of Academic Culture," a paper by Prof. N. S. Shaler, which shows the manner in which Professor Shaler believes the college could be brought into closer touch with the aims of the ordinary student, namely, the gaining of a living, is a noticeable paper of the number. It is followed by a sketch of Madame Cornuel and Madame de Coulanges. Both of these clever Frenchwomen were given to epigram and bon-mots, many of which are retailed in this amusing sketch, which is written by Ellen Terry Johnson. Miss Murfree's "Felicia" and Mrs. Deland's "Sidney" continue their course. Mrs. Deland has, we fancy, reached the turning-point in her heroine's history. The poetry of the number is particularly good. Mrs. Fields has a sonnet; Mr. Whittier a three-page poem on the town of Haverhill; and Dr. Holmes ends his instalment of "Over the Teacups" with some verses which will have great vogue, entitled "The Broomstick Train; or, The Return of the Witches."

Readers of the first two instalments of Alphonse Daudet's "Port Tarascon" will turn with impatience to its continuation in the August number of Harper's Magazine. Extracts from the diary of Secretary Pascalon portray in a realistic manner the life of the colonists in their island home, their discomforts, their amusements, and "everything said and done in the Free Colony under the government of Tartarin." Theodore Child contributes to the same number of the magazine a paper describing an American's "Impressions of Berlin," with some account of the leading attractions of the German capital. Edward Everett Hale, in "Magellan and the Pacific," relates the old story of the first circumnavigation of the globe, but adds to it some facts hitherto not generally known. Capt. Charles King, U. S. A., contributes an interesting paper giving an account of "Custer's Last Battle." Octavia Hensel, in an article fully illustrated from photographs, tells the history of the famous printing-house of "Plantin-Moretus," and describes a visit to the museum in Antwerp, where the literary and art treasures of that establishment are preserved. Ellen B. Bastin contributes a paper on the "Geology of Chicago and Vicinity." Dr. Francis Parkman, in "A Convent at Rome," relates his experience during a brief stay many years ago in the convent of the Passionists at Rome. Short stories are contributed by Richard Harding Davis, Thomas A. Janvier, and Lina Redwood Fairfax; and poems by Coates Kinney, Renneli Rodd,

John B. Tabb, and and Harriet Prescott Spofford. In the editorial departments George William Curtis relates some reminiscences of Dickens's last visit to America; William Dean Howells discusses the ethics of criticism; and Charles Dudley Warner offers some suggestions relative to "conversation lunches" and the influence of culture upon individuality.

BOOK NOTICES.

ELEMENTS OF THE LAW OF DOMESTIC RELATIONS AND OF EMPLOYER AND EMPLOYED. By IRVING BROWNE. Second Edition, Revised. The Boston Book Company, Boston, 1890. $2.50 net.

While the ponderous treatises of the law keep their place in the front rank of professional literature, it *may* be questioned whether the monographs — the condensed statements of principles, serving as it were on the skirmish line — do not do at least their equal share in the battle of legal intellect.

Among the monographs there is none clearer, terser, or more useful than Browne's Elements of the Law of Domestic Relations. This publication of some of Mr. Irving Browne's lectures before the Albany Law School — tested before printing on the intellects of successive classes of bright young men at Albany, and since printing, by the classes and professors of various law schools — has now reached a second edition. While the statement of law could not very well be made clearer than before, later cases have been cited, and the text has been somewhat developed. The result is, as before, a text-book which should be used in every law school, as well as by every lawyer who has an important case on the subject, and wishes to argue it on sound principles.

HISTORY OF THE COURT OF CHANCERY, and of the Rise and Development of the Doctrines of Equity. By A. H. MARSH, Q. C. Carswell & Co., Toronto, 1890.

In a compact little volume of 140 pages Mr. Marsh gives an interesting historical account of the Court of Chancery, and the origin and development of the equitable jurisdiction of that court. A great deal of valuable information has been collected by the author, and the book is one that will be read with interest by the profession. It will be found especially useful by students commencing the study of the law.

RIGHTS, REMEDIES, AND PRACTICE, at Law, in Equity, and under the Codes. By JOHN D. LAWSON. Vol. VI. Bancroft-Whitney Company, San Francisco, 1890. $6.00 net.

To compress into seven volumes the law applicable to civil cases is a work which few would care to undertake, and one which still fewer writers could accomplish successfully; and as this work approaches its completion (there being but one more volume to come), we are more than ever struck with admiration for the thorough and exhaustive manner in which Mr. Lawson has performed his task. The present volume continues the third division, — Property Rights and Remedies, — and contains the titles Real Property, Easements, Landlord and Tenant, Fixtures, Watercourses, Nuisances, Mortgages, Liens, Descent and Distribution, Wills, and the first part of the title, Remedies and Procedure, viz., Arbitration and Award.

A DIGEST OF ALL THE REPORTED AMERICAN CASES AND SELECTED ENGLISH CASES. 1888 Supplement. Being also a Supplement to Vol. XIX. United States Digest, New Series. Digest Publishing Co., New York, 1890. $6.00.

With the merger of the 1888 volume of the U. S. Digest in the Complete Digest, the Digest Publishing Company announced the publication at very early date of a supplement for that year. In the present volume that promise is redeemed, making the year 1888 now as complete as the preceding and subsequent years. Prepared with the same care and discrimination which characterize the other volumes of this important digest, and containing a great number of decisions and other valuable matter which have never appeared in any other digest, this Supplement will be welcomed by all who appreciate the merits of the Digest Publishing Company's work.

THE DUTIES OF SHERIFFS, CORONERS, AND CONSTABLES, with Practical Forms. By JOHN G. CROCKER. Third Edition, Revised and Enlarged, by JAMES M. KERR. Banks & Brothers, Albany, N. Y., 1890. $5.00.

This work has long been recognized as a standard upon the subject of which it treats. The last edition was published in 1870, and the numerous changes in the statutes affecting the powers and liabilities of Sheriffs, Coroners, and Constables have rendered a new edition necessary. The additions made by Mr. Kerr render the work of much greater value than ever, and it is now undoubtedly the best book on the subject offered to the profession.

MEZZOTYPE, BOSTON PHOTOGRAVURE CO.

LORD LYNDHURST.

The Green Bag.

VOL. II. No. 10. BOSTON. OCTOBER, 1890.

LORD LYNDHURST.

NO name in English judicial history possesses more interest for the legal profession in this country than that of Lord Lyndhurst, who was an American by birth and a native of Massachusetts.

JOHN SINGLETON COPLEY, the future Lord Chancellor of England, was born in Boston on the 21st of May, 1772. His father, a portrait-painter in that city, had sent over to England, in 1766, a beautiful picture, "The Boy with the Squirrel," consigned to the care of Benjamin West, who had already achieved a great reputation in England. West was greatly impressed by the talent displayed in this work, and through his efforts it was permitted to be hung on the walls of the Society of Incorporated Artists, although the rules of the Association only allowed the works of its members to be exhibited. This picture thus strangely introduced to English art circles established Copley's reputation in England. Notwithstanding the success of this painting and of others which he sent over in the next few years, Copley hesitated long about removing to London. In 1774, however, he sailed for London, and was followed a year later by his wife and children. After living for a few years in Leicester Fields, the family moved to a small but commodious house, No. 25 George Street, Hanover Square.

Young Copley was educated at Dr. Horne's school at Chiswick, and entered Trinity College, Cambridge, in 1790. Over-confident in his fine memory and in his quickness of perception, he put off too long the preparation for honors, and had to make up for lost hours by working late into the night under the stimulus of strong tea and with wet bandages on his head. He came out, however, in 1794, as second wrangler, and second Smith's prizeman.

Having decided upon the law as a profession, before finally settling down to his life-work, he paid a visit to America. His father had a small property at Boston, called the Beacon Hill Estate. It was only twelve acres; but its value as building land was great, and young Copley, having obtained from his University the appointment of travelling bachelor for three years, with a grant of £100 a year, went to see whether he could secure the property, which had been imperilled by his father's removal to England. He found that according to American law his father was an alien, and agreed to a compromise, by which he resigned all claim to the estate on payment of £4,000. For a time he had serious thoughts of buying a good tract of land and settling down in America; but all such schemes were soon abandoned, and by the middle of 1797 he was again in England. Travel had enlarged his views, and bound him to the land of his birth by many warm ties of friendship.

The serious business of life was now before him. He took his M. A. degree, and attended the chambers of Mr. Tidd, the famous special pleader. For some time after being called to the bar his prospects were not bright; but they gradually became better and better as opportunities were afforded him of displaying his talents. The trial of the Spa conspirators, in which he was associated with Mr. Wetherell for the defence,

first brought him under the notice of the Government.

Early in 1819 he was appointed King's Serjeant and Chief-Justice of Chester, and in June of the same year he was appointed Solicitor-General. Among the earliest duties he was called upon to perform in this office was that of supporting the prosecution of Queen Caroline. He had before this time acquired for himself a distinguished reputation at the bar; but now his talents appeared to much greater advantage than they had yet done. Lord Brougham conducted the Queen's defence, and it was truly a "battle of giants" between the two.

In January, 1824, Sir Robert Gifford was appointed Chief-Justice of the Common Pleas, and Copley succeeded him as Attorney-General; two years later he was made Master of the Rolls; and eight months later still, on the 30th of April, 1827, the great seal was delivered to him, and he was raised to the peerage as Lord Lyndhurst.

He had now attained the highest object of a lawyer's ambition. Under three different governments did he hold this exalted office, and for more than thirty years he was supreme in the House of Lords.

As a judge, Lord Lyndhurst is undoubtedly entitled to rank among the highest. His knowledge of the law was extensive and correct, and his judgment remarkably sound in the application of that knowledge to the cases which came before him. He had a quickness of perception, amounting almost to intuition, of the real merits of the matter under consideration. His summings up were models of composition and of judicial statement, and his decisions deserve the highest praise. He was a great favorite with the bar. Always kindly and courteous, he knew no distinctions of either politics or rank, or anything else, when he sat upon the bench. He regarded all as precisely on the same footing. An incident of his consideration and urbanity of manner may be worth repeating. A case in which a certain Mr. Cleave appeared as his own counsel was tried before him. Mr. Cleave began by observing that he was afraid he should, before he sat down, give some rather awkward illustrations of the truth of the old adage, that he who acted as his own counsel had a fool for his client. "Ah, Mr. Cleave," said his lordship, in his own peculiarly pleasant manner, — "ah, Mr. Cleave, don't you mind that adage; it was framed by the *lawyers*."

In private life Lord Lyndhurst was noted for his many generous acts. One may well be mentioned here. One of the most violent radicals of the day addressed a letter to his lordship, detailing the distressing circumstances in which, through ill health, the infirmities of old age, and the want of even the necessaries of life, he was placed, and solicited charity. Lord Lyndhurst read the letter with attention, and feeling for the painful situation in which the party was placed, handed it to his secretary, saying, "Make out a check on my bankers for five pounds to this poor man."

The secretary, on looking at the signature, exclaimed, "My lord, are you aware who this man is?"

"No," said his lordship; "I do not recollect having before seen the man."

"Why, this is the notorious radical, G—— J——, who has for so many years been grossly and virulently abusing your lordship."

Lord Lyndhurst stretched out his hand for the letter, looked again at the contents for a few moments, and then observed, addressing himself to the secretary: "Oh, never mind what he has been saying about me! The poor man seems to be in a very distressed condition. Get the check ready, and send him the money."

Upon his retirement, for the third time, from the Chancellorship in 1846, Lyndhurst spent his hours of leisure quietly at Turville Park, about six miles from Henley-on-Thames, where he could gratify his love of country life and farming. He suffered much from cataract. During the greater

part of the year 1849 he could neither read nor write, and it was not until July, 1852, after two operations, that he partially recovered the use of his sight. He displayed great energy in the debates of the upper house, and took a leading part in the discussion of many important bills. He was offered a seat in the Cabinet by Lord Stanley, with an earldom. He declined this flattering offer, but acted as a firm ally of the new government. The speeches made by him from 1852 to 1861 show that his powers of mind were as fresh and strong as they had been thirty years before. Even his last speech, on May 7, 1861, when he was eighty-nine years of age, displayed the old vigor.

The last years of the ex-Chancellor's life were filled with many pleasant literary pursuits. He revived his memories of old writers who had been studied in youth, and greatly delighted in modern science and modern literature. One day his niece found him studying a ponderous legal folio, and said she supposed that was his favorite study. He drew out a small volume from under the folio, and answered, "I like this far better; so well, I wish you would read it. It reminds me of my boyhood." The book was "Tom Brown's School-days."

When the end came, he was ready. His friends asked him if he was happy. In feeble accents he answered, "Happy? Yes, happy." Then, with a stronger effort, he added, "Supremely happy." Soon afterward, in the early morning of Oct. 12, 1863, he passed gently and tranquilly away in the ninety-second year of his age.

This splendid career was achieved by an American painter's son, without resources or influence, solely by the force of industry, high character, and intellectual pre-eminence.

EVADING THE LAW.

QUEEN ELIZABETH, in one of her trenchant speeches, roundly rated the lawyers for standing more upon form than matter, more upon syllables than the sense of the law. Had the subjects of the royal censure dared to answer her outspoken Majesty, they might have retorted that all manner of men, if it suited their interest, were apt to do the like, and hold by the letter rather than the spirit. When Pope Innocent put England under an interdict, condemning its fertile fields to barrenness, the people might have starved but for some beneficent hair-splitters opportunely discovering that the interdict could only affect land under tillage at the time of its imposition, and therefore that crops might be raised upon the waste lands, commons, and fields hitherto unploughed. Necessity begets casuistry. The old knight whose sacrilegious deeds earned him many an unheeded anathema, as he lay waiting the coming of death, remembered that he was an excommunicated man, sentenced to be damned, whether buried within the church or without the church. Although the contumacious reprobate had never found himself much the worse for ecclesiastic curses, he thought it advisable to be on the safe side; so, directing his body to be buried neither within the church nor without the church, but in a hole cut in the outer wall, he died in that happy conviction.

Once upon a time the governor of a city issued an order of the night, commanding every person walking about after dark to carry a lantern. Sundry citizens were arrested for non-obedience, whereupon they produced their lanterns, and being asked what had become of the candles, replied that they were not aware candles were required. An amended order now appeared; but night-strollers wandered about as much in the dark as before, and it was not until he commanded the candles to be lighted ones, that the governor got things done to his mind. In 1418 a civil proclamation was issued in London, directing that every honest person dwelling within the city limits should hang out "a lantern with a candle in it, to burn so long as it might endure;" from which it might be inferred that the Londoners had hitherto lit their candles only to blow them out again, so that they were quite capable of poking fun at the authorities. Indeed, the latter would seem to have been inclined to jocularity themselves, humorously insisting only upon honest folk lighting up, — a limitation calculated, however, to insure a general illumination.

There was sense as well as humor in the defence made by the precise Parisian charged with allowing his dog to be at large without a muzzle: "The regulations do not say where the muzzle is to be put, and thinking my dog would like to be able to breathe a little fresh air, I put the muzzle on his tail!" A similar omission in an English Act requiring owners of common stage-carts to have their names painted upon them, led to the object of the law being defeated in various odd ways. Some painted the name where no one could see it, others scattered it all over the cart, a letter on a panel, and one ingenious fellow's vehicle bore the inscription, "A most odd act on a stage-cart," — a clever anagrammatic arrangement of "Amos Todd, Acton, a stage-cart."

Shrewd folks have sometimes managed to get the weather-gauge of the law, by simply shifting the responsibility. When abducting an heiress was a criminal offence, gentlemen taking a trip over the Border with a well-dowered damsel were careful to make it appear the lady was the abductor. Upon a happy pair reaching Carlisle, the post-horses for the last stage were ordered by the bride expectant, her companion becoming non est for the moment; and the goal attained, the lady paid the postilions, sent for the forger

of the matrimonial bonds, and when he had done his office, satisfied his demands out of her own purse. A female toll-taker, sued by the turnpike trustees for money she held belonging to them, and ordered to pay up, induced a travelling tinker to make her his wife, and when summoned for contempt produced her marriage certificate, and pleaded that the trustees must look to her husband for payment of the debt, owning, at the same time, that she did not know, nor want to know, what had become of him.

The truth of the saying, "Where there 's a will, there 's a way," was exemplified in a comical way by a tramp who was refused a night's lodging at a police-station in Maine, the officer on duty explaining, "We only lodge prisoners; you 've got to steal something, or assault somebody or something of that kind." "Oh, I 've got to assault somebody, have I?" remarked the vagabond, and knocked one of the police-officers off his stool; and when the astonished victim had picked himself up, quietly said, "Give me as good a bed as you can, mister, 'cause I don't feel very well to-night."

Shortly after the revision of the United States tariff, resulting in the imposition of heavy duty upon lead, and the freeing of imported works of art from taxation, twenty four grotesque-looking leaden effigies of Lord Brougham were to be seen, standing all in a row on one of the wharves in New York. They had been consigned to a merchant by an English firm as works of art, — a description the custom-house officials refused to indorse, insisting that they were mere blocks of lead. The question was referred to the lawyers; and when, after three months' consideration, the courts pronounced in favor of their artistic origin, collectors of curiosities bought the hideous statues at prices far beyond their metallic value, to preserve them in remembrance of the Britishers having for once proved too cunning for their cousins.

Experience teaches that legislation running counter to public opinion is so much legislation wasted. Wherever the Maine Liquor Law has been established, successful tactics have been resorted to to evade it. A traveller in Colorado wishing to get some whiskey as an antidote against possible snake-bites, not a drop was to be had; but he was told he would find spirits of ammonia, to be obtained at any drug-store, quite as efficacious. Determined to be prepared for any amount of snake-poison, he had his quart flask filled, as advised; and tasting it out of curiosity, declared, if he had not known better, he could have sworn it was Bourbon whiskey.

Mr. Ward's kangaroo was not such a profitable "cuss" to him as the half-starved wolf constituting the entire menagerie of a travelling showman, owning naught else, save a dirty tent and a mysterious-looking keg. Upon arriving at a likely "pitch," the showman announced that the wolf was on view at the charge of six cents a head. After one or two sight-seers had seen what was to be seen, patrons poured rapidly in, to come out wiping their lips, apparently satisfied with having had their money's worth. One man developed an unsuspected interest in natural history, looking in eight times in the course of an afternoon; then he made a start homeward, but after going a few steps, stopped, turned over his pockets, turned round, walked back to the tent, and as he paid the entrance fee, stuttered out, "I b–b–lieve I 'll take another look at that wolf!"

Yankee smartness has been displayed in evading other laws, besides that especially admired by the advocates of permissive prohibition. The suppression of the game of ninepins was met by the invention of tenpins. When the selling of clocks by travelling traders was forbidden in Alabama, the Yankee clock-makers let them on lease for nine hundred and ninety-nine years. Ordered to close their bars at midnight, the San Francisco liquor-sellers shut their doors as the clock struck twelve, and opened them five minutes later for the next day's business. — *All the Year Round.*

DOGS OR MEN?

A JUDICIAL opinion is one of those things which are not supposed to find a resting-place in the columns of the "Green Bag," but the following masterly exposition of law, delivered as the opinion of the Supreme Court of Michigan in the case of Heisrodt *v.* Hackett, by Judge Marston, is certainly worthy of preservation in an "entertaining" magazine. We are indebted to our esteemed contemporary the "Central Law Journal" for the opinion, the humor having been wholly expunged in the official report. The head-note, which is certainly up to the standard desired by brother Seymour D. Thompson, is as follows: —

1. DOGS ARE NEITHER "PERSONS" NOR "CONSTABLES." — A statute permitting "any person," and requiring "police officers," to kill unlicensed dogs, does not justify one dog in killing another of his own motion.

2. LICENSED DOGS. — Where a dog is known to be licensed, the loss of his collar does not deprive him of the protection of the statute, until a reasonable time is allowed his owner to discover the loss and make it good.

Opinion of the Court by MARSTON, J.

"The plaintiff in this case was engaged in the business of raising berries for market. His profits depended largely upon protecting the berries from naughty birds, who, having no moral or conscientious scruples or respect for plaintiff's interests, would sometimes descend, and without leave or license appropriate the berries to their own use. To prevent such high-handed dealings the plaintiff became the owner and possessor of a small, amiable, and intelligent dog, with valuable hunting qualities. This dog, when the birds attempted to steal or take the berries, would at once warn them of the danger they incurred; and they, upon seeing him approach, would immediately withdraw without waiting for the honor of a near acquaintance, so that not one of them would get a peck of the berries during the whole season.

"This dog had business everywhere around the plaintiff's premises, in watching and protecting them, bolting in and out of all the rat-holes, catching and killing the occupants if he could, but at the risk of soiling or losing his collars by the operation.

"There was a large, savage, and dangerous dog, a cross between a bull-dog and a mastiff, living near by the plaintiff's residence. This was a dog without an owner; he was permitted to live, and was taken care of on defendant's premises. Upon the first day of January, 1875, he went out making calls. The same day the plaintiff's little dog was out attending to his duties, pursuing or chasing a flock of snow-birds from off plaintiff's fields and berries, and while engaged in this laudable business, he followed the birds across the highway and into the field of a neighbor, where it does not appear there were any berries. While there, defendant's dog wilfully and maliciously attacked him, and with dangerous weapons, to wit, his teeth, so bit and injured the plaintiff's dog that his bark was shattered; he went home in a languishing condition, and languishing, upon the same day did die. Plaintiff thereupon sued defendant to recover damages for the irreparable loss which he had sustained.

"The defendant justified his dog in what he had done under the statute of 1873. Upon this branch of the case the court charged the jury as follows: —

"'By the law of 1873 then in force, the owner of dogs was required to have a license running from the 1st of April of each year to the 1st of April of the following year; and also to cause such dog to wear a collar around his neck during the life of the license and no longer; and it is made lawful for any person, and also the duty of certain officers, to kill any and all dogs going at large and not licensed and collared according to the provisions of this act. If you find as a matter of fact that the plaintiff's dog was not licensed and was not collared within the law, the collar

being marked with the name of the owner and number of the license, he could not recover the value of his dog, even if killed by the defendant's dog, provided his dog was running at large. He could not be considered running at large if he was on his owner's premises. But if you find the plaintiff's dog was at large, outside the plaintiff's premises, plaintiff cannot recover, even if his dog was killed by the defendant's dog.'

"Plaintiff, by his counsel, then asked said judge to charge the jury that if they find the dog had been properly licensed and a proper collar had been placed upon his neck, and by accident the collar had been lost off the dog's neck, and the plaintiff had had no opportunity to replace it, between the time of its loss and the killing of the dog; that the plaintiff was equally protected by the law as if the dog had the collar on. But the said judge refused to so instruct the jury, to which refusal and ruling of said court the plaintiff by his counsel did then and there except.

"The statute referred to required the owner of a dog to procure a license therefor, and to cause the dog to wear a collar around its neck, and provided that any one keeping a dog contrary to the provisions of the act should be liable to a penalty. The sixth section of that act reads as follows: —

"'Any person may, and it shall be the duty of every police officer and constable of any township or city, to kill any and all dogs going at large, and not licensed and collared according to the provisions of this act, and such officers shall be entitled to receive from the township or city treasury, for each dog, etc., killed by them —'

"Defendant claimed that his dog, in killing plaintiff's dog, acted under this section.

"It does not clearly appear from the record what the particular part of this section defendant's dog was or claimed to be acting under when he committed the deadly act. He seems to have considered it his duty to kill plaintiff's dog. Yet it is not clear from the record, and I am not satisfied we have any right to presume that he, defendant's dog, was either *de jure* or *de facto* a police officer or constable, and if he held neither of these positions at the time, then clearly it was not his duty to act in so summary and severe a manner. Neither does it appear that defendant's dog ever applied to the township or city treasury and received therefrom the compensation to which such officers are entitled in like cases, so that it cannot be said that the proper public authorities ever, by paying him, ratified the act. We are satisfied he does not come under the other clause which permits "any person" to kill such animals, and shall therefore dismiss that branch of the case from further consideration.

"Neither are we satisfied that defendant's dog had sufficient intelligence or discretion to act in an official capacity in such cases. As an officer, if he claimed to act in that capacity, he only had the right to kill plaintiff's dog in case he found him "going at large, not licensed and collared," according to the act. Now, whether defendant's dog had examined the records and ascertained from such examination that plaintiff's dog was not licensed, or whether he stopped and deliberately examined plaintiff's dog to see if he had a collar on, does not appear. Nor does it clearly appear that he killed him for the sole reason that he was not licensed and collared. Yet he had no right to kill him for any other reason. The intention, therefore, with which he committed the act becomes material. The plaintiff's dog may not have had any collar on, and yet if defendant's dog did not kill him because in not wearing a collar he was violating the provisions of the act, but because of some spite or malice entertained towards him, then it is clear he could not afterwards come in and justify under this statute. If for the sole reason that the plaintiff's dog was not licensed or collared, defendant's dog, in the performance of his official duty, killed him, then, were it not for other considerations, his owner or possessor might be held not liable. If, however, there was not that cool-

ness and deliberation which the law would require, but the act was prompted by or sprang from a wicked, depraved, and malignant disposition, then the act could not be justified.

"Blackstone, in speaking of justifiable homicide, in carrying out the judgment of a court, says:—

"'Also, such judgment, when legal, must be executed by the proper officer or his appointed deputy, for no one else is *required* by law to do it, which requisition it is that justifies the homicide. If another person doth it of his own hand, it is held to be murder, even though it be the judge himself. It must further be executed *servato juris ordine;* it must pursue the sentence of the court. If an officer beheads one who is adjudged to be hanged, or *vice versa*, it is murder, for he is merely ministerial, and is only justified when he acts under the authority and compulsion of the law; but if a sheriff changes one kind of death for another, he then acts by his own authority, which extends not to the commission of homicide, and besides, this license might occasion a very great abuse of his power.' 4 Blackstone, 178.

"It is very clear, therefore, from the high authority quoted, that all such highly penal provisions of the law must be strictly construed; that where a statute authorizes a particular officer to perform an act, another cannot do it and justify under the authority given; that where an officer or a person is under certain circumstances given authority to take life, a dog cannot of his own head do the act and afterwards his owner say: 'Because an officer under the circumstances could have done the act, my dog had like authority.' See also Bishop *v.* Fahay, 15 Gray, 61; Kerr *v.* Seaver, 11 Allen, 151.

"It is also a circumstance to be noted that there is nothing in the case tending to show that defendant's dog was licensed and had on a collar at the time he committed the act. If not, he was equally in the wrong and liable to be killed, and we do not see what right he had to punish others no more guilty than he was himself.

"Nor do we think that the owner, in any case, would be prevented from recovering if his dog was licensed and he had kept a collar upon him, in a case where the collar without his knowledge in some way either accidentally or otherwise got off, until at least a reasonable time thereafter had elapsed to enable him to discover the fact and replace it. It will be noticed that while the statute requires the dog to wear a collar, it does not prescribe the kind. If the plaintiff had put a paper collar upon his dog, experience teaches us that it would become soiled, and that frequent changes would become absolutely necessary. If, under such circumstances, plaintiff had taken off the old in order to put on a clean collar, and while in the act defendant's dog, standing by and seeing the old collar taken off, could he at once before plaintiff had time to replace it bounce upon and kill plaintiff's dog? We think not. Or if plaintiff's dog in the pursuit of rats had torn or destroyed his collar, could the defendant's dog, watching for such an opportunity, take advantage of the circumstance and kill him before his owner had an opportunity to discover the fact and replace it? We are of the opinion that no such severe and deadly construction can be given to the statute.

"We have deliberately and gravely considered these important questions, and are satisfied that the court erred in giving and refusing the charges above quoted. Judgment reversed with costs, and a new trial ordered."

THE SUPREME COURT OF CONNECTICUT.

By Leonard M. Daggett.

THE Supreme Court of Errors of the State of Connecticut, as at present constituted, may be described in few words. There are a Chief-Justice and four associate judges, all of whom are also Judges of the Superior Court, and like them appointed by the Legislature for terms of eight years upon nomination by the Governor. By constitutional provision the judges are disqualified to act after reaching the age of seventy years, and are removable by impeachment or by the Governor upon address of two thirds of each house of the Legislature. Their salaries are $4,500 a year for the Chief-Justice and $4,000 for each associate judge. The Superior Court, of thirteen circuit judges including those who are members of the Supreme Court, has original jurisdiction of all important causes, civil and criminal, holding stated sessions in each county, and transacting the larger part of the judicial business in the State. Until 1889 the judges of the Supreme Court performed circuit duty as judges of the Superior Court, but are now excused unlessthe public business shall demand such service. The State is divided into Judicial Districts, in each of which terms of the Supreme Court are held at stated times.

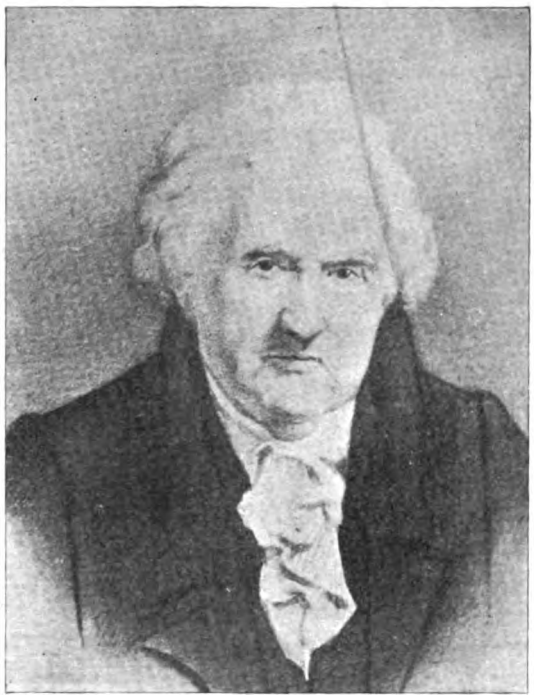
An outline history of the court system from the beginning will show where the appellate jurisdiction has lain, and how the Supreme Court as an institution has been developed.

Connecticut's first "Corte" met in the very infancy of the Colony, in the year 1636. The magistrates of whom it was composed were legislators; but, having the supreme power, they both made and administered the law. In 1638 an inferior court without legislative power was organized, called the Particular Court. Its jurisdiction, as afterwards extended, included all causes, civil and criminal, with a right of appeal to the General Court, the legislative body. The judges were Magistrates; that is, members of the upper house of the Legislature. The system of the New Haven Colony, from its foundation in 1638 until its union with Connecticut under the Charter of Charles II. in 1665, was somewhat different, but not radically so. In fact, the exercise of judicial power by the Legislature as the highest court and by its members as judges of the inferior courts, was common in the New England Colonies, and remained a feature of the Connecticut system until 1784.

The union of the Connecticut and New Haven Colonies in 1665 made a new organization of the courts necessary. As then established, the system remained unaltered in its prominent features until 1784, over a century.

The Colony was divided into four counties, afterwards six, in each of which sat County Courts, with juries, invested with jurisdiction of all civil causes of more than trivial importance and of minor criminal offences. There were, of course, magistrates with local jurisdiction of trivial causes. A State Court, called the Court of Assistants, holding two sessions yearly with a jury, exercised original jurisdiction of capital offences, but of civil causes by appeal only. This court was composed of the Governor, or Deputy Governor, and at least six or seven Assistants, — that is, members of the upper house. In 1711 it was succeeded by the Superior Court, composed of the Governor (afterwards the Deputy Governor), who presided, and four associate judges, which held two sessions a year in each county. These judges were appointed annually by the Legislature, and were, with very rare exceptions, members of the upper house. The Legislature held two sessions yearly. During the

whole of this time, until 1784, although the Superior Court and its predecessor had appellate jurisdiction of civil causes, and was therefore a court for the correction of errors, yet the Legislature was the court of final resort to which many cases were carried from the lower courts. The Legislature exercised original jurisdiction also in all causes at law and in equity, especially the latter. Jurisdiction in equity was, however, gradually transferred to the courts.



STEPHEN M. MITCHELL.

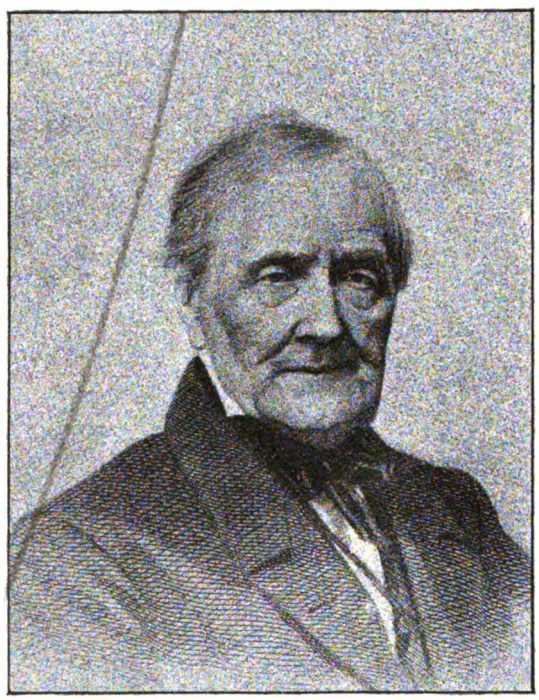
Under the early practice in Connecticut, a party defeated in the trial of his cause, and desiring to obtain the correction of any supposed error, might have his action of review, or take an appeal, or bring a writ of error. The action of review was one by which the original cause was tried a second time in the same court. The appeal was the trial of the action a second time, but in a higher court. The writ of error, as now, was an action brought in the higher court for the correction of an error appearing on the record of the case, and so put in issue questions of law only. The action of review was especially frequent, but the privilege was so often abused that it was much restricted by the Legislature, and finally abolished. As a substitute it was provided that a new trial might be granted by the court for certain reasons.

In conformity with this practice, the revisory action of the Legislature as a court for the correction of errors might be invoked in two ways, — by an appeal from the Court of Assistants or the Superior Court, and by a writ of error. The customary method at first was by an appeal; but a provision made in 1697 prohibiting the appeal of any case which had already been appealed from the County Courts to the Court of Assistants, since the latter court had no original jurisdiction in civil causes, compelled parties to seek their relief in the Legislature by writs of error. In 1719 a commission was temporarily constituted to hear and determine all writs of error brought to the Legislature,— the first significant step toward the transfer of this class of cases to an independent tribunal. In addition to the appeal and writ of error application could be made to the Legislature to obtain new trials in the lower courts, but procedure on such petitions was not strictly revisory.

The democratic character of the Connecticut government and institutions, and its independence of the Crown are familiar facts of history. The only interruption to orderly development was the brief period of two years when Sir Edmund Andros administered the government, after which Connecticut easily returned to her accustomed political life. The common law of England was not recog nized as binding upon the people of the Colony. The right of final appeal to the King or Queen in Council, which was exercised in a few instances, was regarded by the Legislature with jealousy, and attempts by that means to enforce the common law of England were unsuccessful.

Both Legislature and judges dispensed justice informally, according to the requirements of individual cases. The Legislature, especially, acted with such informality and gave relief in such various forms that it is perhaps wrong to call its procedure a system. But after the separation of the two houses in 1699, their action, both legislative and judicial, was much more formal, although original jurisdiction of causes was exercised by the Legislature even until the adoption of the Constitution in 1818.

About the middle of the eighteenth century there was a great change in legal practice. A new generation of advocates, educated for their work, elevated the law into a science and its practice into a profession. Consequent upon this new development, and in sympathy with the other changes of that formative period, radical changes were made in the court system in 1784.



THOMAS S. WILLIAMS.

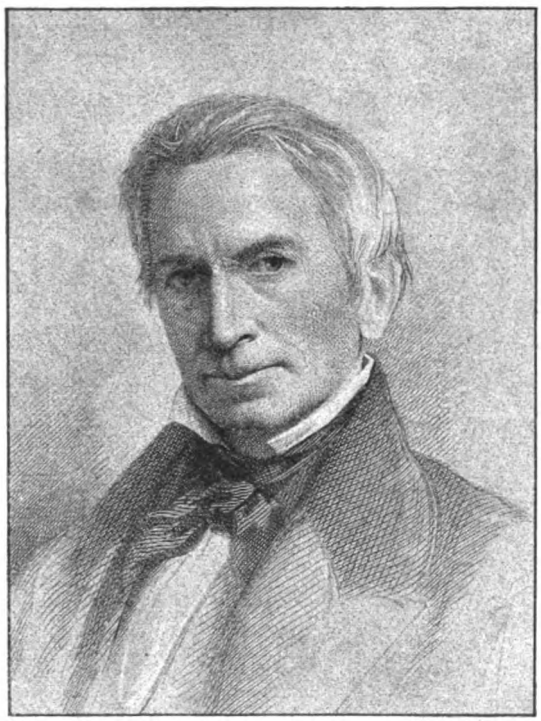
The exercise of legislative and judicial powers by the same individual was declared to be inconsistent. The Lieutenant-Governor and Council, or upper house, were constituted a Supreme Court of Errors, the *dernier ressort* in all matters of law or equity brought by way of error from a judgment or decree of the Superior Court. The Governor was afterwards added, and made presiding judge. It was also required that the reasons of the judges, upon questions of law, in both the Supreme and Superior Courts, should be reduced to writing and filed for record. The jurisdiction of the Superior Court was left unchanged.

The Council, which retained the powers of a Supreme Court until 1807, contained many distinguished judges and statesmen. The presiding judges (*ex officio*) were Samuel Huntington, Oliver Wolcott, and Jonathan Trumbull (2d). Among their associates were William Edmond, Oliver Ellsworth, Chauncey and Elizur Goodrich, Matthew Griswold, James and William Hillhouse, Stephen T. Hosmer, Benjamin Huntington, Jonathan Ingersoll, Richard Law, Stephen M. Mitchell, William Pitkin, Tapping Reeve, Jesse Root, Roger Sherman, Nathaniel Smith, David Daggett, and Zephaniah Swift. During the fierce political war between the Federalists and Jeffersonians, the Council was a stronghold of Federalism. The method by which its members were selected tended naturally to continue the same men in office, and so materially aided the Federalists in maintaining their power. It was therefore the object of many bitter attacks. It was pointed out that its members as legislators made the laws and appointed the judges, and as lawyers sought the construction and application of those same laws before those very judges, and often before their own body as an appellate court.

The objection, touching vital points, was almost a prediction of approaching changes. In 1803 the appearance of members of the Council at its bar was prohibited. David

Daggett, of New Haven, and Nathaniel Smith, of Woodbury, two of the ablest and most popular lawyers of the day, thereupon resigned from the Council. It is interesting to note that in the reports the names of one or both of them as attorney appear in sixty-five of the ninety-two cases next following their resignation.

In 1801 another judge was added to the Superior Court, making six in all, and the Court divided into two divisions, three judges in each, for circuit duty. The summer session was by the full court, once in each county, for the determination of issues of law and equity arising on demurrers, special verdicts, writs of error, petitions for new trials, and cases reserved by the judges on the circuit for the advice of the full bench. The Superior Court, being a compact body of experienced trial judges, with such an elastic system for the determination of questions of law, was extremely efficient. The Council, with its abundance of legal talent, was an able tribunal; but in 1807 its judicial power was transferred to the full bench of the Superior Court. The number of judges was at the same time increased to nine.



HENRY M. WAITE.

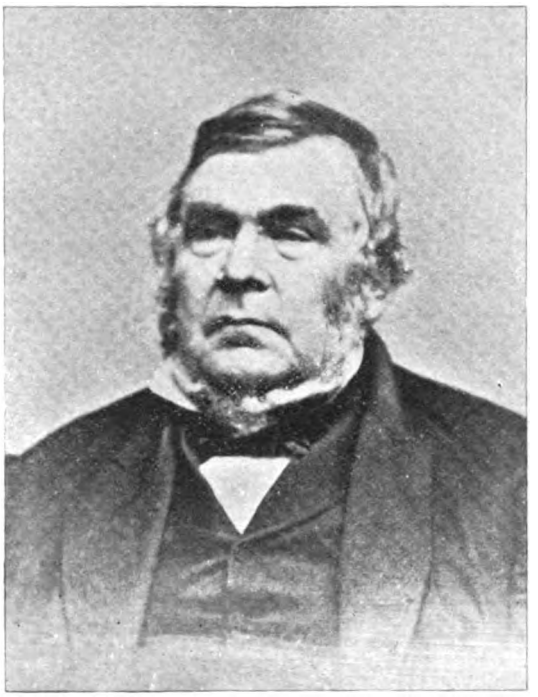
By the Constitution of 1818 the number of judges was reduced to five, circuit duty to be performed by them singly. Since that time, although it has several times been necessary to increase the number of trial judges, the judges of the Supreme Court have remained five in number, — excepting some slight and temporary changes. The Constitution made the tenure that of good behavior, which was in 1856 changed to a term of eight years, and has so remained. In 1855 the County Courts were abolished, and the Superior Court given original jurisdiction of all civil causes of importance.

From 1807, when the powers of a Supreme Court were transferred from the Council to the judges of the Superior Court, until the re-organization of the court under the Constitution in 1819, is in some respects the most interesting period in the court's history. Not only was the whole judicial power for the first time confided to one competent tribunal, but the Federalists, with their proud record of patriotic service and their old-fashioned ideas of the dignity of official station, put their best men into the court. It was an aristocratic body, whose members were never removed except by promotion.

During this period three Chief-Justices served, — Stephen M. Mitchell, Tapping Reeve, and Zephaniah Swift, — each of whom was at the time of his appointment the senior member of the court.

The story of Judge Mitchell's life is one of active devotion to public service, followed and rewarded by a happy and honored old age. His only home was in Wethersfield, where he was born in 1743 and died in 1835. After graduating at Yale and spending a short time there as tutor, he continued his legal studies, already begun, under the guidance of Jared

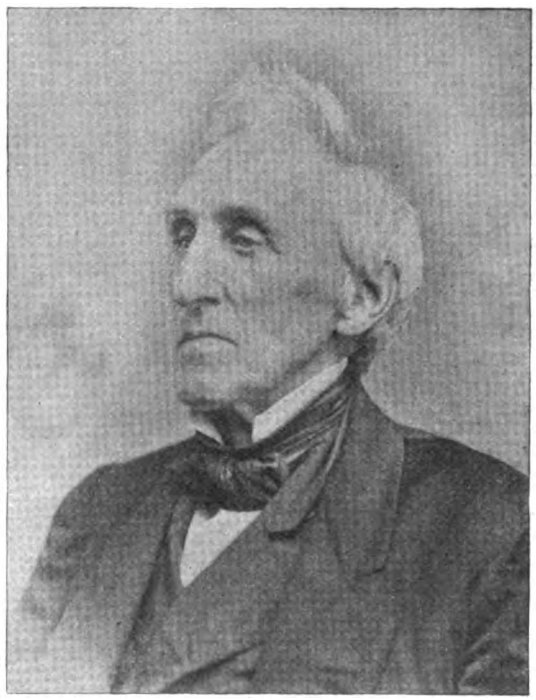
Ingersoll of Stamp-Act fame. He received from Yale the degree of LL.D. At the time of his appointment as Chief-Justice in 1807, he had been a member of the Superior Court since 1795, and had previously been for sixteen years Judge of the Hartford County Court, and for nine years an Assistant, and as such a Judge of the Supreme Court of Errors. He had also been for five years a member of the Federal Congress before the adoption of the Constitution, and for a short time a Senator succeeding Roger Sherman. Judge Mitchell was not a man of words. There is less of his writing in the reports than of any of the other Chief-Justices. Until 1809 the judges were not required to give their opinions severally, and Judge Mitchell even after that time was usually content with the expression of his concurrence or dissent. In his last year or two of service he gave several opinions, all of them admirable for their clear and practical reasoning. His circumstances made it unnecessary for him to pursue the law as a livelihood, and he is better known as a legislator than as a lawyer or judge; but he was nevertheless a distinguished judge. After his retirement in 1814, having reached the age of seventy years, he took no further active part in public affairs except as a member of the Constitutional Convention of 1818. As he was honored for the purity of his character and the noble qualities of his heart as well as for his public services, it cannot be out of place to quote a description written by his grandson Donald G. Mitchell, Esq., drawn from his domestic life. He recalls the "figure bent with the weight of over ninety years, abounding white hair, a face clean-shaven, an aquiline nose, and an eye that seemed to see everything. . . . I remember distinctly his long woollen hose, and his knee-buckles, and his oaken staff, on which he leaned heavily such times as he trudged away to his barns for a look at his cattle, or the fondling of some pet beast. His long coat — such as you see in pictures of Franklin — had huge lapels and pockets; these latter often bulging out with ears of corn, on the visitations I speak of, for the pampering of some favorite horse or pig." The photograph of which the picture on page 426 is a reproduction, was taken from a portrait in oil painted by Professor Morse, the inventor of the telegraph.



JOEL HINMAN.

After Judge Mitchell's retirement in 1814, Tapping Reeve, the senior member of the court in both age and service, was appointed Chief-Justice. But in 1815 he too became disqualified by age and retired. Unlike Judge Mitchell, Judge Reeve had devoted himself to the law not only as a business pursuit but as a study, and had but little experience of public life outside of his judicial career. He graduated at Princeton, served there four years as tutor, then came to Litchfield, where he was admitted to the bar in 1772. His practice was very large. His eloquence was at times marvellous, and at such times his language of remarkable purity and force. But usually he was careless of speech, though al-

ways reasoning forcibly and originally, — one of his students who was a constant listener in court has neatly described his argument as a "*huddle of ideas.*" His treatise on the Domestic Relations ranks him as one of the most learned of our early law-writers. The reports contain many of his opinions; for his pen was ready, as had been his tongue. One very remarkable incident of his judicial career was the fact that owing to the failure of his voice he did not speak above a whisper for several years, even in charging the jury. The foundation of the celebrated Litchfield Law School, where he and Judge Gould delivered their famous lectures for many years, was his proudest achievement. None of his biographers neglects to speak of his rare domestic qualities.



THOMAS B. BUTLER.

Zephaniah Swift, who became Chief-Justice in 1815, is familiar by name to all lawyers as the author of "Swift's Digest," the inspired commentary on Connecticut law. At the time of his appointment as Chief-Justice he had been for fourteen years a judge of the Superior Court, had served in the State Legislature and in Congress, and had been in France as Secretary of Legation with Oliver Ellsworth. His entrance into public life was a stormy one. Although a Federalist, and a stanch one, he was yet an open enemy of the Church Establishment. Ever ready with his tongue and pen, he tilted frequently with the Congregational clergymen of his neighborhood. These reverend gentlemen and the friends of the Establishment were outraged by his election to the State Legislature in 1787 and afterwards. He was nevertheless repeatedly elected. In one of his battles with the ecclesiastics, we are told by one historian, he was called by a certain divine "destitute of delicacy, decency, good manners, sound judgment, honesty, manhood, and humanity; a poltroon, a cat's paw, the infamous tool of a party, a partisan, a political weathercock, and a ragamuffin." His bold thought and vigorous expression can be seen in his written opinions; but a glance at his "System," a predecessor of the "Digest" published in 1795, containing his excellent history and fearless criticism of Connecticut institutions and laws, gives a better idea of his power. During the four years of his service as Chief-Justice it was his uniform practice to give the leading opinion of every case, even when the following opinions of the other judges show him to have been in a minority. After his retirement, which occurred in 1819, when his party lost its power, he assisted in the revision of the statute law of the State and published his "Digest." He died in 1823 at the age of 64.

The associates of these first three Chief-Justices, though all honored by the affectionate regard of Connecticut lawyers, can be noticed here but briefly. Nathaniel Smith, of Woodbury, was one of the most powerful of them, — a famous lawyer whose law was a sturdy and practical logic, and

whose peculiar physical and mental characteristics made him tremendous to his adversaries. John Trumbull was another, the master of *belles-lettres*, author of "McFingal," who after his elevation to the bench in 1801 devoted himself to his judicial work for eighteen years. Simeon Baldwin and Calvin Goddard, each of whom had been in Congress, were distinguished men and judges. Roger Griswold, John Cotton Smith, and Jonathan Ingersoll were all taken from the bench for service in the executive offices. James Gould was a finished scholar and one of our most learned judges. He was author of a work on Pleading, and was associated with Tapping Reeve in the conduct of the Litchfield Law School.

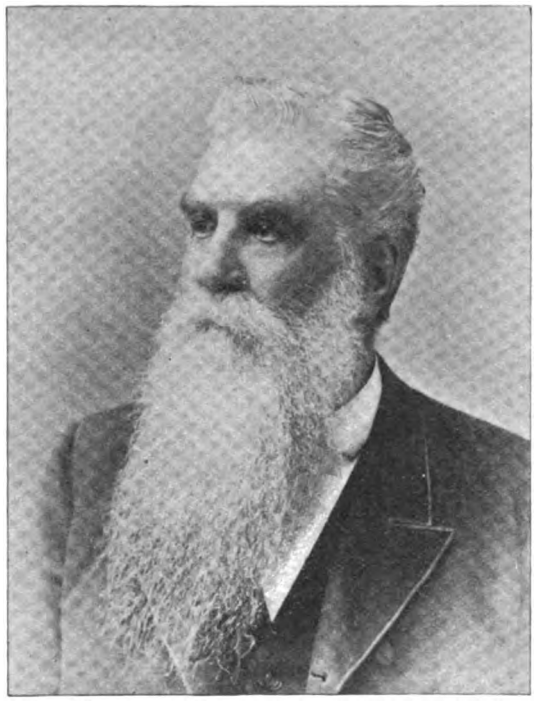
ORIGEN S. SEYMOUR.

The Toleration party, a combination of all the elements hostile to the Federalists and the Congregational Establishment, whose watchword was a new Constitution, carried the elections in the fall of 1817. The Constitution, which was adopted in the following year, reduced the number of the judges from nine to five. Owing to the excellence of the old court, and the fact that most of the lawyers, always a conservative class, were Federalists, there was much anxiety to see what kind of a court could be formed by the Tolerationists from their scant material. It was hoped that some of the old judges would be retained; but all were retired by the Tolerationist Legislatures, except Judges Hosmer and Brainard. Judge Brainard, though a Federalist, was retained owing to the support of some of the Tolerationists from his own county. He was a quiet, business-like judge, who had been a member of the court from 1807, and continued in service for ten years after the enforced retirement of his colleagues. The new judges were John T. Peters, Asa Chapman, and William Bristol, the last of whom had been conspicuous in the Constitutional Convention, and was afterwards United States Judge for the District of Connecticut.

Stephen Titus Hosmer was made Chief-Justice, serving until disqualified by age in 1833. He was a native of Middletown, a graduate of Yale in 1782, and had studied law with William Samuel Johnson and Oliver Ellsworth. His practice was large. Persistent and methodical application was the condition, if not the cause, of his success as a lawyer and judge. For several years after his appointment he followed the practice of his predecessor, Judge Swift, in giving the leading opinion in every case decided, so making the reports of those years a monument of his industry. An examination of his opinions shows a remarkable familiarity with the authorities, a reliance on precedent and on the more elementary principles, and a notable skill in the analysis of cases to permit of their application. As a trial judge he was quick to see the issues involved, and to indicate what his decision would be. In the higher court he was sometimes driven to a rather vigorous defence of his own rulings. It is said of him that he made a practice of

prescribing for members of the bar in the intervals of judicial business, giving them recipes for the cure of corns, for making liquid blacking, and the like.

Judge Peters remained a member of the court until after the retirement of Judge Hosmer. As he was a strong Episcopalian and Tolerationist, it was feared that his prejudices might lead him to sustain certain attacks made in the courts upon funds established for the support of some of the old Congregational societies. His decisions were favorable to the societies. He used to say that the Congregational pastor in one of the towns where he held court, who usually made the opening prayer, never invoked the Divinity for blessings on the judge until after his favorable decision of one of these church cases, after which the pastor regularly and most fervently prayed for "*thy sarvant the Judge.*"



JOHN D. PARK.

Strange to say, when the first vacancy occurred in the Supreme Court after the ouster of the Federalists, one of the best known and most faithful of them, David Daggett, of New Haven, received the election. This was in 1826. He was first named by the House, and elected only after a strong effort by the Senate to substitute the name of Samuel Church, an Episcopalian and conspicuous Constitution-maker. In 1833 Judge Daggett was appointed Chief-Justice, although Judge Peters was the senior, but retained his position less than two years, reaching the constitutional limit of age in 1834. He was a graduate of Yale in the class of 1783, and until the overthrow of his party in 1819 was in active public service. He served in the Council eight years while that body was the Supreme Court, and was a Senator at Washington from 1813 to 1819. His distinguished bearing, the warmth and energy of his feelings, his keenness of mind and readiness of speech, and his thorough understanding of men and their impulses, made him one of the most successful advocates of his day, and caused him to be almost constantly employed before the courts when not engaged in public duties. His persistency even to the time of his death, in 1851, in retaining not only the ideas but also the dress of the old-school Federalists, helped to make him a conspicuous man in the popular eye. The white top-boots were an important part of the dress; and for many years Judge Daggett's boots were in great demand among his younger acquaintances on occasions of public display, appearing frequently in the military parades. He was a professor in the Yale Law School, in which connection a brief sketch and portrait of him have already appeared in the columns of the "Green Bag."

Thomas Scott Williams, Judge Daggett's successor as Chief-Justice, had already been a member of the court for five years, and remained at its head thirteen years, until disqualified by age in 1847. After his graduation at Yale he studied at the Litchfield Law School, and afterwards with Judge Swift,

and settled at Hartford to practise in 1803. He was frequently sent to the State Legislature, and was for one term in Congress. A scholarly man, of quiet tastes, with a comprehensive mind, always practical and thoroughly in earnest, although without much grace or skill in speech, he was a successful lawyer, and one of the best judges Connecticut has had. He was especially honored for the unusual purity of his personal character.

The present Reporter of the court, Hon. John Hooker, in biographical sketches of Judges Williams and Storrs (afterwards Chief-Justice) contained in the appendix to volume 29 of the Connecticut Reports, has made a most admirable comparison of their judicial abilities and methods. By well-considered criticism he has brought out most clearly the peculiar excellence of each as a judge. We cannot do better than quote one or two passages: —

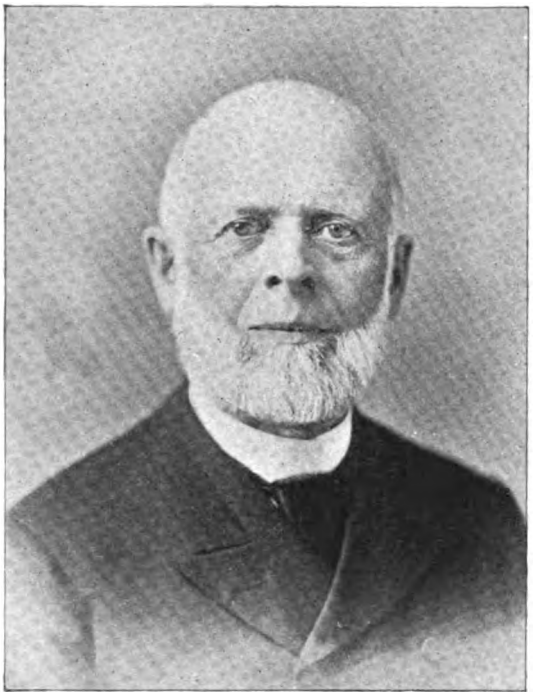
CHARLES B. ANDREWS.

"While belonging in common to the list of great chief-justices, they were yet very dissimilar. Indeed two men of superior intellects and of the same general tenor of life could hardly be found more unlike in the leading characteristics of their minds. That of Judge Storrs was polished in the highest degree by classical study and a life-long familiarity with the best English literature, and his utterances were always in the most elegant diction of the schools; the mind of Judge Williams had derived from his collegiate education little but discipline, and he generally spoke and wrote in a condensed and vigorous Saxon, with little regard to the balance of his sentences or the grace of his periods. Judge Storrs had a mind of extraordinary penetration, that could look down the deepest abysses of thought without agitation, and could explore the profoundest depths without losing its way; Judge Williams saw whatever he was looking after without seeming to search for it, the nearer and the remoter all coming before his mind alike, as obvious truths which it was a matter of course for everybody to see. The mind of Judge Storrs was stimulated and excited by the adventurous character of any mental exploration; that of Judge Williams found everything so plain before him that he was never excited by any consciousness of great intellectual effort. Judge Williams came to his conclusions by a single step and with something like intuition, and looked about afterwards for his reasons, and then less to satisfy his own mind than to convince his associates on the bench, or the public in his written opinions. Judge Storrs in seeking his results moved along down the line of a close logic, and reached his conclusions by a prior consideration of the reasons. I can hardly conceive anything more exquisite than the movements of his mind, as it was feeling its way along through a maze of perplexities, in the consultations of the judges, which it was my privilege to attend as reporter of the court."

The death of Judge Williams did not occur until 1861.

In 1833 Samuel Church, of Salisbury, who had been proposed for the bench twice before, was elected and from 1847 until his death in 1854 served as Chief-Justice. He was a prominent member of the Episcopal

Church, had been extremely active in bringing about the adoption of the Constitution, and had taken part in the convention, advocating there a permanent judiciary, free exercise of the elective franchise, the rights of the minority, and the separation of Church and State. At his graduation from Yale in 1803 he was known as a good student of *belles-lettres*. His work as a historical and political writer, as a lawyer and as a judge, was marked by the most thorough research and preparation and by unusual literary excellence. His opinions are spoken of by Hollister, the historian, as among the most lucid and learned in American law writings.



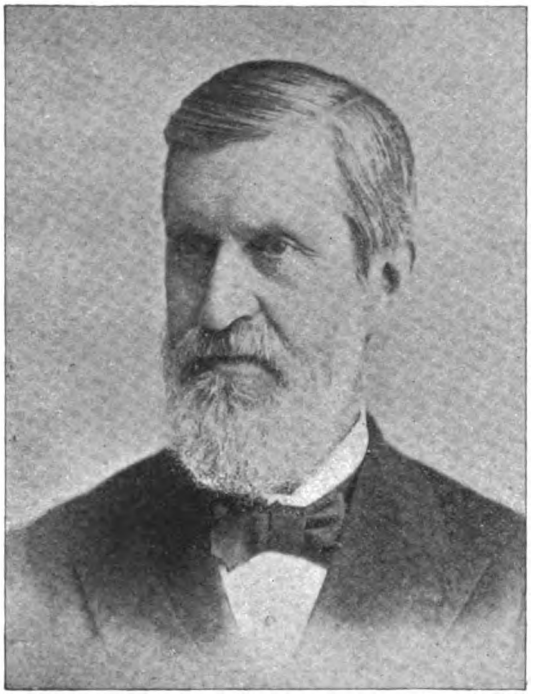
ELISHA CARPENTER.

Henry Matson Waite, his successor, served but three years as Chief-Justice, reaching the constitutional limit of age in 1857, but had been a member of the court for twenty years, making his whole term of service one of the longest in the history of the court. He graduated at Yale in 1809, and studied with Hon. Matthew Griswold and Gov. Roger Griswold. He was a native and lifelong resident of Lynn, with the exception of a year or two in early life, and frequently represented that town in the Legislature. In politics he had been a Federalist, and adhered faithfully to the principles of that party. The embarrassments caused by the war of 1812 and the consequent litigation, in which Judge Waite was actively engaged, started him in his long and successful professional career. As a judge he had a high reputation for integrity, for faithful and careful reasoning, and for firmness in maintaining his conclusions. He lived for twelve years after his retirement. Hon. Morrison R. Waite, late Chief-Justice of the United States Supreme Court, was his son.

William L. Storrs, Chief-Justice from 1857 until his death in 1861, graduated from Yale in 1814, was several times in the State Legislature and two terms in Congress. His judicial service, like Judge Waite's, was a long one, twenty-one years in all. He has already been noticed in the quotation in which he and Judge Williams are compared. It was said that his judicial ability was not so evident in the earlier years of his service, but seemed to be developed by experience. His portrait has already appeared in this journal among those of the former professors of the Yale Law School.

Even longer than the service of either Judge Waite or Judge Storrs was that of Joel Hinman. Appointed to the court when yet a young man, he remained a member twenty-eight years, until his death in 1870. He was Chief-Justice for the last nine years of his service. The bar still remember him with the liveliest interest, — a survival of the feeling with which he was regarded while upon the bench. His appointment to the court was a surprise to himself as well as to every one else. The late Alfred S. Blackman, a prominent lawyer of New Haven, and he were intimate friends, and often roomed together when upon the circuit. In 1842

they were both of them members of the Legislature, and room-mates as usual. Gov. Isaac Toucey declining to be a candidate for a vacancy which existed in the Supreme Court, Judge Blackman proposed his friend Hinman, in whom he thought he had discovered judicial qualities, and within two days had procured his election. Before that time he was hardly known to his profession. Judge Hinman was a peculiar man, — peculiar in physique, in personal characteristics, and in abilities. He was very large, of easy-going temperament, familiar in his intercourse with all, without polish in manners, learning, or speech, yet with a powerful "common-sense," and a deliberative, clear mind. The most implicit confidence, after a better acquaintance with him, was felt by all, not only in his integrity, but in his judgment. Advancement to judicial office caused no change in the simple and homely habits of his life, — he might still be seen by his neighbors driving his cows home from pasture in the early evening.

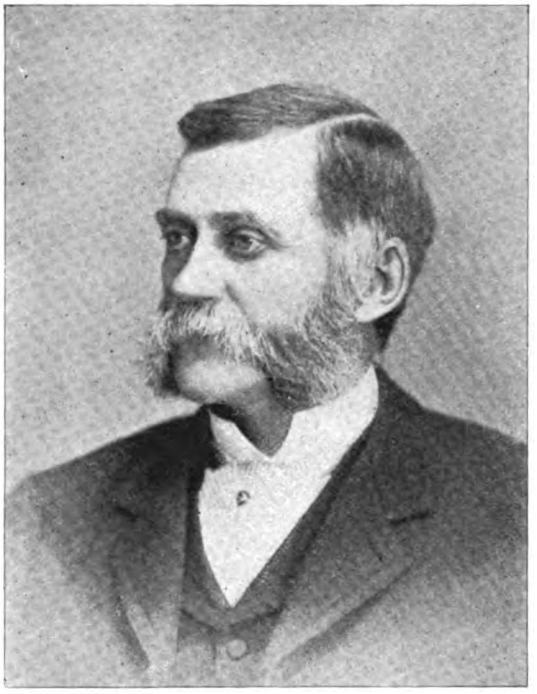


DWIGHT LOOMIS.

Thomas B. Butler was Chief-Justice from 1870 until his resignation in 1873, shortly before his death. He had been an associate judge for nine years. He prepared himself first for the practice of medicine, and settled in Norwalk about 1830, but after practising eight years gave up his profession for that of the law, finding that he was of too sensitive a temperament to endure the sight of suffering. He studied with Judge Clark Bissell, and practised in partnership successively with Thaddeus Betts and Senator Ferry. After serving several terms in the State Legislature, he was sent to Congress in 1849, where he was known as the "Lone Star from Connecticut," being the only Whig of the delegation. Judge Butler, in addition to his medical training, had a decided taste for natural science and mechanics. He was a successful agriculturist, the author of several inventions, wrote two works upon Meteorology, and is credited with being the first to suggest a national weather bureau. Keen and quick in mind, and impulsive in nature, he is said to have been disposed to prejudge cases in the early years of his judicial service. His written opinions show faithful and exhaustive research, and occasionally a tendency toward philosophical speculation.

Origen Storrs Seymour was a member of the court but four years, and Chief-Justice but one year before reaching the constitutional limit of age. He was a graduate of Yale in 1824. He had a long political career, being frequently a member of the State Legislature, — once even after his retirement from the Supreme Court; was two terms in Congress, and was twice the Democratic nominee for Governor, being each time defeated by Gov. Buckingham. In 1855, when under the new law additional Superior Court judges were chosen besides those designated for service upon the Supreme Court, in accordance with the understanding that the

new judges should be selected alternately from the two parties, he was chosen to the Superior Court to represent the Democratic minority. His term expiring in 1863, at a time when there was great excitement over the passage of the Federal Draft Act by Congress, the Republican Legislature refused to re-elect him, together with Judge Loren P. Waldo, fearing that they might be influenced by their political affiliations to prevent the enforcement of the law if the matter were presented to them for action upon writs of *habeas corpus*. The character, the life, and the reputation of Judge Seymour are convincing proof of the injustice of such a feeling, which was probably in great measure due to his relationship with Ex-Gov. Thomas H. Seymour, an outspoken opponent of the measure. The contest over the appointments was very bitter. Some slight atonement was made to Judge Seymour by his subsequent appointment to the Supreme Court by a Republican Legislature. He was a very successful judge, combining legal knowledge and abilities with rare personal qualities. Judge Seymour, after his retirement from the bench, took an active part in establishing the new system of legal procedure, acting as chairman of the commission which framed the law. His home was in Litchfield, where he died in 1881.



EDWARD W. SEYMOUR.

Hon. John D. Park, of Norwich, whose retirement on account of age occurred in April, 1889, has the record of an unusually long judicial service. He was born in Preston, April 26, 1819, received his education in the public schools and at the Wilbraham Academy, and for a time studied law in the office of Hon. LaFayette S. Foster, Connecticut's brilliant judge and senator. The best part of his life has been spent in judicial service, beginning in 1854 with his appointment to the bench of the County Court. Upon the dissolution of that court in 1855, he was appointed to the Superior Court, and in 1864 to the Supreme Court, where he remained twenty-five years. He was Chief-Justice for fifteen years, from 1874 to 1889. Upon his retirement, the Legislature created the office of State Referee, to which he was appointed, so that parties may still in certain classes of cases avail themselves of his judicial experience.

During eleven years of his service as Chief-Justice (1876–1887) the Supreme Court remained unchanged, his associates being Judges Carpenter, Pardee, Loomis, and Granger. The only similar instance in the court's history is the period of twelve years ending in 1854, when Judges Church, Waite, Storrs, and Hinman were together on the bench, four of the five judges. After such a period the retirement of Judge Park, and subsequently of Judge Pardee, the resignation of Judge Beardsley, and the appointment of three new members form a landmark in the court's history.

The present judges are Chief-Justice Charles B. Andrews and Associate Judges

Elisha Carpenter, Dwight Loomis, Edward W. Seymour, and David Torrance.

Chief-Justice Andrews was born Nov. 4, 1834, in Sunderland, Mass., graduated at Amherst in 1858, and practised law very successfully in Litchfield. In 1868 and 1869 he was a member of the State Senate, and in 1878 of the State House of Representatives, acting as Chairman of the Judiciary Committee of the House. In 1878, though but forty-three years of age, he was nominated for Governor by the Republicans and elected, his Democratic adversary being Gov. Richard D. Hubbard. He was appointed Judge of the Superior Court in 1882, and Chief-Justice of the Supreme Court in 1889.

DAVID TORRANCE.

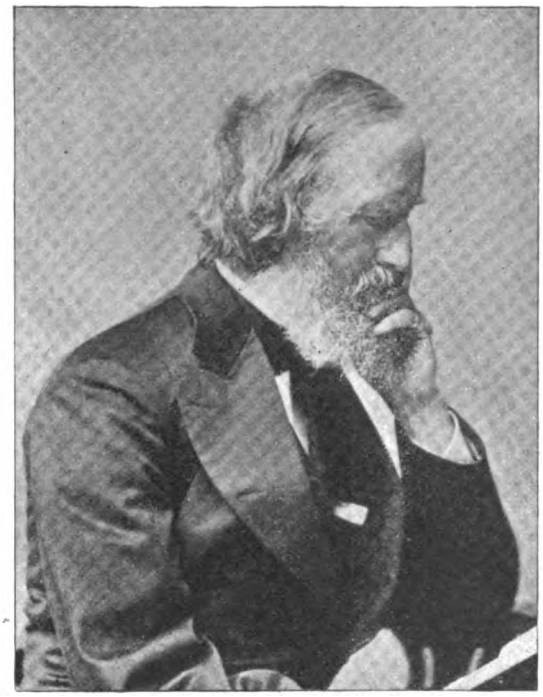
Judge Carpenter was born in Ashford, Windham County, Jan. 14, 1824. His education was obtained in the common schools and by his own efforts. He taught for several years, but in 1846 was admitted to the bar, having prepared himself for practice. He practised in Windham County until 1861, being prosecuting attorney seven years of the time, but now resides in Hartford. He was a member of the State Senate in 1857 and again in 1858, and of the lower house in 1861, where he acted as Chairman of the Committee on Military Affairs. In the same year, 1861, he was appointed to the Superior Court, and in 1865 to the Supreme Court. He has therefore been in high judicial office but little less than thirty years.

Judge Loomis was born July 27, 1821, at Columbia, in Tolland County, graduated at Amherst, and after a few years spent in teaching attended the Yale Law School, graduating in 1847. He settled at Rockville, which has ever since been his home. He was in 1851 elected on the Whig ticket to the State House of Representatives, and again in 1857 to the State Senate on the Republican ticket. In 1859 he was elected to Congress, and served there two terms. He was appointed to the Superior Court in 1864, and promoted to the Supreme Court in 1875. His present term will expire in 1891, when he will have also reached the constitutional limit of age.

Judge Seymour is a son of the late Chief-Justice Origen S. Seymour, was born in Litchfield Aug. 30, 1832, graduated at Yale in 1853, and practised law in Litchfield for several years, a portion of the time in partnership with his father, afterwards removing his office to Bridgeport. In 1859, 1860, 1870, and 1871, he represented Litchfield in the State House of Representatives, and in 1876 in the State Senate. He was a member of Congress for two terms, from 1883 to 1887. He was appointed to the Supreme Court in 1889.

Judge Torrance is a native of Scotland, born in Edinburgh March 30, 1840, but came to this country very early in life. He entered the army in 1862 as a member of the 18th Connecticut Regiment, but was promoted to act as Lieutenant-Colonel of the 29th Regiment (colored). After his return from

the war he settled in Birmingham, where he studied law with Col. William B. Wooster, with whom he practised after his admission to the bar in 1868. In 1871 and 1872 he represented the town of Derby in the State House of Representatives. In 1879 and 1880 he was Secretary of State, running on the Republican ticket which was headed by Judge Andrews. After serving for four years as Judge of the Court of Common Pleas for New Haven County, he was appointed to the Superior Court in 1885, and to the Supreme Court this present year.



JOHN HOOKER.

There are but few former members of the court now living. Hon. Charles J. McCurdy, of Lyme, studied law with Judge Swift, was admitted to the bar in 1819, and was a member of the court from 1863 to 1867, besides having performed many other public services. He is still living at his old home. Other former judges are Hon. James Phelps of Essex, Judge from 1873 to 1875, who has since served several terms in Congress, and is now a Judge of the Superior Court; Hon. John D. Park, already mentioned; Hon. Dwight W. Pardee, of Hartford, who has but recently retired, having been a judge of the Superior and Supreme courts for twenty-six years; Hon. Miles T. Granger, of Litchfield County, who was a member of the court for eleven years, and afterwards a member of Congress.

Among the associate judges not already mentioned there have been several distinguished for judicial or other public service. Governors Clark Bissell, William W. Ellsworth, and Henry Dutton; Senators Jabez W. Huntington and LaFayette S. Foster, were among them. Roger Minott Sherman and David C. Sanford should also be mentioned.

Connecticut has been very fortunate in having able and efficient Reporters. The first volume of reports printed in the United States was "Kirby's Reports," published in Litchfield in 1789, and containing the decisions of the Connecticut Superior Court from 1785 to 1788. It also contained some notes of decisions of the Supreme Court. The Reports subsequently published by Judge Jesse Root contained some of the earlier decisions of the Superior Court, — one of them decided in 1764. Hon. Thomas Day published the reports of cases decided between 1802 and 1853. Hon. John Hooker, the present Reporter, was appointed in January, 1858, and has already served more than thirty-two years, his work so far extending through thirty-three volumes of the Reports. At a comparatively early period of his life he declined the offer of a seat upon the bench; and the Legislature, in recognition of his abilities, made the salary of the office $4,000 during his tenure, to be but $3,000 thereafter. The obituary sketches of deceased members of the bar, contained in appendices to the official reports, are an interesting and valuable feature of his work.

Connecticut in early days earned fame as

the "Land of Steady Habits" largely by her practice of repeatedly re-electing faithful public officers. So far as the judicial office is concerned, that wise precedent is still followed. The figures are interesting. Until 1889, when two of the present new judges were appointed, since 1807, forty-one judges have served, the average time of service being a trifle over eleven years. In the same time thirteen chief-justices have served, making an average service of a little more than six years. But if we include their service as associate judges, owing to the practice of promoting the senior judge, we find their average time of judicial service to be but a trifle less than *sixteen years*.

The Connecticut Supreme Court has not the difficulty of an overcrowded docket to overcome, which in some States is a serious one. The comparatively small number of appealed cases is due to three facts, — the small size of the State; the excellent work done by the trial judges; the uniformity and consistency of decisions by the Supreme Court. The recent change by which the judges are relieved from the circuit duty formerly performed by them will give more time for appellate work, and the present system will probably meet the needs of the State for several years to come.

This change completes the development of the Supreme Court as an institution, in one of its aspects, in the course of which the jurisdiction has been gradually transferred from the Legislature to a tribunal especially constituted for its exercise. This is therefore a peculiarly favorable time for a review of its history, which can bring to a Connecticut lawyer nothing less than a profound satisfaction.

LAWYER AND CLERK.

A WOODEN-LEGGED BALLAD.

By H. M. Doak.

[*Response to the Toast "Taxing the Costs" at the Banquet of the Tennessee Bar Association, Lookout Mountain, Chattanooga, Tenn., July* 11, 1890.]

DEFENDANT was a gallant son of Mars,
A soldier maimed in many wars,
Who 'd garnered glory, cuts, and scars,
And a serviceable wooden leg, —
Not gold, like that of Kilmansegg,
Nor steel elastic, nor bounding cork,
Equal to Nature's handiwork, —
Only a well-worn oaken peg.

A greedy, sour-faced tapster mean,
To satisfy a landlord's lien,
Sued out a sort of writ e-leg-it,[1]
And to a justice's court he fetcht it,
And claimed his pitiful bill for board, —
This sour-faced, sordid, scurvy landlord.

John Doe, of certiorari fame,
Was lawyer for the soldier lame
Against the landlord's lamer claim,
And threatened to recoup[2] for waste[3]
Because he had the leg unbraced;
And snatching off the leg on-laced
Was waste of timber used for leg-bote[4] —
A common-law term explained in foot-note
(Don't "bote" for "boot" mistake, I beg;
The boot was on the other leg) —
Or, as it were, for waggin'-bote;
The only way he had to wag,
Wi' scrippage and scrip, baggage and bag.

Writs issued, too, from the soldier's side
Before the case was called and tried.

The ancient writ of habeas corpus
Could n't be served on half the carcass;
At least such writ would not be good
To reach the part that was made of wood.
The writ de homine rep-leg-iando [5]
Would for the wooden leg o' the man do;
And, for the tapster, capias in withernam [6]
Was the kind o' writ that withered him;
And so the cause came rectus in curia
For trial of both parties' injuria.

The lawyer argued the case to the squire,
And said he 'd throw his books in the fire,
If he could n't show by all authorities.
About the queer case at bar — the res —
His client's leg was ultra vires;
Surely the plaintiff could not make a raise
By levy on him of writ of fi. fa.,[7]
Or take him, in whole or in part, by ca. sa.[8]
The leg was part of him, not his'n;
The debtor can't be put in prison;
Who can't th' integral man restrain,
A fortiori, can't the half detain.

The squire decided the cause for the leg;
But that the wooden limb, detached,
Was by the limb o' the law up-snatched —
The lawyer's lien for his fee 'd attached.

Severed [9] — no longer person, you see —
The limb was personal property.

The case "went up," as the lawyers say;
The soldier's "gone up" too, — far away,
Where wings are used in lieu of legs,
Where not even Miss Kilmanseggs
Stump jasper-laid streets on golden legs.

The clerk was then receiver made,
And rented out that wooden leg;

And as the rents were duly paid,
Allowances were each term made;
Became trustee and made reports,
Term after term, to courts on courts.
And long before the appeal was tried,
The landlord sickened, grew worse, and died;
His lawsuit, however, still survived,
And duly was the cause revived.

At last the leg was ordered sold;
And the clerk — as clerk, receiver, trustee —
With ref'rence, account, report, decree,
With costs, expenses, and fee on fee —
Allowed and due — completely up-ate
The corpus — or limb — o' the trust estate;
Which shows that the day 's exceeding cold
When clerks are left wi' the bag to hold.

The case is somewhere pending still;
And never will be ending, till
The court, for the clerk, on ref'rence, decrees,
From the lawyer's estate, a balance of fees.

The squire who sat when the cause was tried
Has departed this life; all the lawyers have died;
The landlord drank 's own liquor, — he 's dead;
The soldier 's gone to the realm where, it 's said,
They 've dispensed wi' saltpetre and villanous lead.

The clerk, of all of the many lives
In being at the time this suit was brought,
Still lives and prospers; and, I 'm told, he bought
The leg at the sale, — and the leg survives.

LEG-NOTES.

Wooden foot-notes, explanatory of the text, cut by the author from the stump to fit a wooden leg. For the longer of these notes the author is indebted to Mr. Story's law books.

[1] "E-leg-it," the common-law writ of *elegit*, which the debtor might choose instead of *fiery facias*. The judgment debtor might also have a writ of extent, wherewith to put the debtor upon the rack, to the extent of his income.

[2] "Recoup," where the defendant may "cut back" or "set off" his damages against those laid by the plaintiff. In this case both parties seem to have had a bad case of *damnum absque injuria*, which is where

a man knows he is hurt, but the law does not. The common-law maxim, "A smart feels better when it quits hurting," applies to cases of *damnum absque injuria*. The application of this profound maxim of Justinian, wisely transplanted into the common law, and of the *damnum* with the *que* part left off, is the only remedy the injured party has in *damnum absque injuria* cases. When a man runs against another's open gate and is hurt, it is *damnum absque injuria*, because, the court said in a leading case, the gate was made to open and it had not travelled out of its usual path of duty, although the plaintiff was within his.

[3] "Waste" is where a tenant for life, or a term of years, injures the reversion by cutting off timber. It is the same if he snatch it off unlawfully as in this case. It was held not to be waste in a leading English case, where the stump was taken off unskilfully by a surgeon, although the court said that it would have been had he unskilfully removed the wooden leg. This case rested chiefly upon the maxim *de minimis lex non curat*, because, although the law takes care of the tree, it cannot undertake to look after the stumps.

[4] "Leg-bote." The tenant, at common law, was allowed to commit waste, or use certain timber for certain purposes, which was thus called "fire-bote," "plough-bote," etc. Some curious distinctions were made at common law. Thus the right of leg-bail belonged to every Briton but him who had lost a leg. In "Fleta" it is said that no one-legged man can have leg bail at common law, because it can avail him nothing and the common law is guilty of no absurdities. Blackstone re-states this as the law. But the tenant was allowed "leg-bote," and the vassal who had lost a leg in his lord's service was entitled to use timber for wooden legs, and the right of leg-bail appertained to wooden-legged persons.

[5] "Rep-leg-iando." The writ *de homine replegiando* was used instead of *habeas corpus* in certain cases.

[6] "Capias in withernam" was issued in certain cases to fetch in one who unlawfully detained another. It was used instead of *habeas corpus*. They had more writs in those days than the Romans had gods. They searched the land like a fine-toothed comb.

[7] "Fi. fa." Short for *fieri facias*, or fiery-fetch-it, a writ of execution at common law.

[8] "Ca. sa.," common-law writ of *capias ad satisfaciendum*, by which the person of the debtor could be reached.

[9] "Severed," etc. A thing may be realty to-day, personalty to-morrow: thus growing grain is realty, and passes with the estate; severed, it becomes personalty. A wooden leg is personality when attached and walking off; when detached, it becomes personalty. It is never realty. Lord Coke said that this was because the wooden legee can never realize it, can't realize on it, and can scarcely stand on it. The learned lawyer said in this connection that it is better to stand on one good hand at poker than to stand on two legs when one of them is a wooden leg.

With some exceptions the principles of severance which govern in other cases have been applied, with some important exceptions, to wooden legs. In an action by the College of Surgeons against a body-snatcher, it was held that the wooden leg did not pass with the remainder of the body, although it was detached by the defendant before delivery of the body.

When a man broke another's wooden leg breaking a man's head with it, held not to be waste, although he snatched it from the stump, but a personal injury. The decision was affirmed in the House of Lords. The Lord Chancellor said that the British law is so jealous of the rights of persons that it cannot even consider a wooden leg as subject to the laws of property. See authorities on Waste and Ferne on Contingent Remainders in the chapter on the remainder-man.

As to whether wooden legs are a part of the person, personal property, or mixed in character, the American authorities are in a state of hopeless conflict. This subject, along with that of divorces, seems to call for national legislation. In an action growing out of a Chicago divorce suit, the court held that a woman who had married a man with a wooden leg was not lawfully divorced, because the decree failed to divorce her from the wooden leg as well as from the rest of the man. In a well considered case the Supreme Court of Illinois, reviewing the authorities, overruled the former case, although, out of abundant caution, the court allowed a decree *nunc pro tunc* to be entered, granting an absolute divorce. In a recent North Carolina case a man who chopped off another's wooden leg was held guilty of mayhem, and the Supreme Court of Arkansas unanimously held a man who had kicked another upon the wooden shin guilty of assault and battery.

In a case under a statute of Connecticut, which allows the heirs to sue for injuries to the person of a deceased ancestor, the court was doubtful whether a right of action could descend through a wooden leg on account of a failure of heritable blood. The injury in that case occurred in the winter, when the sap was down. The cause was dismissed; but afterwards an action of trespass *quare clausum fregit* was maintained

upon the same state of facts, because it was shown that the defendant had torn the deceased's breeches-leg, jerking off his wooden leg.

See also the case of Smith against Pennsylvania Railway, which was an action for damages to plaintiff, distress of mind, bodily pain, doctor's bills and expenses, and loss of time, incurred in curing an injury to a wooden leg, cut off by the defendant, while caught in the frog of a switch. Although it was shown that defendant's engineer was going at an unusual rate of speed, and that defendant's switches were constructed without the slightest reference to our wooden-legged citizens, it was held to be *damnum absque injuria*. The principles of this case have not been accepted in this country or in England.

In a Kentucky case it was held that the maxim *nemo est hæres viventis* does not apply to wooden legs. The court held that one might be heir of a wooden leg, although the rest of the man were living. The wooden leg in that case was a cork leg, and the single dissenting justice applied the maxim, *qui hæret in literis, hæret in cortice*, to the majority opinion. It is believed that a question of public policy had much weight in bringing the court to this opinion. The vendetta has taken such deep root in Kentucky that it is beginning to be feared that property cannot descend at all, unless through the wooden legs.

The Supreme Court of the United States, construing the law of Virginia, in a case involving an entailed estate, held that a wooden leg can only be a tenant in tail, as a tenant-tail-after-possibility-of-issue-extinct.

The Supreme Court of Tennessee has decided that the rule in Shelley's case does not apply to wooden-leg estates. The court laid some stress on the fact that the General Assembly of Tennessee once took the rule in Mr. Shelley's case for some sort of dog-tax law in disguise, and repealed it. See Code of 1858, § 2008.

CURIOUS WILLS.

W. D. FOSTER, the dramatic company promoter, would have no woman present at his funeral, says the "London Standard." If his wife survived him, he would be cremated; otherwise he would be buried in the ordinary way. One of the strangest cases occurred in France a few months ago. M. Travers, declaring the French to be "a nation of dastards and fools," left his fortune to the poor of London, and further ordered that his body should be launched into the sea a mile from the English coast. An attempt was made to declare this unpatriotic Frenchman insane, but the Court of Appeals upheld the will.

Frenchmen always have been more inclined to frivolity than we are in the disposal of their estates. One bright specimen actually provided that a new cooking recipe should be pasted on his tomb each day. There was more force, however, in the frivolity of the French lawyer who left $10,000 to a local mad-house, declaring that it was simply an act of restitution to his clients. For sheer levity no will of the last two years compares with that of the rich American, a cousin of the Vanderbilts, who left every dollar he possessed to a girl he used to watch in the theatre. He did not even know her, and the only reason he gave for the strange freak was that her turned-up nose amused him.

Another American gentleman, Horatio G. Onderdonk, has of late enjoyed an elaborate joke at the expense of his heirs. There was a good estate and many expectant relatives; but deep was their dismay when it was found that no one could benefit under the will who did not reach an almost unattainable exaltation of life. No one could so benefit who was an idler, a sluggard, a profligate, a drunkard, or a gambler. The use of liquor and tobacco would deprive a legatee of his portion. He was also debarred from entering any bar-room or porter-house, from getting married before the age of twenty-five, or even from not having risen, breakfasted, and got ready for business by nine o'clock in the morning. We have not heard if any heir has claimed, or if the money is still un-

appropriated, like the letter which still lies in an American post-office, addressed to "A Christian, Chicago."

An American young lady exhibited a depth of sentiment rarely equalled, when she directed in her will that tobacco should be planted over her grave, that the weed, nourished by her dust, might be smoked by her bereaved lovers.

Cremation clauses are now becoming common, but these appear only in the wills of advanced and strong-minded people. Other provisions are made by nervous people, moved chiefly by the dread of being buried alive. This was the case with John Blount Price, a justice of the peace of Islington, whose will was recently published. Mr. Blount declared in his will, that four days after death two skilful surgeons were to be paid five pounds each to perform such an operation on his body as would prevent the possibility of his coming to life in his coffin.

The Viscount de Carros Lima, who threatened his heirs with the loss of their property if they buried him in the family vault, further enjoined on them to have his body watched until decomposition set in. A similar provision was made by Dennis Crofton, an Irish gentleman, last year. One Vienna millionnaire was so anxious about his corpse, that he would not let it be left in the dark. Not only did he provide for the vault to be lighted by electricity, but he also ordered the coffin to be so illuminated, science thus coming in a gruesome fashion to the aid of security.

Lord Newborough claimed by will the peculiar privilege of being twice buried. His remains are now finally laid at rest in Bardsey Island, off the Welsh coast; but to the dead peer's honor be it said that the strictest economy was enjoined in his obsequies, and the housekeeper at Bonveau, who watched his every glance, received a legacy of £5,000 and an annuity of $600 a year.

The "waiting will" is a constant source of irritation. The professors of Vienna University were delighted to learn this year that Count Hardegg had left their institution £50,000; but when it came out that the money was to accumulate for one hundred years, by which time it would have increased to $18,000,000, the wits decided that Count Hardegg should have been styled half-boiled. The most hard-headed business men occasionally like to keep their heirs waiting. Mr. McCalmont, the stock-broker, provided that his nephew, Captain McCalmont, must wait seven years for his inheritance of $30,000,000.

Perhaps the legatee who has the least chance of realizing, is the one mentioned by a wicked Finn, who left all his property to the devil. Finland is now probably the only country where the devil is a land-owner. Some notice was taken at the time of the fact that the name of the legatee appeared in capital letters throughout the will. The inference was that the testator wished to make a good impression upon him, with an eye to securing indulgence when they met. Even the devil's name in the will is better than none, which has been the case with certain large properties this year and last.

A feature of the year has been the tendency of gentlemen to draw up wills in favor of ladies to whom they are engaged. Mr. Rawson, for instance, left all his property to Miss Vizetelly. In like manner a Miss Bessie Macdonald, a young lady of Glasgow, has become possessed of a handsome legacy and a hotel in New York, left to her by one who hoped to marry her.

PROFESSIONAL REMUNERATION.

By George F. Tucker.

THERE is as much misunderstanding as misrepresentation concerning the remuneration received by attorneys for the conduct of causes and the general transaction of affairs. That a few eminent lawyers receive large compensation in exceptional cases is true; but it is equally true that the average practitioner earns hardly more than a fair rate of interest upon the money expended upon his classical education (if he has received one) and his preliminary training in the study of the law. Indeed, all professional men, even the most faithful and conscientious, are held up to popular ridicule, while the acts and services required of them in the discharge of their duties are frequently stigmatized as evidences of gross incapacity and pretentious shallowness. If the lawyer is sometimes charged with duplicity and exactions, he is fortunate in escaping the reputation enjoyed by so many clergymen for a kind of dissimulation begotten of audacity, and by so many physicians for a want both of discernment and medical skill.

The experience of most lawyers is that there are two classes of clients who are generally disinclined to the prompt payment of bills for legal services and advice, — the extreme rich and the extreme poor. The former are prone to defer the day of settlement, in order that they may save interest upon their money, knowing well that the charges are generally proportionate to the time employed and the labor expended; but with the latter adjustment is impossible, because they are destitute of means, — and even were they to become the sudden possessors of fortunes, they would question items which from their standpoint and experience seem of tremendous magnitude. This erroneous view of the fairness of charges springs from ignorance of the operation of social and political laws. The client estimates the services of a lawyer as of no more value than those of a blacksmith or wheelwright. It seems the extreme of extravagance to pay a few dollars for a little piece of paper or for the benefit of a brief conversation with a lawyer. But this want of appreciation is not wholly confined to the classes alluded to; most thrifty people are deficient in proper regard for professional learning and skill. The following story, founded on fact, presents an amusing phase of the subject.

A few years ago some New England people purchased a large tract of land in East Tennessee, with the intention of starting a settlement after the nature of Rugby, which, it will be remembered, despite the many good wishes for its prosperity, failed to succeed. They intended to profit by the mistakes of their predecessors, and they were foolish enough to think that New England tact and energy could accomplish what English pluck and intelligence had failed to achieve. They had the merit of realizing that they could not establish an ideal community like that attempted by the old New England transcendentalists; so, as they apprehended differences and embarrassments, they concluded to take a lawyer with them; and an invitation was extended to and accepted by a young lawyer, an acquaintance of the writer. After the collapse of the enterprise, this young lawyer returned to New England, where he narrated to an audience of interested friends his experiences in his temporary home in the practice of law.

The tract of land adjoined the property of an old farmer who, though not rich in a worldly sense, possessed means sufficient to liquidate all obligations and leave a considerable surplus. By the "cracker" community he was regarded as a capitalist, and a man

of penetration and understanding. Soon after the arrival of the colonists he became involved in a controversy over the title to some land worth about five hundred dollars; and learning that a Yankee lawyer had just arrived with the settlers, he drove over to see him, and engaged his services in the case.

The young lawyer proceeded to familiarize himself with the forms of practice employed in the State of his adoption, and then spent three or four days in investigation of the facts. It was difficult to elicit information from the witnesses, as they were deficient in perception and intelligence; but he gleaned enough to convince him that there was some chance for a verdict. On the morning assigned for the trial, the old farmer took him in his wagon to the court-house, which was about ten miles distant. They passed through a country distinguished by an agreeable distribution of forest and pasture, and in some cases presenting picturesque features which would have delighted the eye and done honor to the pen of Charles Egbert Craddock. The young lawyer had purposely neglected to ask a retainer, as he was a stranger and anxious to establish a reputation in the community; but the old man voluntarily broached the subject of remuneration as they drove on together.

"We 'll squar' accounts when it 's all over, young man. I b'lieve in bein' lib'ral."

The trial, which took place in a primitive tribunal, lasted a day and a half, and the manners and methods of the new-comer were subjected to the rigid scrutiny of a gaping crowd. His opponent was illiterate, abusive, and versed in that cunning and duplicity so characteristic of lawyers in remote communities. But the young man's persistent progression towards his objective point began to tell, and on the adjournment of the court late in the afternoon, it was the verdict of the spectators that the Yankee lawyer was "right smart."

On the second day the old litigant repeated the service of carrying the young lawyer to the legal battle-ground. The contest was renewed under auspices more favorable to our young friend, who by skilful cross-examination elicited valuable information relating to the bounds of the land in question. The case was given to the jury after the arguments and a crude charge by an ignorant judge, and the result of the consultation was a verdict in favor of the old farmer. The crowd lingered to gaze at and converse with the successful lawyer, and their interest was intensified by the fact that for the first time in their lives they were in the presence of a Yankee. While our young friend was wondering what he ought to charge, he overheard a conversation between a perennial loafer and an ignorant-looking fellow who was just mounting a mule.

"Waal, the young chap done well an' no mistake."

"'Pears to me he done; but 'll cost old Egypt a right smart sum, you bet."

"I 'spec' so. Young chap 'll want five dollars or mo'."

The young hero's courage failed as he stepped into the wagon and was driven home. As the rude settlement came in sight, he said,—

"I suppose, Mr. Egypt, that we had better talk over the subject of compensation. You said you were disposed to be liberal, and I am sure that I am disposed to be reasonable."

"Waal, yas," replied the old man, "you done well; but you see I 've got a little account ag'in you. You won the case; but you 've taken up two days of my time, and I driv you twice to the court and back; *and s'pose we call it 'bout squar'*."

CAUSES CÉLÈBRES.

XIX.

DESRÜES.

[1777.]

Concluded.

UPON receiving this communication from Madame Masson, the Commissary Mutel at once repaired to the Rue de la Mortellerie. The door of the cellar was forced open, and they found there the cask of cider, two empty bottles, a glass, an iron bar, and a wooden shovel. In one spot the earth appeared to have been recently disturbed, and upon digging in this place the great canvas-covered package was presently discovered. Removing the canvas covering, it was found to contain a large box made of rough boards which had evidently been hastily nailed together. Within this box lay the dead body of a woman.

At first sight they were satisfied that they had before them the remains of Madame de la Motte, as they corresponded in every particular with the description given by M. de la Motte of his wife.

The next day, the 19th of April, the whole quarter of La Grève was in a state of great excitement. An immense crowd filled the approaches to the Rue de la Mortellerie, kept at a distance from "The Pewter-Pot" by a detachment of French guards. It was known throughout all Paris that Desrües, who now wholly engrossed the public attention, was to be confronted with the body of Madame de la Motte.

About eleven o'clock in the forenoon several carriages, preceded and followed by mounted police, entered the narrow gloomy street which led from the Place de Grève. Loud cries arose from the crowd: "Death to the villain! Kill him! The poisoner!"

The carriage containing Desrües stopped before the house. The little man alighted, calm and smiling. He glanced around him. "Where are you taking me?" he asked, "and what street is this? I do not think I was ever here before." The cries of the crowd redoubled in the distance; women, leaning from the windows, hurled imprecations and shook their fists. Desrües, with a look of gentle pity, advanced toward the house, saying to the Commissary Mutel, "Monsieur, those poor people there do not know what they are doing; we must not be angry with them."

The other carriages contained Madame Desrües, Bertin, who was for the moment suspected of complicity, the daughter of Desrües, M. Jolly, and several other persons who had known Madame de la Motte.

The body of the poor victim was placed in a hall on the ground floor. Desrües was first taken into the cellar, which he examined with a certain curiosity; and when he was confronted with Madame Masson, Rogeot, and the other dwellers in the house who had seen the false Du Coudray, he answered them calmly that he had not the honor of knowing them. They all unhesitatingly identified him as the little man with the cart.

Conducted before the body, he said, "Do you take that to be the body of Madame de la Motte? There is, it is true, some slight resemblance; but how can it be Madame de la Motte, when I saw her at Lyons on the 8th of March? She must have been buried here since that date, then."

Madame Desrües did not deny that it was the body of the lady of Buisson; she recognized her, as did all the other witnesses.

There was then no question as to the identity. It only remained to determine the cause of her death. Two physicians exam-

ined the body, and found no trace of any violence. An autopsy revealed the fact that death had been the result of poison.

Desrües was again confronted with the inhabitants of the house, who recalled to him certain acts and words of his. He replied with bold assurance: "That is all very well to say; but it is necessary for you to prove it. You are mistaken as to the person."

An investigation was again commenced in the vicinity of Versailles. On examining the registers of death in the different parishes, they were not long in discovering the record of the death of young Beaupré; and by interrogating the inhabitants in the vicinity they speedily found the essential witnesses, — the Abbé Manin and the two Pecquets. On the 22d of April the exhumation of the body of the pretended Beaupré was ordered, and the next day all the witnesses in Paris and the two prisoners were brought to Versailles for the purpose of identifying it.

The Abbé Manin, the Pecquets, Bertin, and Donon the schoolmaster did not hesitate to recognize in the decomposed body, the first three the young Beaupré, the two others the young De la Motte.

When Desrües's turn came, he gazed upon the body with an ill-concealed emotion. "It is badly decomposed," he said. "I do not recognize it; no, I do not recognize it." Then, after a pause, he continued: "I do not pretend to deny that these may be the remains of that poor child. These gentlemen are honest men, — you can believe what they say. But I swear, before God, that I am innocent of this death. I only wished to conceal an unforeseen accident."

His voice trembled. He became deathly pale, and rapidly making the sign of the cross, yielded, for the first time in his life perhaps, to an emotion stronger than his will, and sank down in a half-fainting condition.

When Desrües had been taken from the room, an effort was made to induce his wife, who had been greatly affected by this scene, to confess that she had lied in saying that she had seen Madame de la Motte depart for Versailles; but she persisted in her assertion.

Recovering his self-possession, Desrües again declared that he was innocent. Madame de la Motte had abandoned her son, and he, Desrües, had found himself in the painful situation of having to answer for the sudden illness of the young man. He lost his head, and attempted to conceal this death.

This statement was highly improbable, and was not borne out by the facts, and they proved this to him; but his assurance had returned, and he stoutly maintained his position.

The surgeons charged with making an autopsy concluded their work, and reported that death in this case had been caused by a corrosive poison.

It then became necessary to confront Desrües with the witnesses summoned from Lyons. All the employés of the Hôtel Blanc recognized in him the false Desportes. Madame Pourra, the notary's wife, could not swear that the little man was the person who had called on her husband, but she unhesitatingly identified one of Madame Desrües's dresses as the one worn by the veiled lady.

It was impossible to ascertain who the lady was who had called on Desrües at the Hôtel Blanc, but she was undoubtedly some woman of doubtful reputation who had been engaged by him to play a rôle in this sinister drama.

With such overwhelming evidence in his possession, the Procureur-général of La Chaise had no need of further delay, and the trial of Desrües for the murder of mother and son was at once commenced. A verdict of "Guilty" being rendered, on the 30th of April sentence was pronounced upon him.

It was ordered that he should make the *amende honorable* before the door of the principal church; that he should be conveyed thither in a cart, wearing upon his breast and upon his back a placard bearing the inscription *Empoisonneur de dessein prémédité*. He was to wear only a shirt, a cord about his neck, and to carry a torch in his right hand. After having in a loud, clear voice confessed

that he had wickedly and maliciously poisoned his said victims, asking for this the pardon of God and of justice, he should be conducted to a scaffold erected in the Place de Grève, and there his arms, legs, and loins should be broken while he was yet alive; his body should then be cast into a burning pile at the foot of the scaffold, and his ashes scattered to the winds.

As for Madame Desrües, judgment was suspended in her case until after her husband's execution.

Previous to the carrying out of the sentence pronounced against him, Desrües was submitted to the torture; but all efforts to tear a confession from him were in vain. Lying upon a mattress before a fire after the application of the torture, he conversed calmly with the magistrates. "You are doing," he said, "what you believe to be your duty. But before God, who hears us, you are wrong. I am innocent of all that is imputed to me. I loved that boy too well to cause his death. My only crime, and that I expiate, was in endeavoring to conceal this accident. That was a sin, and God punishes me. Believe me, gentlemen, both these deaths were from natural causes."

They asked him if he would not acknowledge the complicity of his wife. "Poor Marie," he replied, "she knew nothing of my affairs. I deceived her, as I did others, as to these unfortunate deaths. If the boy's watch was found in her possession, it was because I gave it to her, telling her I had bought him another. I did not wish to bury it with him, and I kept it; that was wrong."

But how had he concealed these two deaths, especially that of Madame de la Motte, from his wife? "Oh!" he replied, "I don't remember;" and turned over on the mattress, refusing to reply further, and murmuring prayers.

At the Hôtel de Ville Desrües and his wife met for the last time. In this interview Desrües displayed much feeling. He pitied this companion of his life, whom he seems to have loved sincerely. "Ah, my dear, good friend!" he repeated several times, on seeing her. He asked permission to kiss her, and recommended his children to her, "Bring them up," he said, "in the fear of God. Leave Paris, go to Chartres, and recommend yourself to the bishop, who has always been good to me." He manifested, in a word, in his last moments the calmness of a philosopher and the resignation of a Christian.

He sustained this rôle to the very end. As they were conducting him to the scaffold, he perceived a crucifix. "Oh, Man!" he cried, "I am about to suffer as thou didst!"

At the first blows of the bar he uttered several sharp cries. After a heavy blow upon the breast his moans ceased, his eyes remained closed; the small, frail body had ceased to live.

Desrües left a dying statement in writing. In it he said that, to acquit his conscience, he felt obliged to declare once more that he had taken no part in the death of Madame de la Motte or her son. He had only to reproach himself for the concealment of the body. He repented of all the lies he had told concerning this mysterious disappearance, and he asked pardon of God and of the saints. His wife had had no knowledge of these affairs. He had resorted to every conceivable means to conceal them from her. It was not he who signed the power of attorney at M. Pourra's house in Lyons; it was a woman. He again and again asserted the innocence of Madame Desrües. He had always kept his mouth closed to her; when she had wished to question him he had always begged her not to interrogate him, contenting himself with saying to her, "I am arranging matters with them; be perfectly easy on that point. I am acting for the best. Question me no further." It was he who had exacted that his wife should say that she had witnessed Madame de la Motte's departure for Versailles; the poor woman was obedience itself.

The last victim of Desrües was this same

poor wife. For a long time Madame Desrües remained in the conciergerie, — in a wretched condition, for she had not a sou to pay for nourishment, and no one took the slightest interest in the unfortunate woman. Finally she was transferred to La Salpêtrière, where she languished and died.

The children, thus deprived of both father and mother, were sent to an asylum for foundlings.

PROCESS OF TAKING THE COIF.

FROM "BENCH AND BAR," BY MR. SERJEANT ROBINSON.

HAVING given a detailed account of the genesis of a barrister,[1] it may not be out of place to describe the process of his conversion into a Serjeant-at-law, and the status he thus occupies in the profession. It will not be long before there will exist no living representative of the race. If any one of the few that remain of us succeeds in getting into the next century, he will deserve great credit for perseverance and tenacity.

The position of serjeant-at-law is undoubtedly the oldest, and was until comparatively recent times the very highest, dignity a barrister could achieve below that of a judge. It dates from about the middle of the thirteenth century. Until the year 1875 the judges were invariably selected from that rank; and so strictly was the rule adhered to that even a Queen's Counsel, who had spent half his life under that title, was obliged, on his appointment as judge, to become a serjeant, perhaps the day before he was sworn in as a member of the bench. The little round black patch on the top of the wig distinguishes a serjeant from the other members of the bar, and the origin of the mark is said to be this.

By the Canon Law, the clergy were forbidden to resort to any secular vocation, and therefore in strictness they could not act as advocates in a court of justice; but it was a very profitable business, and they did it, in spite of ecclesiastical rule, at a time when discipline was somewhat lax. But a more rigid observance was at length insisted upon, and, not liking to give up the emoluments they had been in the habit of enjoying, they continued to do clandestinely what they could not do openly. So, to conceal the tonsure, which would at once have shown them to be priests, they covered the tops of their heads with a small coif or cap, — originally white, but it afterwards became black, — and went on pursuing their worldly avocations as merrily as ever. I presume it was very wicked, but it was very remunerative; and that was a consideration which the clergy of those times thought was a covering for many transgressions. The coif thus became the outward symbol of the degree of a serjeant, and was worn by them, as may be seen in old portraits, up to the time of the general introduction of wigs among the aristocracy and the upper middle classes. This necessitated a change in the mode of designating the rank, and a black silk patch on the top of the new head-dress was resorted to as a substitute for the coif, while it still retains the name.

All the learning and intelligence of the kingdom was in early times monopolized by the clergy, and it is not therefore surprising that they should have succeeded in obtaining the highest rank that could be conferred on successful advocacy.

The position of Queen's Counsel is of comparatively modern date. The first who bore the title was Lord Bacon, but his position had nothing to do with the rank as it at

[1] See the "Green Bag" for October, 1889.

present exists. He acted merely as the Queen's private adviser, while the Attorney and Solicitor-General were the advisers of the Government.

No other appointment of Queen's or King's Counsel was made for many years, until Sir Francis North (afterwards Lord Guildford), was so created in the reign of Charles II., and from that period the title seems to have grown, and to have gradually assumed its present significance.

The Queen's Counsel will soon have it all their own way, for it is now resolved that no fresh serjeants are to be appointed, although the existing ones maintain the same rank and privileges they have always enjoyed.

The power of conferring the coif rested — in fact, still exists — with the Lord Chancellor, but he never exercised it, except at the recommendation of the Chief-Justice of the Common Pleas. On the creation of a serjeant a number of gold rings (about twenty-eight) had to be bestowed by him on several persons of different grades, — the Queen, the Chancellor, the judges, and I think the Masters of the Common Pleas. Even the chief usher of that court received one, but it dwindled down to a hoop of not much greater breadth than a curtain ring and about one tenth of its thickness. Her Majesty's ring was a very massive affair, nearly an inch long, with enamel in the middle and massive gold ends; on the former were engraved — as indeed was the case with all of them — a motto specially chosen for the occasion. The Chancellor's and the judges' rings were about one third of an inch in breadth, but luckily for me not very thick, as I had to pay for them. The greater number I never saw, for the goldsmith always undertook to distribute the gifts to those who, by immemorial custom, had a claim to them. It was only the Queen's and the colt's of which we had personal inspection. I may state that the "colt" is generally a young professional friend, who attends the new serjeant on his being sworn in before the Lord Chancellor, and who is an ancient and necessary appendage to the ceremony. He walks in (*pone*) behind his principal, and it is said that the term "colt" is merely a parody on that Latin word.

The ceremonial itself is very simple. You go in full official dress with your colt before the Chancellor in his private room, where the Queen's writ conferring the rank upon you is read. The oath of allegiance is then administered by the Chancellor; after which you kneel down before him, and he pins the coif (consisting of a patch of black silk with a white crimped border) on the top of your wig, and you become a Serjeant-at-law. You are henceforth addressed by the judges who are serjeants as "brother," but the relationship ends there; we never take the same liberty. In court we address them as "my lord," and in private as "judge."

On rising from your knees and receiving the congratulations of the Lord Chancellor, the colt advances and presents the Queen's ring to the Chancellor, requesting him to beg her Majesty's acceptance of it in the name of his principal; another is presented to the Chancellor, and a third is kept by the colt as his own perquisite.

On becoming a serjeant, your connection with your ancient Inn of Court entirely ceases. If the creation took place during term, a breakfast was given in the hall, and the bell solemnly tolled you out of it, in token of your being dead to the society in future.

The Green Bag.

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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.

THE GREEN BAG.

IN our November number we shall publish an article on "The Highest Court of Law in New Hampshire, Provincial, Colonial, and State," written by Hon. Charles R. Corning, of Concord, N. H. The paper is one of unusual interest, and will be profusely illustrated with portraits of eminent New Hampshire judges.

FROM Pennsylvania comes the following: —

Editor of the "Green Bag":

DEAR SIR, — Your "Disgusted Layman" finds an apt illustration of the "Original Package" decision in the pages of Porte Crayon. The said explorer found a typical Tar Heel down in North Carolina, and solemnly read to him an account of men existing on the shores of Albemarle Sound at an early date with mouths eight inches wide. Mr. Tar Heel did n't swallow that, and replied, "I call that a Gatesville story;" and "Porte" impressively replied: "My friend, you should not be so sceptical. I can demonstrate the correctness of this by induction beyond cavil. We know that the oyster is to be eaten whole. We know that there are oysters eight inches across. Now, we must either admit that there are men with mouths large enough to take in such oysters whole, or we establish a breach in the beautiful harmony of nature, a weak link in the chain of the complete harmony and eternal fitness of creation." "Strenger," said Tar Heel, "you 's from the North." "Why so, my friend?" "Kase they 's so bookish and larned up there that they 'll believe anything." The Supreme Court is so bookish and larned that they 'll decide that Tom Jones's selling a rag baby to Pete Smith, both sitting on a fence in Kansas, is an act of "interstate commerce," if said rag baby was shipped Tom from Illinois! Did you ever meet that story of how Roaring Ralph Stackpole escaped conviction for horse-stealing in the early days of Kentucky? It was just after the long and bloody Indian wars, and Ralph's attorney thus addressed the jury: "Gentlemen of the jury, my client there, Ralph Stackpole, 'Roaring Ralph Stackpole,' is charged with stealing a hoss; and, gentlemen of the jury, I want to say that they have putty well proved it on him too. But, gentlemen of the jury, what 's that got to do with the case? Why, gentlemen of the jury, did n't that air Ralph Stackpole, on the river Raisin, in the year 1798, attack, kill, and sculp three buck Injins all by himself? Did n't he? Don't you all know it? And furder, gentlemen, did n't that same Roaring Ralph, in the year 1802, on Green River, attack and kill a buck Injin, — that air Ralph, with his hands tied and without gun, scalper, or tomahawk; did n't he beat that air Injin to death with his bare fists in the nateral way, — in the nateral way, gentlemen? Why, gentlemen of this here jury, is that air Ralph Stackpole guilty or not guilty?" "Not guilty! not guilty!!" roared the jury, with a heartiness and unanimity that shook the court-house.

Your "Disgusted Layman."

REFERRING to the articles in the "Green Bag" on animadversions of judges on one another and on counsel, a Rhode Island correspondent sends the following censure on a statute law, delivered by Mr. Justice Mitchell of the Supreme Court of Pennsylvania in the case of Fritz *v.* Hathaway:

"The Act of 1887 provides that the plaintiff shall make a concise statement of his demand, accompanied, in actions of assumpsit, by copies of all notes, contracts, etc., upon which the claim is founded. The spirit of this act plainly requires that every contract or agreement upon which the claim in any manner depends, even if in parol, shall be averred in the statement. The act is unwise, and is founded on the erroneous and superficial view that, by abolishing technical forms, it can get rid of distinctions inherent in the nature of the subject; but it would be doing injustice to the purpose of its framers to hold that it was meant to sanction mere looseness of pleading. Accuracy and technical precision have no terrors except for the careless and the incompetent, and the Act of 1887 was not intended to do away with them. As to all matters of substance, completeness, accuracy, and precision are as necessary to a statement now as they were before to a declaration in the settled and time-honored forms."

THE following amusing anecdote comes from an esteemed correspondent in Lebanon, Tenn.:

Editor of the "Green Bag":

In the early days of Tennessee, and before the establishment of law schools, applicants for the bar were admitted upon examination by two or more judges. The old books, such as Coke's Littleton, were read by the students. On the subject of pleading, the common-law distinctions, as will be remembered by a few who read this, were quite nice, and often expressed in quaint language which a modern law-writer would consider jargon. Thus, on the subject of certainty we have the three following degrees: (1) Certainty to a common intent in general; (2) Certainty to a certain intent in general; (3) Certainty to a certain intent in every particular.

Sam T., uncle of one of our noted judges, was before old Judge Scott, applying for a law license. Mr. T. lisped rather badly, and was otherwise quite eccentric. He had little learning, but a great deal of natural ability and quickness.

Judge Scott asked: "Mr. T., how many degrees of certainty are there in pleading?"

The student was puzzled for a moment, but recovered himself, raised his head, and confidently answered, "Two, thir."

"Well," said the judge, "what are they?"

"One, thir," said Mr. T. "ith thertainty, and the other ith unthertainty."

LEGAL ANTIQUITIES.

IN an old volume published in 1715, containing the "Acts and Laws passed by the General Court or Assembly of His Majesties Colony of Connecticut in New England," we find the following extraordinary provisions: —

"If any Child or Children above Sixteen years old, and of sufficient understanding, shall curse or smite their natural Father or Mother, he or they shall be put to Death; unless it can be sufficiently testifyed that the Parents have been very Unchristianly negligent, in the Education of such Children, or so provoked them by Extream and cruel Correction, that they have been forced thereunto, to preserve themselves from Death, or Maiming.

. . . . . .

"If any man have a Stubborn or Rebellious Son, of sufficient understanding and years, viz., Sixteen years of Age, which will not obey the voice of his Father, or the voice of his Mother, and that when they have chastened him, he will not hearken unto them; then may his Father or Mother, being his Natural Parents, lay hold on him, and bring him to the Magistrates Assembled in Court, and testify unto them, that their Son is Stubborn and Rebellious, and will not obey their voice and Chastisement, but lives in sundry notorious Crimes, Such a son shall be put to Death.

. . . . . .

"If any Man or Woman, after legal Conviction, shall have, or worship any other God, but the LORD GOD, he or she shall be put to Death."

FACETIÆ.

THE first Viscount Guillamore, when Chief-Baron O'Grady, was remarkable for his dry humor and biting wit. The latter was so fine that its sarcasm was often unperceived by the object against whom the shaft was directed.

A legal friend, extremely studious, but in conversation notoriously dull, was once showing off to him his newly built house. The book-worm prided himself especially on a sanctum he had contrived for his own use, so secluded from the rest of the building that he could pore over his books in private, quite secure from disturbance.

"Capital!" exclaimed the Chief-Baron. "You surely could, my dear fellow, read and study here from morning till night, and no human being be *one bit the wiser*."

In those days before competitive examinations were known, men with more interest than brains got good appointments, for the duties of which they were wholly incompetent. Of such was the Hon. —— ——. He was telling the Chief-Baron of the summary way in which he disposed of matters in his court.

"I say to the fellows that are bothering me with foolish arguments, that there's no use in wasting my time and their breath; for that all their talk only just goes in at one ear and out at the other."

"No great wonder in that," said O'Grady, "seeing that there's so little between to stop it."

A COUNTY court was sitting awhile ago; it was not far from winter, — cold weather anyhow, — and a knot of lawyers had collected around the old stove in the bar-room. The fire blazed, and

mugs of flip were passing away without a groan, when who should come in but a rough, gaunt-looking babe of the woods, knapsack on shoulder and staff in hand. He looked cold, and half perambulated the circle that hemmed in the fire, looking for a chance to warm his shins. Nobody moved, however; and unable to sit down, for lack of a chair, he did the next best thing, — leaned against the wall, and listened to the discussion on the proper way of serving a referee on a warrant deed, as if he were the judge to decide the matter. Soon he attracted the attention of the company, and a young sprig spoke to him,—

"You look like a traveller."

"Wall, I s'pose I am; I came from Wisconsin afoot, 't any rate."

"From Wisconsin! — that is a distance to go on one pair of legs! I say, did you ever pass through the lower regions in your travels?"

"Yes, sir," he answered, a kind of wicked look stealing over his ugly phiz, "I 've ben through the outskirts."

"I thought it likely. Well, what are the manners and customs there? Some of us would like to know."

"Oh," said the pilgrim, deliberately, half shutting his eyes, and drawing round the corner of his mouth till two rows of yellow teeth, with a mass of masticated pig-tail, appeared through the slit in his cheek, "you 'll find them much the same as in this region, — *the lawyers sit nighest the fire.*"

Some time ago the dockets of the various justices were sent for by the grand jury, to undergo the usual annual examination.

Among the number was one which gave the inquisitors very little trouble, but afforded considerable mirth. It recorded the cases disposed of by one of the colored magistrates from the rural "deestricts."

The office had not been burdened with much litigation, the docket recording only three cases, and they were all marriage cases.

The faithful justice thought the docket was supposed to record all the business he transacted; and when he was called on to unite in matrimony Bill Jones and Sylvia Johnson, he made the entry on his docket as follows: "Bill Jones *v.* Sylvia Johnson; officer ——, J. P.; judgment, married. Costs paid by plaintiff;" and the docket was marked "satisfied" and signed by the groom.

The other two "cases" were similarly entered; and the justice sent the docket to the grand jury, with the proud consciousness of having done the correct thing. — *Memphis Avalanche.*

Mr. Justice Norris, in the Calcutta High Court, recently delivered what is understood to be the shortest summing-up on record. It was as follows: "Gentlemen of the jury, the prisoner has nothing to say, and I have nothing to say. What have you got to say?"

In a trial at Auburn, N. Y., the counsel for the prosecution, after severely cross-examining a witness, suddenly put on a look of severity, and said,—

"Mr. Witness, has not an effort been made to induce you to tell a different story?"

"A different story from what I have told."

"That is what I mean."

"Yes, sir, several persons have tried to get me to tell a different story from what I have told, but they could n't."

"Now, sir, upon your oath, I wish to know who those people are."

"Well, I guess you 've tried as hard as any of them."

When a lady giving evidence in a Kansas court refused to answer a question on the plea that it was not fit to tell decent people, her questioner blandly said: "Well, then, step up and whisper it to the judge."

In a case in which a man was being tried for murder, when the clerk repeated the formula, "Prisoner, look upon the jurors; jurors, look upon the prisoner," one of the "sworn twelve," who was a very stupid man, looked solemnly at the prisoner for a while, and then said, "I think he 's guilty; he looks like a murderer."

The issue discussed in the jury-room is not always germane to the question committed to the intelligent twelve men for decision.

An ex-judge in New Hampshire relates that after a long trial a case had been given to the

jury just before the close of the day. About eleven o'clock in the evening the judge determined that before retiring for the night he would go to the court-house, which was near his hotel, and ascertain if the Court would be likely to be required to come in and receive a verdict. Entering the court-room, he inquired of the deputy-sheriff in charge what the jurors were doing. "Well," replied the officer, "for the last two hours they have been discussing whether General M. or Squire H. [the leading counsel in the case] was the biggest lawyer!"

NOTES.

THE meeting of the American Bar Association at Saratoga, August 20–22, was a noteworthy gathering of notable members of the profession from all parts of the Union. The exercises were interesting; and the annual address by James C. Carter, of New York, on "The Ideal and the Actual in Law," was a most finished and scholarly production. The usual number of papers on legal subjects were read; the most important, perhaps, being that of Henry C. Tompkins, of Alabama, on "The Necessity for Uniformity in the Law governing Commercial Paper."

The election of Prof. Simeon E. Baldwin of New Haven, as President for the ensuing year, was a well deserved compliment bestowed upon a most worthy and accomplished scholar and lawyer.

It is often said that the American Bar Association does not accomplish anything. It may be to a certain extent true that the visible results of its deliberations have not been marked; but these annual reunions of lawyers from the several States cannot fail to bind the profession together by stronger ties, and the earnest discussion of needed legal reforms, while it may not bear immediate fruit, must ultimately bring about the desired end. The American Bar Association may move slowly, but its work will tell in time.

The next annual meeting of the Association will be held in Boston, and the "Hub" will do its utmost to make the gathering a memorable one.

THE following are the summarized results of a series of inquiries instituted by the Howard Association into the operation, during recent years, of the penalty of death, and also of its abolition, in some of the principal countries of Europe and America. They indicate the extreme uncertainty which inevitably characterizes the infliction of capital punishment, and which therefore greatly weakens or nullifies its presumptively deterrent tendency.

"In England and Wales, during the ten years 1879 to 1888 inclusive, 672 persons were committed for trial for 'wilful murder.' Of these 299 were convicted and sentenced to death; but *nearly one half* of these had their sentences commuted, only 154 being executed.

"The latest official returns of French crime are contained in the Compte Général de la Justice Criminelle," issued in 1889, and relating to 1887. In that year 683 persons were arraigned for capital crimes. Of these, 61 per cent, or 413, were acquitted; while 270, or 39 per cent, were convicted. Of the latter, 240 had verdicts of "extenuating circumstances" recorded. The remaining 28 were condemned to death; but of these *only six were executed.*

"In Sweden, Norway, and Denmark there results one execution from about every twenty sentences of death.

"The death penalty has been abolished in Russia, Switzerland, Holland, and Portugal; and in Belgium there have been no executions since 1863, although capital punishment has never been abolished there *de jure.* There appears, however, to be more security with no executions than when they were abundant.

"In the United States of America, generally, murders are terribly numerous, especially in the South and West. This is largely owing to the habit of carrying pistols and bowie-knives by many citizens in those regions.

"The American prisons are all, with a solitary exception (at Philadelphia), conducted on the corrupting gang-system. Their inmates are either kept idle, or are worked on the 'penny-wise and pound-foolish' plan of associated labor. The dietaries and other features of United States jails also tend to increase criminality. In Indiana, recently, a long-sentenced criminal was permitted to keep a stall in the State-prison, and sell goods to visitors. When his earnings amounted to $2,000, he eloped with a young lady friend of the Governor's. Demo-

cratic 'liberty' is carried to such an extreme that arrested murderers, by means of appeals and other legal delays, usually secure a period of from one to two years between their capture and their final disposal. The result is that many of them escape conviction altogether, and only one in twenty-five or thirty, even of those convicted, is legally executed. In short, the honest citizen in the United States is victimized by the so-called 'law' and by the prison laxity. The results are appalling, as is shown by the following figures (collected by the Chicago 'Tribune'):

Six Years of United States Murders (1884–1889, *inclusive*).

	Murders.	Legal Executions.	Lynchings.
1884	3,377	103	219
1885	1,808	108	181
1886	1,499	83	133
1887	2,335	79	123
1888	2,184	87	144
1889	3,567	98	175
Total of six years	14,770	558	975

"Hence, of nearly 15,000 known murders in the six years, less than 4 per cent were followed by legal executions. Further, there were a large number of suicides, and probably very many unreported murders. In the four States where the capital penalty is abolished, conditions are stated by competent authorities to be less unsatisfactory than elsewhere. The lynchings nearly all take place in States which retain the gallows."

On an appeal to the Supreme Court in an action recently brought in Pennsylvania for personal injuries received by a passenger while alighting from a train, the court in its opinion says: "An ingenious argument was made, based upon philosophical reasons, to show that the manner of the plaintiff's fall was evidence that she must have attempted to leave the car while it was in motion, and that a ball thrown in a particular manner would rebound at a certain angle. This may be so; but a woman is not a ball, and her rebound is an unknown quantity."

The principal duty of a judge is summed up in the oath which in the Isle of Man is administered to the judge: "By this book and the holy contents thereof, and by the wonderful works that God hath miraculously wrought in heaven above and in earth beneath, in six days and seven nights, I do swear that I will, without respect of favor or friendship, love or gain, consanguinity or affinity, envy or malice, execute the laws of this isle justly between our sovereign lord the King and his subjects within this isle, and betwixt party and party, as indifferently *as the herring's backbone doth lie in the midst of the fish.*"

Recent Deaths.

Hon. Edward F. Noyes, ex-Governor of Ohio and ex-Minister to France, died September 4 in Cincinnati. He was born in East Haverhill, Mass., Oct. 3, 1832. At the age of twelve he was apprenticed in the office of the "Morning Star" newspaper at Dover, N. H., and a few years later he began to prepare for college, earning his way by teaching in the winter months. In 1857 he graduated at Dartmouth, and the same year settled at Cincinnati. There he took up the legal profession, but at the outbreak of the war he gave up his practice to enter the army as major of the 39th Ohio. Upon the resignation of Colonel Groesbeck, Major Noyes was commissioned, July 8, 1862, to be lieutenant-colonel, and took part in the battle of Inka and in the engagements at Corinth. Oct. 1, 1862, he was made colonel. While in command of an assault at Ruff's Mills (July 4, 1864), he received a wound which resulted in the loss of a leg. After partial recovery, he reported to General Hooker for duty, and was assigned to the command of Camp Dennison, where he remained until April 22, 1865. He then resigned and became the City Solicitor for Cincinnati, the office to which he was elected while in the army. In 1867 he was elected probate judge of Hamilton County, Ohio, and in 1871 was elected Governor of the State. In the year 1873 he was renominated, but was defeated and also lost the United States senatorship. It was Governor Noyes who nominated Rutherford B. Hayes for the presidency in the Republican national convention of 1876. The next year Governor Noyes was appointed Minister to France; and there he remained until 1881, when he returned to Cincinnati to resume his profession.

HON. HENRY HUSE, State insurance commissioner for New Hampshire, died at his home in Concord, September 7, aged fifty-one years. He was a native of West Fairlee, Vt., and resided at Barnstead, Pittsfield, and Manchester, prior to his removal to Concord. He read law and practised at Pittsfield and Manchester, having been the partner of the Hon. James F. Briggs in the latter city. On the death of the Hon. Oliver Pillsbury, he was appointed insurance commissioner, and has held the office ever since. He was an officer in the Eighth New Hampshire during the war, was Representative to the Legislature from Manchester for several terms, and Speaker of the house of Representatives in 1879. He was also Chairman of the Republican State Committee for several years.

HON. ISAAC P. CHRISTIANCY died in Lansing, Mich., September 8, at the age of seventy-seven years. From 1857 to 1875 he was a Supreme Court judge in Michigan, and he was also an ex-United States Senator and ex-Minister to Peru. Fifty years ago he was a practising lawyer at Monroe, Mich., the partner of Robert McClelland, who, a few years afterward, became the distinguished Secretary of the Interior in the Cabinet of President Pierce. In 1858 he was elected to the bench of the Supreme Court, and for nearly twenty years was one of the most honored and distinguished judges, serving as chief-justice for three years. In 1875 Judge Christiancy was elected United States Senator, to succeed Senator Chandler, through a combination of Democrats and dissatisfied Republicans. He was elected as an Independent, though all his life he had been known to be an ardent Republican. As a Senator he sprang at once into prominence. He took his seat on March 4, 1875, and delivered his maiden speech on the 12th, the question before the Senate being the contested election cases from Louisiana. In 1879 he went to Peru. His later years were passed in Lansing. An excellent portrait of Judge Christiancy was published in the September number of the "Green Bag."

HON. JOHN PROUT, who died recently in Rutland, Vt., was a respected citizen and an able lawyer. He was born in 1815. He was chosen Representative from Salisbury to the General Assembly of Vermont in 1847, 1848, 1851, and was State's Attorney of Addison County from 1844 to 1851. He represented Rutland in 1865 and 1867, and in 1868 was a Senator from Rutland County. He was elected a judge of the Supreme Court of the State, holding two terms, 1868 and 1870, when he voluntarily retired from the bench on account of his extensive legal practice. For many years he was counsel of the Rutland Railroad and the Delaware & Hudson Canal Company.

REVIEWS.

THE leading article in the POLITICAL SCIENCE QUARTERLY for September is one which will particularly interest the legal profession, the subject being "Recent Centralizing Tendencies in the Supreme Court." The author is Fred Perry Powers. The other contents of the number are, "State Control of Corporations," by George K. Holmes; "The Taxation of Corporations," by Prof. E. R. A. Seligman; "German Historical Jurisprudence," by Ernst Freund; "Italy and the Vatican," by William Chauncy Langdon; and "Booth's East London," by Prof. W. J. Ashley.

IN the September number of HARPER'S MAGAZINE, Theodore Child describes a journey "Across the Andes," along the line of the great Transandine Railway which is soon to connect Buenos Ayres with the Pacific coast. This is the first of a series of illustrated articles on South America, which Mr. Child has prepared, relating his personal experiences and observations in that continent during the first six months of the present year. In the same number of the magazine, Russell Sturgis describes certain "Recent Discoveries of Painted Greek Sculpture," and incidentally gives some valuable information concerning Greek art and architecture. Lieut. J. D. Jerrold Kelley, of the United States navy, contributes an article on the "Social Side of Yachting." The superiority of our common wild-flower over the cultured varieties of the conservatory is illustrated with pen and pencil by William Hamilton Gibson in a characteristic

article entitled "The Wild Garden." Among the other contents are "The Metric System," by H. W. Richardson; "The Mountain Passes of the Cumberland," by James Lane Allen; and a timely paper by Charles Eliot Norton on "Harvard College in 1890." Daudet's inimitable story of "Port Tarascon" still holds the first place in the fiction of the magazine; while among the short stories are contributions by Barnet Phillips, Mary E. Wilkins, Paul Carson, and the author of "Cape Cod Folks." Alfred Parsons continues his illustrations of Wordsworth's poems with a full-page drawing to accompany the sonnet on "Aix-la-Chapelle." Other poems are by Howard Hall, Graham R. Tomson, and Rennell Rodd.

SCRIBNER'S MAGAZINE for September contains the first of three articles on our New Navy, — the results of the voyage which R. F. Zogbaum, the artist and writer, recently made on the flagship of the "White Squadron," expressly for this magazine; Donald G. Mitchell's very richly illustrated paper on "The Country House," which is written in his most charming style, and is full of his love for rural life; Thomas Stevens's discussion of the commercial importance and relations of the River and Lake Systems of Africa, — the fruit of his journey to meet Stanley; a description of Heligoland (recently ceded by Great Britain to Germany), by one who has visited that picturesque island; one of several papers by Prof. N. S. Shaler (author of "The Aspect of the Earth"), describing the effects which physical conditions have had on the character of the populations of various States; another clear and valuable contribution, by an eminent Chicago lawyer, to the series on "The Rights of the Citizen;" and fiction, poems, and essays, with a clever number of "The Point of View." The illustrations represent the best work of skilful artists and engravers.

MR. LOWELL'S "Inscription for a Memorial Bust of Fielding," though brief, is the most remarkable piece of writing in the ATLANTIC for September. Dr. Holmes, in his instalment of "Over the Teacups," discourses on the fondness of Americans for titles, and gives a lay sermon on future punishment, and ends it, as do many preachers, with some verses. Mr. Justin Winsor considers the "Perils of Historical Narrative;" and Mr. J. Franklin Jameson contributes a scholarly paper on "Modern European Historiography." Mr. Fiske adds an article on the "Disasters of 1780," and these three papers furnish the solid reading of the number. Hope Notnor continues her amusing studies in French history; this time writing about Madame de Montespan, her sisters, and her daughters. "A Son of Spain," the chronicle of a famous horse; Mr. Quincy's bright paper on "Cranks as Social Motors;" and "Mr. Brisbane's Journal," the diary of a South Carolinian, written about 1801, are among the other more notable papers. Mrs. Deland's and Miss Fanny Murfree's serials, a consideration of American and German Schools, and reviews of the "Tragic Muse" and other volumes, complete the number.

CALIFORNIA topics occupy considerable space in the September CENTURY. The paper by John Muir, on "The Treasures of the Yosemite Valley," in the August number, is followed by another on "Features of the Proposed Yosemite National Park," which is illustrated by William Keith and Charles D. Robinson, the California artists, and by Fraser, Moran, and Davies, the sketches being made in several instances from sketches by Mr. Muir himself. The number also contains, apropos of the celebration, on September 8, of the fortieth anniversary of the admission of the State, a paper by George Hamlin Fitch, entitled "How California came into the Union," illustrated by a large portrait of General Fremont from a daguerreotype of 1850, and by others of Commodores Sloat and Stockton, Governor Burnett, Senator Gwin, and J. Ross Browne, together with pictures of Colton Hall, Monterey, — the scene of the constitutional convention, — and the famous bear flag hoisted at Sonoma in '46. A paper of timely interest, practically illustrated, is Commander C. F. Goodrich's description of "Our New Naval Guns," detailing the process of manufacture and recounting their remarkable efficiency. "The Anglomaniacs," which has awakened much curiosity and has attracted more remark, perhaps, than any other recent fiction in the CENTURY, reaches its fourth and concluding part, with illustrations

by Mr. Gibson, in this number. It is understood that the authorship of this story will not be given upon its appearance in book form. Mr. Jefferson's Autobiography deals with incidents of his life in England, Scotland, and Ireland, and includes material relating to Charles Mathews, John B. Rice, and William Warren, together with Mr. Jefferson's apology for the liberty taken with "The Rivals." The autobiography, which will be concluded in the October number, continues to be notable for its humor and humanity. Mrs. Van Rensselaer contributes an article on "Wells Cathedral," illustrated by Pennell, whose pictures combine the accuracy of an architectural drawing with the charm of etching. Mr. La Farge's "An Artist's Letters from Japan" are accompanied by an engraving after his drawing; and a paper is contributed by Rowland E. Robinson on the "Marble Hills of Vermont," which is illustrated by J. A. S. Monks. "Friend Olivia" (Mrs. Barr's novel) is continued, the scene being changed to America; and there is a short story by Miss Anne Page entitled "Lois Benson's Love Story." Two sonnets, one by Ella Wheeler Wilcox entitled "September," and one by Col. John Hay ("Love's Dream"); an editorial on the "Misgovernment of Cities," and a variety of light verse in "Bric-a-brac" complete the number.

BOOK NOTICES.

A Treatise on the Law of Sheriffs and other Ministerial Officers. By William L. Murfree, Sr. Second Edition, revised by Eugene McQuillin of the St. Louis Bar. The Gilbert Book Company, St. Louis, 1890. $6.00 net.

Following close upon the heels of the third edition of "Crocker on Sheriffs," comes this new edition of Mr. Murfree's work on the same subject. Intended to be a compendium of the law now in force in each of the United States, relating to sheriffs and other ministerial officers, Mr. Murfree's book covers, perhaps, a broader field than the work of Mr. Crocker, which was originally based upon the New York Code, and particularly adapted to the wants of the New York Bar. In the revision of Mr. Murfree's book, Mr. McQuillin appears to have done careful and conscientious work. Two hundred and sixty-four pages have been added to the original text, and more than two thousand new cases, besides numerous references to text-books and statutes, are cited in this edition. The paper and type deserve a special word of commendation.

The American State Reports, Vol. XIII. Bancroft-Whitney Company, San Francisco, 1890. $4.00 net.

We have had occasion so often to praise this series of Reports, that our vocabulary of complimentary remarks is pretty nearly exhausted. The present volume appears to be in every respect up to the standard of its predecessors, and Mr. Freeman's Annotations are as full and valuable as ever. The cases reported are selected from the Reports of Alabama, California, Colorado, Kansas, Michigan, Nebraska, New Hampshire, South Carolina, Texas, and West Virginia.

Lawyers' Reports, Annotated. Book VII. All Current Cases of General Value and Importance decided in the United States, State, and Territorial Courts, with full Annotations, by Robert Desty, Editor. The Lawyers' Co-operative Publishing Company, Rochester, N. Y., 1890. $5.00 net.

This series of Reports continues to be as useful and valuable as ever. For every-day reference the lawyer can find nothing more satisfactory. What is required is sure to be found, the good judgment and discrimination of Mr. Desty in his selection of cases admirably meeting the wants of the profession.

A Treatise on the Law of Roads and Streets. By Byron K. Elliott and William F. Elliott. The Bowen-Merrill Company, Indianapolis, 1890. $6.00 net.

A careful examination of this work leaves no doubt in our mind that it is, what the authors proposed to make it, a practically useful book. It deals with general principles, and not with statutes, except as they are incidentally involved in the subject discussed; and it is truly refreshing to find the authors volunteering their own individual opinions upon many doubtful and unsettled questions. Our modern writers are too much given to passing over such points in silence. The work will be of great assistance to City Attorneys, Corporation Counsel, and Railway Lawyers. The authors are well known through their admirable book, "The Work of the Advocate," and the present treatise will add to their already established reputation.

Yours truly
Sam F. Miller

The Green Bag.

VOL. II. NO. 11. BOSTON. NOVEMBER, 1890.

JUSTICE SAMUEL F. MILLER.

ANOTHER great jurist has gone. Mr. Justice Miller died in Washington on the 13th of October. He was the senior justice of the United States Supreme Court, having served more than twenty-eight consecutive years.

Samuel F. Miller was born in Richmond, Kentucky, on the 5th of April, 1816. The first twelve years of his life were spent on a farm, and there he underwent all the hardships and toil incident to life of this kind. He left school when fifteen years of age, but not until he had shown an unusual power for study, and a good deal of proficiency in grammar and mathematics. He was devoted to both studies all his life. He left his books, however, to become an apothecary's boy, and served an apprenticeship in this calling. He then entered the medical school of Transylvania University, now the University of Kentucky, whence he graduated as a physician in his twentieth year.

Then he went to Barboursville, a rude little hamlet of four hundred inhabitants in Knox County, back in the Cumberland Mountains, not far from the Tennessee and Virginia lines. Here he married, and here he doctored without a competitor for ten years, during the last two of which he read law between sick visits. He discovered his uncommon natural aptitude for law and argument as a member of the same village debating society which not only gave the Supreme Court of the United States an excellent judge, but also, in the person of Green Smith, started a man versatile enough to fill creditably the shrievalty of his county, the judgeship of his circuit, a seat in both the Kentucky Legislature and the National House, and, finally, the sixth auditorship of the Treasury, besides giving Governor Woodson to Missouri.

Miller was thirty years old, and the father of two children, when he abandoned medicine for law. The rising young attorney was an enthusiastic follower of Henry Clay. That great leader's attitude toward the institution of slavery planted in him the seed of abolitionism. When the question of gradual emancipation came up, he took earnest part in behalf of it. The cause was defeated; and in 1850, for the purpose of escaping from the effects of local prejudice, no less than of seeking his fortune in a newer and more hopeful community, the young lawyer moved to Iowa. There, making his home in Keokuk, which was then no more than the distance of a good walk from the slavery of Missouri, he became a pioneer politician in the Republican party. When the war broke out he was a conspicuous leader, but had an unbroken record for refusing to become an office-holder.

He quickly achieved success at the bar. Ambitious, extraordinarily studious, possessing a wonderful capacity for work, he rapidly gained in reputation as a lawyer, and in 1860 was generally looked upon as, by odds, the ablest man of his age at the bar in his State. When the time came to reorganize the demoralized judiciary of the divided country in 1862, there was a remarkably unanimous agreement on Mr. Miller for an associate justiceship in the Supreme Court. The lawyers of Iowa, Minnesota, Kansas, and Wisconsin urged his selection,

and one hundred and twenty-nine members of the House, — thinned out by secession, — and five-sixths of the Senators, joined in recommending him to President Lincoln. At nine o'clock on the evening of July 16, and the day after the passage of the reorganization law, Mr. Miller's name was proposed to the Senate. The nomination was instantly confirmed unanimously, without reference to a committee, — a compliment rarely paid to any one who has not formerly been a member of the Senate.

Justice Miller, by common consent, has been regarded as the strongest man on the Supreme bench ever since he took his seat thereon.

To give his judicial history would amount to giving a history of the Supreme Court since its reorganization. He first gained national reputation in decisions made in suits brought from the West to enforce the payment of bonds given by municipal corporations in aid of the construction of railroads. He led the minority of the court at that time, which denied the legality of these bonds. His view, however, has since prevailed in all of the leading courts of the country. In this he declared himself against the railroads' encroachments, and has been a steady opponent ever since of corporation influences. One of the most important and far-reaching of his decisions was his opinion in the case of Crandall *v.* Nevada. In this decision he held that no State could levy a tax upon passengers, or upon public carriers for conveying passengers through such State on the way to another. Maryland, Delaware, and New Jersey had, for a number of years, derived a large revenue from this source. Another noted decision of his was in the case of Lot *v.* Hinton (8 Wallace). In this he held that the Constitution forbids each State from imposing taxes discriminating against the products of sister States in favor of its own. He also declared himself in favor of the right of Congress to assume the control and regulation of all railroad traffic when it exceeds the bounds of a single State. This decision was in the case of the Clinton bridge, reported in Woolworth's reports of Miller's decisions. His decision was the first declaration of the authority of Congress over this subject. He, with Swain and David Davis, were the original dissenters from the first decision against the validity of the Legal Tender Act. Another noted decision of Miller's was in the case of Watson *v.* Jones, in which he decided that in all questions of ecclesiastical doctrine, discipline and government, the decision of the highest tribunal of each denomination as to its own rules upon those subjects will, in the civil courts, be accepted as the true exposition of the principles of that organization, without further inquiry as to their soundness. A notable decision in Justice Miller's career was in the slaughter-house cases. The opinion was delivered in the September term in 1872. It required an exposition of the thirteenth, fourteenth, and fifteenth amendments of the Constitution. These amendments were before the court for the first time. The cases had been twice argued in the court, and the decision had been withheld for a year. In this decision Mr. Miller held that while these amendments secured liberty, suffrage, and equality of civil and political rights to the African race, and placed the protection of these rights and others belonging to citizens of the United States under the control of Congress, the right of the States in regard to the control of domestic and internal legislation remained unimpaired otherwise than as above expressed (16 Wallace, 36). It was the line of argument in this decision which led to the declaration of the unconstitutionality of the Civil Rights Bill. One of the most important chapters in Judge Miller's life was his connection with the Electoral Commission in 1877.

Personally, Justice Miller was one of the most popular men in Washington. His social qualifications, his lovable disposition, and kindly manner endeared him to all. His death is a national loss, and his place upon the bench will be exceedingly difficult to fill.

CAN IMAGINATION KILL?

MEDICAL doctors and persons experienced in human ailments are acquainted with the important part which imagination plays in respect to the origin and cure of diseases. Medical aid is sometimes sought by persons who really believe themselves suffering from some bodily affliction, but who, when examined, are found to be quite free from every possible ailment. It is also well known that sick persons recover quickly or slowly according as they have or have not faith in their medical adviser or in his nostrums. This introduces the much wider subject of faith-healing, on which a great deal has recently been said, and by means of which much benefit appears to have been derived. Cases in which illnesses are originated or aggravated by the imagination are numerous; but those which have terminated fatally are comparatively rare. At first, it is difficult to lead one's self to believe that imagination can really kill; but a brief consideration of the slight effects produced in less serious cases prepares the way for further belief. One or two instances of non-fatal cases will suffice. Some time ago a girl about sixteen years of age had a prescription made up at a chemist's. The prescription was a double one — part being for internal use and part for external application only. The usual red "Poison" label was affixed to the bottle containing the lotion, and a verbal caution was also given. The girl, having been under medical treatment for some time previous, was permitted to take and apply the medicines herself; and so careful was she, that her precautions to avoid mistakes were the subject of frequent comment and occasional banter. One day a male cousin, having unfortunately resolved to play her a practical joke, transposed the labels on the bottles — which in other respects were not very much unlike — soon after the girl had taken her first dose. In an apparently careless way her attention was directed to the bottles, and, to her horror, she discovered that she must have drunk some of the lotion. Within half an hour she had frightened herself into the belief that she was poisoned. She complained of a burning sensation in the throat and stomach, of colic, and other symptoms of poisoning. A little later she was seized with an overpowering tendency to sleep. The doctor was summoned in haste. He heard the girl's story and applied such remedies as he thought proper. But the girl grew worse. She was sinking so rapidly that at last the frightened and hitherto silent culprit confessed what he had done. At first the girl did not believe him; and it was not until the doctor had taken a large dose from the red-labelled bottle that she was convinced. Then she began to recover, and in a few hours the immediate effects of the practical joke left her. A well authenticated case is told of a young lady who for seven years or more has been under the impression that she is paralyzed. She looks strong and healthy, but lies all day on a couch, and has to be carried about in an invalid chair. She shrieks with pain whenever a limb is moved. Her parents have taken her to at least a dozen physicians, — some of the most eminent men in London, — and all agree that she is in perfect health. One of them plainly told her, after a most exhaustive examination, that she was simply wasting her parents' money, and added, that he would gladly give a hundred pounds in exchange for such a constitution as hers.

And now as to the fatal cases. Some time last summer an inquest was held in London on the body of a young woman who it was supposed had poisoned herself. The usual examination of the contents of the stomach contained a powder which in appearance and general character corresponded with a certain insect powder. Now, the manufacturer claims that this powder is absolutely non-poisonous,

and chemists do not regard as a poison the vegetable from which this powder is prepared. Dr. Tidy at the time tried its effects upon a rabbit and a dog, and although experiments on so limited a scale are by no means conclusive, still neither animal was affected by it. In the absence of evidence of other causes to account for death, the only assumption that could therefore be made was that the woman had taken the insect powder believing it to be poisonous, and through her own imagination caused her death. Some years ago Napoleon III., while emperor of France, permitted a French physician to experiment on a convict who was sentenced to death. The condemned man was delivered to the physician, who had him strapped to a table and blindfolded, ostensibly for the purpose of being bled to death. Near the drooping head was placed a vessel of water, which, by means of a siphon arrangement, trickled audibly into a basin below, at the same moment that a superficial scratch with a needle was made right across the culprit's neck; perfect silence was maintained, and in six minutes the man was dead.

General Johnston, leader of the Confederate armies, tells of a case that came under his own observation. He, when a lieutenant, learned that some acquaintances had concocted a plan for testing the power of imagination on the human system. The plan was that half-a-dozen of them should, apparently by accident, meet some particular individual and comment on his appearance of extreme illness. A healthy young man was selected for experiment, and the result of this joke was that he sickened and died. Another case is said to have occurred in a university town in Scotland. A college porter having made himself particularly obnoxious to the students, they resolved to be revenged upon him. For this purpose they decoyed him into a room one night, held a mock inquiry into his bad behavior, and with a great show of outward solemnity sentenced him to be decapitated, the execution to take place at once. The terrified porter was led to a quiet corner where stood a huge block and a keen axe; he was then blindfolded and compelled to kneel and lay his head on the block. The executioner struck him on the neck with a wet towel, and the porter was lifted up — dead.

REMARKABLE RESUSCITATIONS AFTER EXECUTION.

WE do not as a nation hang so many culprits as in bygone years. We may by and by cease to inflict this awful punishment at all. But so long as law and religion and justice and public sentiment are considered to warrant the continuance of this ancient mode of retribution, so long there ought to be no mockery, no mistake, no trickery about it. If a man survives after hanging, without a proof of his innocence accompanying his recovery, it would be infinitely better to society (of his wretched self we say nothing) that he had not been hanged at all; seeing that the sense of a just punishment would be swallowed up in a kind of pity for the novelty of his position.

Now, such things *have* occurred sufficiently often to merit attention. Men have recovered their lives — or rather retained life under nearly desperate circumstances — in spite of what seemed to be a due infliction of the punishment of death by suspension. For something like six hundred years, at any rate, such escapes have from time to time been recorded.

In 1264 there was a woman named Inetta de Balsham condemned to death for collusion with robbers; she was hanged, and

remained on the gibbet (if the records of the time are to be trusted) no less than three days; and yet she survived to receive pardon from Henry III. In 1313 Matthew of Enderby was hanged for some crime of which he had been convicted; he was cut down, and revived just before the body was about to be interred. In 1363 Walter Wynkeburn was hanged at Leicester; when cut down, he was carried in a cart to the cemetery of the Holy Sepulchre in that city; he gradually regained sensibility while the cart was rumbling along, and escaped with life. Similar cases occurred in the fifteenth and sixteenth centuries. The seventeenth century was exceptionally full of such cases. Dr. Plot mentions the strange lot of a Swiss, on the authority of Dr. Obadiah Walker, master of University College: this man is said to have been hanged no less than *thirteen* times without losing his life; his windpipe having been converted by disease into a substance almost as hard as bone.

No case has, perhaps, been more discussed or written about than that of Anne Green. This poor girl was executed at Oxford in 1650. After hanging for half an hour she was cut down, actually trampled upon while prostrate, and her body then consigned to the doctors for dissection. To the surprise of all, as they were about to commence the work of dissection, a slight rattling in the throat was perceived, and upon means being used for her recovery, she speedily returned to consciousness, and the next day talked and prayed very heartily. During the time of this her recovering, the officers concerned in her execution would needs have had her away again to have it completed on her; but by the mediation of the worthy doctors and some other friends, there was a guard put upon her to hinder all further disturbance until they had sued out her pardon from the government. Much doubt indeed arose as to her actual guilt. Crowds of people in the mean time came to see her, and many asserted that it must be the providence of God, who would thus assert her innocence.

A similar case occurred in France in 1625. A young girl, Helen Gillet, was tried on the charge of infanticide; and although the evidence was very vague and unsatisfactory, she was condemned to death by the parliament of Dijon. The execution was to take place on May 13th. We are told that on the appointed morning the executioner confessed himself and received the sacrament, and that when he arrived at the scaffold he exhibited the most lively signs of mental anguish. He wrung his hands and raised them to heaven, and falling on his knees, prayed for pardon from the culprit, and begged the blessings of the assistant priests. He cried out that he wished he were in the place of her who was about to receive from him the mortal stroke. At last, when the head of the miserable girl was laid upon the block, he raised the axe, but missing his blow, only wounded her left shoulder. The headsman, horror-stricken, called aloud to the populace to kill him, and stones were thrown at him from all sides. His wife, however, who was by his side, darted forward, and seizing Helen, placed her head once more upon the block, and the executioner struck again, but again missed his blow. The rage of the multitude now knew no bounds, and the executioner fled for safety to a small chapel which stood near by. His wife then seized a cord, and twisting it round the neck of the prisoner tried to strangle her; but a volley of stones flew from the crowd, and the female fiend drew out a pair of long sharp scissors with which she stabbed her victim in the face and neck and different parts of the body. The populace, in a transport of rage, killed both her and her husband on the spot. The lifeless, as it was supposed, body of Helen Gillet was taken charge of by a surgeon; and signs of life having been discovered by him, the application of prompt remedies restored her to consciousness. The inhabitants of Dijon then presented a petition to the king, and prayed him to grant her his royal pardon. The prayer was successful.

In 1658 a female servant was hanged for some crime at Oxford; she was kept hanging a longer time than usual, probably on account of the wonderful resuscitation of Anne Green a few years before. She was cut down, and the body allowed to fall to the ground with much violence; yet she lived. But the severity of the law insisted upon her undergoing a second and more fatal hanging.

The case of Margaret Dickson was one that excited great interest in Edinburgh in 1724. She was hanged for infanticide; the body was cut down and placed in a coffin, and removed by her friends with a view to interment in the parish churchyard of Masselburgh. The jolting of the cart and the admission of air through some injury to the coffin, appear to have combined in resuscitating the woman; for she showed evident signs of life before the cart had proceeded one third of the distance. She was removed, revived, prayed with by a minister, and received back into the circle of her friends. She lived creditably many years afterward, had a large family, and sold salt about the streets of Edinburgh.

In 1752 Ewen MacDonald was hanged for murder. After the body was cut down it was taken to Surgeon's Hall and placed ready for dissection. The operating surgeon having to leave the room for a short time, was surprised on his return to see the man sitting up. Possessing more professional zeal than humanity, the surgeon took a mallet and killed MacDonald outright, in order not to be disappointed of an opportunity for dissection. This atrocious case gave rise to much indignant comment at the time.

In 1667 a tailor named Patrick Redmond was hanged at Cork for highway robbery. After hanging less than the usual time, the body was cut down and conveyed to the house of an actor named Glover, who found means by friction and fumigation to revive him. Redmond had the incredible audacity to go to the theatre on the same evening, and, to the horror of the audience, publicly thank Glover for having saved his life.

In 1747 a man was broken alive upon the wheel at Orleans for a highway robbery, and not having friends to take care of his body, when the executioner concluded he was dead, he gave the body to a surgeon, who had him carried to his anatomical theatre, as a subject to lecture on. The thighs, legs, and arms of this unhappy wretch had been broken; yet on the surgeon's coming to examine him, he found life reviving, and by the application of proper cordials he was soon brought to his speech.

The present century has not been without its instances. Some years since a man was executed at Tyburn, and his apparently dead body was purchased by a surgeon for dissection, and taken to his house. A servant, wishing to see the body, stole into the room, and found the man sitting upright on the dissecting-table. The surgeon, a humane man, shipped him off quietly to America, where he amassed a fortune, which in gratitude he bequeathed to his benefactor. Sir Jonas Barrington, in his "Personal Recollections," mentions the case of one Lannigan, who was hanged for the murder of Captain O'Flaherty. Lannigan survived, by some means which are not explained; and Sir Jonas saw him at the house of Mr. Lander in the Temple. He was smuggled over to Abbeville, where he died many years afterwards in the monastery of La Trappe.

THE DETECTION OF CRIME IN CHINA.

THE Chinese possess no organized detective force, though the officials sometimes visit in disguise the scene of a notable crime for the purpose of making inquiries, and police spies are often locked up with remanded prisoners to try to worm out their secrets. The lower classes being intensely superstitious, the judicial investigation of crime usually takes place at night. The judgment hall is a lofty building of wood, unceiled, and bare of furniture save for the raised dais at the north end, where is seated the presiding magistrate, attended by his secretaries, clerks, and lictors. The only light comes from paper lanterns or cotton wicks in oil-cups, which but serve to bring into prominence the weird shadows flitting about the corners and lurking amongst the wood-work of the roof. Silence prevails, the few spectators watching the proceedings standing like statues. The accused, dragged from the darkness and filth of a Chinese prison, is forced to kneel before the judgment seat throughout the trial. Weakened by ill-treatment and appalled by his own superstitious imaginings, he often requires only a little judicious terrorizing to elicit a full confession of his guilt. If he prove obdurate, witnesses are called. From these no oath or affirmation is demanded, the breaking of a saucer and other forms for administering an oath to a Chinaman laid down in English law books being quite unknown in Chinese courts. Any hesitation or refusal to answer the magistrate's questions — for he is judge, jury, and crown prosecutor all in one, and no counsel for the defence is allowed — is punished by slaps on the cheek or the application of the bamboo to the thighs; and similar penalties more severely administered check the giving of false testimony. Should the prisoner, in face of strong evidence, persist in denying his guilt, various persuasive measures are resorted to, such as forcing him to kneel on chains, hanging him up by the thumbs, or suspending him by the neck in a wooden frame so that his toes just touch the ground. All such tortures are illegal; but a confession has to be obtained somehow before sentence can be passed, and cases are many, and the time allowed for settling them short. Seldom can the stoutest rogue, or, alas! innocent man, hold out against such treatment continued throughout the night, and renewed, if necessary, again and again.

When two or more persons are equally suspected of theft or the like, the magistrates often show great ingenuity in detecting the guilty. In cross-examination they are peculiarly skilful in obtaining damaging admissions, their suave manner deceiving the accused as to the importance of the point they inquire about so carelessly. Two instances of extra-judicial methods for ascertaining the culprit among many equally under suspicion deserve to be recorded for their cleverness.

Some balls of opium taken from a piratical junk by a revenue cruiser mysteriously disappeared while being transferred to the latter vessel. Opium is very precious in China, and a ball is easily split up and secreted in the wide sleeves or the voluminous waistband of a Chinese sailor. The commander of the vessel was loath to institute a search of the ship and crew, knowing well the craftiness of his men, and that, even if found, the opium would most probably be in the bundle of some innocent man. He therefore resorted to a plan as simple as it proved effective. In his cabin was, as is usual, a shrine of the Goddess of Mercy and of the Chinese Neptune. Before these deities he instituted a solemn service, which was prolonged till evening. When night fell, he mustered the crew and called them one by one into the dimly lighted cabin. Here each man had to make solemn declaration of his innocence, kneeling before the images, and dipping his finger in a saucer of water, to smear his face all over,

being warned that, if he were guilty, the divinities would make his face appear streaked with black. When the thief's turn came, he tried to outwit the gods by rubbing his finger on the bottom of the saucer; but, to his horror, when he reached the light, his face was all over black marks, the wily commander having held the saucer over a lamp before commencing the experiment.

In another case, where several servants were suspected of theft, each man was given a bamboo of the same length, marked with his name, which had to be deposited in an urn before a small shrine in the outer prison where they were confined. The officer announced that the culprit's rod would grow, by interposition of Providence, one inch during the night. The prisoners were then locked up, no watch being kept on the urn. On the reassembling of the court, one rod was found to be an inch shorter than the rest, as the thief had, under cover of darkness, endeavored to circumvent the supposed divine power by biting a bit off his rod.

When any article disappears from a private house, and one of the inmates is suspected of purloining it, it is usual, before having recourse to the magistrate, whose underlings exact huge fees for doing anything, or nothing, to call in a priest and hold a commination service. This consists in invoking the evil spirits and bribing them by offerings and music to hound the culprit to death within the year. It continues for three days and nights, if the terrified thief does not confess and make restitution before that time, — a result very frequently achieved. Europeans living in China have tried this method, but not with much success, as the gonging and other discordant sounds which constitute the "music" so effectually drive away sleep that the neighboring foreigners insist on its being intermitted during the night, and so, say the Chinese, spoil the charm.

Of late years, Chinese newspapers on the European model have been started, and are well supported in the matter of advertisements. So now the loser of bank-notes or other portable property can, and very frequently does, announce his loss in good Chinese in the columns of one of three leading dailies, offering suitable rewards for the recovery of his property and the detection of the thief.

The European settlement at Shanghai alone of all the towns of China employs regular detectives at the expense of the ratepayers. When, if ever, the Chinese Government will follow the example set them by this "Western" community, it is impossible to predict.— *Chambers Journal.*

THE HIGHEST COURTS OF LAW IN NEW HAMPSHIRE, — COLONIAL, PROVINCIAL, AND STATE.

By Charles R. Corning.

THE judiciary of New Hampshire has long enjoyed a high reputation among the lawyers of the land. Its judges have been men of learning, and occasionally men of genius; and their decisions have been recognized and cited in the highest tribunals of the United States and of Great Britain. Considered historically, the Supreme Court of the Granite State does not offer much of value or of interest; it has undergone certain vicissitudes incident to the exigencies and the spirit of the times, and it has appeared under various names, according to the temper of partisanship. Like nearly all judicial systems, our highest court has passed through a sort of evolution, which has affected the character of the bench less than it has affected its methods and procedure. In the ceaseless turmoil of politics the bench did not escape unscathed, and change after change was made in its membership; but in no case did these shocks bring scandal in their train. On the contrary, they merely put spectacles of a different political color over the eyes of the judges; but beyond this even the ultra-radical politicians of New Hampshire did not go. It is now more than a decade since the present court passed through a wager of political battle, and its permanency now seems to be assured; for by an unwritten law the dominant party is entitled to a majority of the judges, — four out of seven, — and any vacancy is at once filled by the appointment of a lawyer entertaining the same political belief as the deceased or retiring judge. How long the present form of our judicial system will endure is a question independent of partisanship, and its settlement will be in accord with the best and promptest despatch of justice. In States where politics have been one-sided, judicial affairs have been rarely disturbed; but in the close and hard-fought commonwealths, the influence of political prejudices prevails to a greater or less degree, and it would scarcely be American human nature if it were not so.

Unfortunate as such influence may be, and calculated as it certainly is to bring suspicion on the purest department of government, yet it can be safely affirmed that the ermine of our courts has never been soiled by dirty hands nor infected by the breath of scandal. That the judges should be of the same way of thinking as the majority of voters was as proper in the old times as that the town minister should preach the belief of his parish. The hard-headed fathers who had driven out the British and expatriated the Tories were not likely to sit tamely at the bar of Common Pleas, and hear the law given out by political heretics, — not at all; and the overturning of courts was to them a political duty as imperative as was the seizure of Castle William and Mary, or the imprisonment of Col. John Fenton.

In the distant colonial days the process of justice was exceedingly simple; for the judges decided questions according to their notions of abstract right and wrong, caring little for precedent and less for consistency. Back farther than this, the law necessary to good government was administered by the agents of the trading-companies, and it was not till about the year 1641 that regular courts are mentioned in the books. In 1680 either increased litigation, or the importance of creating a set of office-holders, had the result of establishing a superior and an inferior court, with stated terms and places of meeting. A few years after this the judiciary system was remodelled by the

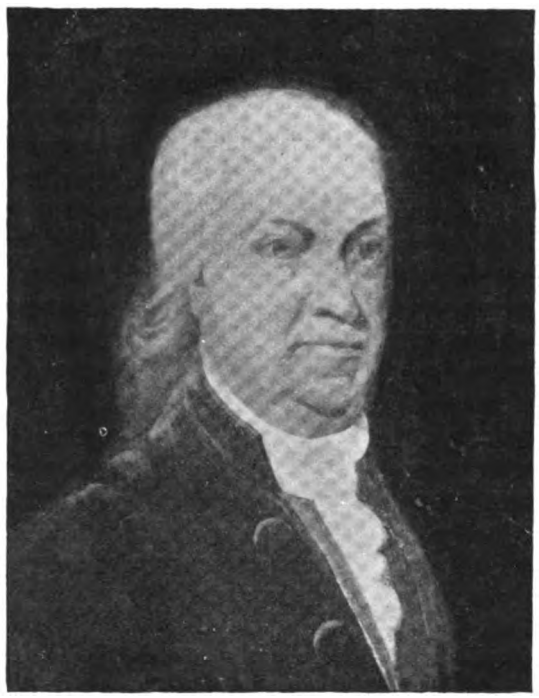
Assembly; and this continued, with some modifications, down through the Revolution and into a few succeeding years.

In New Hampshire, as in other colonies, a ludicrous looseness prevailed in the department of justice, extending down to the close of the eighteenth century; and yet legal procedures were characterized by the application of good sense, so that justice and equity were kept in their legitimate channel. These old courts had stated times for meeting, in Exeter, Hampton, and Portsmouth, where the judges went through the ceremony of hearing causes and giving decisions; and wise beyond his fellows was that suitor who could guess what the same court would hold at its next sitting. It does not appear that the people held the judges in lofty veneration, for the whole process of justice savored too much of a lottery, where luck, and not reason, won the prize. Law learning was not a requisite for judges till long after the Revolution; and it came to pass that almost anybody except a lawyer was thought of as the proper person to sit on the bench. Laymen were repeatedly appointed, and this practice continued with general approval until judicial affairs soon became nothing more than a bundle of wrongs and grievances bound up in faded red tape.

Throughout the young Republic the burdens imposed by the war were so heavy that the stoutest patriots lost courage, debts public and private harassed every one, and the courts, as well as the Government, lacked the confidence of the people. While this vexed condition of affairs was threatening, new men came to the front and furnished the brains and energy to overcome the obstacles. In statesmanship and administrative ability they showed themselves to be the peers of their contemporaries in Europe, and by their splendid achievements saved the country from utter ruin. But these great men, although lawyers, did not seek the bench in search of fame; their talents were given elsewhere, thus leaving the law to work out its own regeneration. And so it was in New Hampshire,— the courts were neglected by able men, although the profession contained very eminent members; but as the bar was not the training-school for the judges, it exercised but little influence on the public mind.

During the Revolution, Meshech Weare, who was given to theological studies, was Chief-Justice of the Superior Court, while one of his two associates was the celebrated Matthew Thornton, a patriot by calling and a physician by profession. These men were among the most prominent in the land; but while they achieved renown in the history of their State and country, they scarcely could have been selected as exponents of the niceties of pleading, whatever abilities they may have possessed at nation-making. And yet it was by men like these, although not always so able, that the judicial policy of the State was for a long time directed. In 1782 Samuel Livermore became Chief-Justice, bringing to the bench a resoluteness of purpose seasoned with some law learning, that gave him legal distinction and renown. Even to-day one hears among the old *raconteurs* of the bar stories of this judge. Livermore was one of the marked characters of the epoch, who was as independent of conventionality as any living being could be, and yet he enforced respect by his rugged honesty and his sound interpretation of the law. He attached no importance to precedents, and to quote any would invite his anger and set loose his sharp and merciless tongue. Even when gross inconsistency marked his decisions, and his attention was called to his former rulings, he was not disturbed, but merely replied that "Every tub must stand on its own bottom." He frequently cautioned the jury against "paying too much attention to the niceties of the law to the prejudice of justice." He was firm in his determination not to go back into the past in quest of authorities; so he laid down the inflexible rule that all reports of a date prior to the Declaration

of Independence might be cited in his court, not, however, as authorities, but as enlightening by their reasonings the judgment of the court, but that decisions of a later date would not be received. Judge Livermore was afterwards a distinguished member of the First and Second Congresses, and of the Senate, where he served during several years as President *pro tem.* He was the most conspicuous personality as regards eccentricities that has ever favored the bench with its presence; and his peculiar mental condition was again seen in his son, another Judge Livermore, who came upon the stage a quarter of a century later.



SAMUEL LIVERMORE.

In spite of men intellectually strong, the bench did not recognize law as a science, or even as a system; therefore, while the State made progress in every other direction, it remained stationary as to its courts. The bar, confronted with the unprofessional character of the bench, was compelled to adapt itself to existing conditions, and patiently await the improvement that must come in the inevitable order of things. Here is an illustration of judicial utterance common to the period. The judicial genius who delivered himself of this charge was John Dudley, a trader and farmer, who was on the bench many years prior to 1797. And yet, with all his crudities and absurdities, this man was regarded by Theophilus Parsons and Jeremiah Smith as more than a match for any lawyer in the State. "Gentlemen, you have heard what has been said in this case by the lawyers, the rascals! . . . They talk of law. Why, gentlemen, it is not law that we want, but justice! They would govern us by the common law of England. Common-sense is a much safer guide, — the common-sense of Raymond, Epping, Exeter, and the other towns that have sent us here. A clear head and an honest heart are worth more than all the law of all the lawyers. There was one good thing said at the bar. It was from Shakspeare, — an English player, I believe. No matter; it is good enough almost to be in the Bible. It is this: 'Be just, and fear not.' It is our duty to do justice between the parties, not by any quirks of the law out of Coke and Blackstone, — books that I never read and never will. . . . Now, Mr. Sheriff, take out the jury; and you, Mr. Foreman, do not keep us waiting with idle talk, of which there has been too much already, about matters which have nothing to do with the merits of the case. Give us an honest verdict, of which, as plain, common-sense men, you need not be ashamed."

Happily, as the effects of the war disappeared, a better tone pervaded the courts of justice; the bar and the people recognized the shortcomings of the bench, and at once took measures for its reformation. The days of hap-hazard law may never disappear, but the days of the layman judiciary have gone never to return. The lawyers of that period found their work of regeneration hard and discouraging; and yet such giants

as Mason, Plumer, Smith, and Sullivan were among the laborers. The niggardliness of compensation did more to retard the reform than all other causes combined. The salaries were not equal to the wages of an artisan. The Chief-Justice received eight hundred and fifty dollars a year, and each associate fifty dollars less; and to show the munificent disposition of the Legislature, the vote putting the salaries at these figures was passed, after a long opposition, by 73 yeas to 62 nays. The offices could not be filled by lawyers unless at great personal sacrifice, and the bar viewed with chagrin and alarm the sorry condition of their courts.

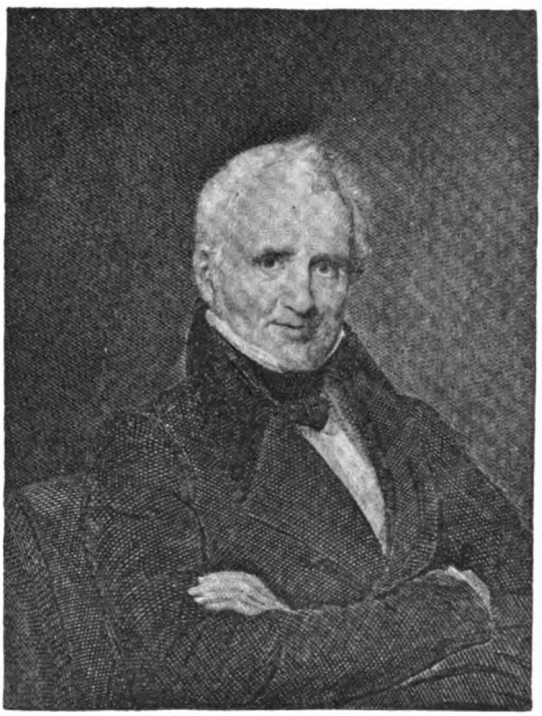
But one lawyer set himself hard at work, determined that he would do what he could to raise the standard of both bench and bar. His name was Jeremiah Smith. He was one of the purest and most unselfish of public men, and to his efforts may be attributed the improvement of legal affairs.

On the 20th of February, 1801, Jeremiah Smith was appointed a circuit judge of the United States, — a coveted honor, and one that gave great satisfaction to the people; but never was judicial preferment more briefly enjoyed, or more ruthlessly taken away. The history of John Adams's midnight court, as his opponents termed it, is interesting, if not comical. The victorious Jeffersonians would stand no such sharp practices; and no sooner were they installed in power than they legislated the newly organized Circuit Court out of existence. This was certainly one of the grimmest parliamentary acts ever recorded; but appeal there was none, so Judge Smith and his associates found themselves practising at the bar as if no unusual honor had been conferred upon them. Smith, however, was too good a man to be forgotten; and in August, 1802, Governor Gilman appointed him Chief-Justice of New Hampshire. In this office he continued till 1809, devoting all his time to his duties, often overworked but never discouraged, and always conscious that the people looked to him for those reforms that had long been demanded. He accomplished much, and with him arose a new order of things. The idea that law was a science seemed never to have entered the heads of the old judges during their supremacy. To them law was looked upon as a superior mode of arbitration, where each case was to be adjudicated independently of every other case. From these propositions the new Chief-Justice emphatically dissented. He had well-defined ideas on the subject, and so far as he was able he insisted that certain rules should be strictly observed by those who practised before him. At all times he was exacting; and he frequently took occasion to lecture the bar on the necessity of going by rules and certain precedents that he had laid down for guidance. His mission was successful; and when he left the bench it was the testimony of all that in no State was the law administered with greater wisdom and precision.

With Judge Smith the law was a great and comprehensive science, founded on reason, and capable of consistent application, and not a cunning contrivance for tripping up the unwary, and throwing dust in the eyes of the uninitiated. In his own words is recorded, "If the world should be pleased to speak of me after I am dead, let them say, He was a judge who never permitted justice to be strangled in the nets of form." Firm and impartial, learned and diligent, his example is worthy of emulation. When he left the bench it was felt throughout the State that the judicial system had been regenerated, and that henceforth only lawyers of character and attainments should be called to the judgeships.

Judge Smith was succeeded by Arthur Livermore, a good lawyer, but, like his father, whose acquaintance we have just made, painfully eccentric and uncertain. He had certainly inherited many of those salient characteristics that made his father so famous. The bar, however, respected him, as well as his two associates, Richard

Evans and Clifton Claggett, and they rode the circuits with general acceptance. Even at this early period politics and justice maintained a partnership, and the fact that these judges stood well with the dominant party may have enhanced their judicial reputations. From the earliest times party feeling ran high in New Hampshire, and a man could renounce the Christian scheme of salvation with far less personal inconvenience than he could turn his back on his party and come out for the opposition. A sentiment so deeply held had its influence on the courts, and it was only natural that the party in the minority should regard every department of the Government with suspicion and sometimes with alarm. In later years this feeling has largely abated, but who can predict what might come of some tremendous party excitement? But in the young years of this century the people were half crazed with politics, and were always on the war-path. The yearly struggles between the Federalists and the Republicans were fierce and stubborn, resulting in alternating victories; but in 1813 the Federalists came out ahead, and their adherents called for vengeance. The Revolutionists on the banks of the Seine were not more impatient before the guillotine than were the hot-tempered politicians on the Merrimack in the presence of so many victims. They did not wait to address the judges out of office according to the mode pointed out by the Constitution, but deposed the whole judiciary system by creating another in its stead. At one swoop the Superior and the Inferior courts went out of existence. To justify these measures the leaders showed the gross imperfections and irregularities of the old courts, and claimed that while the process was severe, circumstances demanded it. This reasoning only roused the other party to redoubled exertions under the battle-cry of Revenge, and the people were kept alive to partisan issues during many years following.



JEREMIAH SMITH.

At this juncture Judge Smith again became prominent. Since his retirement from the bench he had been Governor of the State, and he now (1813) was appointed Chief-Justice of the Supreme Judicial Court, with Arthur Livermore and Caleb Ellis as associate justices. It was conceded that this was the ablest tribunal that the State had ever known; but it was a political court, so the furious Republicans declared, and this party foolishly denied its legal existence, and encouraged citizens to obstruct its functions. The old judges, Evans and Claggett, held to this absurd and violent view, and actually rode their circuits and endeavored to hold court as if such persons as Smith and his *confrères* never existed. The party newspapers sustained them in their misguided course, and the politicians outside the bar nodded approval. The lawyers, however, were too wise and prudent to be carried away by the prevailing insanity, and to their conservative attitude the preserva-

tion of order throughout the State was largely due.

In certain localities there was cause for apprehension, for the presence of the dethroned Evans and Claggett stimulated the popular excitement; but the potent, invisible spirit of common-sense rose paramount to prevent bloodshed and rioting, and furnished gratifying proof of the splendid discipline and patriotism of the citizens as a body.

When Judge Livermore entered the courthouse at Dover to hold his first term, he found his former companions in ermine on hand, resolved to carry on the business of the term. By some compromise he effected a part capitulation, whereby the rival courts could occupy the halls of justice at different hours, — the Evans-Claggett court to have its say in the morning, while the new court held forth in the afternoon.

It was at this term that Livermore put himself in a remarkably embarrassing position by vehemently denouncing the change in the judiciary, hinting at bribery and dishonesty generally, and winding up by a volley of choicest Livermorese; and yet this singular man continued to sit on the bench a contented and earnest participant in its unconstitutional and sordid emoluments.

At Exeter the Chief-Justice and Judge Ellis met with considerable opposition, which had about it certain symptoms of violence; but the calm demeanor and good sense of the former allayed the animosity, and prevented any outbreak. As at Dover, the old judges seated themselves on the bench alongside the new, and proceeded to countermand the orders of the Chief, — even going so far as to command the clerk to administer anew the oath to the jurors, declaring that the oath as given by Judge Smith was illegal and of no binding force. Ex-Judge Evans took occasion to make several speeches on the unconstitutionality of the act whereby the Superior Court was said to have been abolished; and the immediate effect of his speeches was to convince the people that he was a vain and shallow man, whose original appointment was a mistake. During all this annoyance Judge Smith and his associate Ellis bore themselves like gentlemen, and kept their tempers unruffled. The spectators and the mob-inclined partisans quickly saw how farcical and childish such proceedings were, and they quietly withdrew, murmuring their contempt for those who had deceived them. The sheriffs of two counties refusing to recognize the new court, Governor Gilman summoned the Legislature in extra session, and the offenders were summarily removed from office. One of these sheriffs was Benjamin Pierce, the father of President Pierce. The contest that once was threatening had been happily averted, and the course of justice glided on unobstructed.

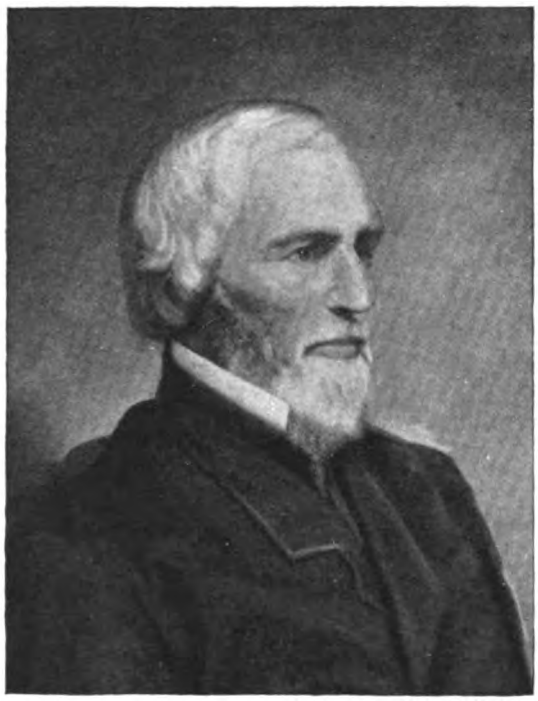
The attempts of Evans and Claggett were looked upon as laughable; and the story of the old woman, who, being told of their actions, said that the judges were like her hen turkey, who kept sitting and sitting like an old fool after the eggs had been taken away, illustrated the popular feeling regarding the old courts.

Everybody behaved well, and all thoughts of violence were banished. But the Republicans were none the less hard at work in every school-district throughout the State, bent on having revenge at the ballot-box; so when the votes were counted after the March meeting in 1816, it appeared that William Plumer, the Republican candidate for Governor, had 20,652, and James Sheafe, the Federalist candidate, had 18,326.

Here was the looked-for overturn at last, and the headsman again set up the decapitating machine in the state-house. Governor Plumer was one of the most eminent of New Hampshire public men, and after the lapse of fifty years his reputation stands unblemished in the annals of the Republic. A philosopher, student, and statesman, he was on intimate terms with the leading men of the period, especially with Thomas Jefferson. No governor has exercised greater

influence on legislation; and many of the reforms that he suggested are now firmly held as a part of the governmental system.

To a certain extent he was a politician; but his politics were of the highest order, and he refused to be bound soul and body to any political party. This rare blending of party policy with the general welfare was conspicuously shown by his prompt approval of the bill to create a new judiciary, and his persistency in giving the minority a fair representation on the bench of the new courts. The court of which Judge Smith was Chief was abolished by a strict party vote; but as some question might arise as to the constitutionality of this change, every judge was specially addressed out of office, thus making the action secure against all possible question. But this procedure put the dominant party in this position, as regarded Evans and Claggett: If Judge Smith and his judges needed to be addressed out in addition to being legislated out, then the old judges, Evans and Claggett, had good cause of complaint, for they had only been legislated out. In this view they had continued judges *de jure* during the last three years, and still continued judges *de jure*. As their *status* might be a cause of confusion and doubt, and the source of contention in the future, the Legislature formally addressed them out of their almost forgotten and ridiculous judgeships, thus extinguishing all claims under the old judiciary acts. All this having been accomplished, the State now presented the anomaly of being absolutely judgeless, — a sovereign State with not the slightest vestige of judicial authority. This dangerous condition lasted several weeks, and might have lasted indefinitely had it not been for the wisdom and statesmanship of the Governor.



ANDREW SALTER WOODS.

All judicial appointments had to be confirmed by the Council, and at that time that body was made up of three Republicans and two Federalists, who seemed willing to do anything except to compromise. Unanimity was impossible; but the Governor nominated as Justices of the Superior Court, Jeremiah Mason, William M. Richardson, and Samuel Bell. Richardson was promptly confirmed, and so was Bell, after considerable discussion; but Mason's political views were against him, and thus was saved to the American bar the greatest common-law lawyer of any age.

Thus furious was political policy. Enslaved to that touching tenet, that to the victor belong the spoils, the five Councillors wrangled, and got angry, because one side or the other might get some advantage in the division of the plunder. In all, there were seventeen judges to be appointed, and Plumer insisted on giving the minority party its representation; so, accordingly, he named seven Federalists to the new vacancies. But party prejudices were too strong; and though promptly confirmed, all but one judge declined to serve. The best men in

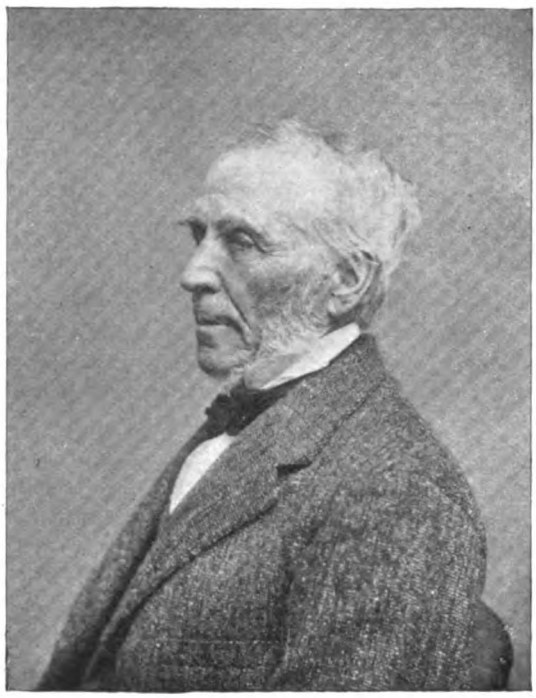
the old Federalist ranks approved of this rude policy, and Daniel Webster even nodded his lion head in commendation of such a course.

At length the Governor, after repeatedly soliciting Mr. Mason to accept the office, and his positive refusal, reluctantly turned in other directions, and appointed young Levi Woodbury, thus making the highest court to consist of Richardson as Chief, and Bell and Woodbury as associates. This was a trio of able men, and the bench speedily gained a high place among the State judiciaries. For two-and-twenty years Chief-Justice Richardson administered the law with an even hand and becoming dignity, thus making the longest term of continuous service that ever fell to the lot of a New Hampshire judge. The present Chief, Charles Doe, had it not been for a political hiatus of two years, has been on the bench since 1859, which is almost the longest tenure of judicial office ever held. With Judge Richardson came a reform that will cause his name to be revered by the profession; for it was he who began the systematic reports of decisions. Before this the only way to get reports was from the note-books of the judges, or from minutes jotted down by some methodical lawyer, both very uncertain and doubtful sources of information. To a man who loved order, as Judge Richardson did, such a loose practice shocked him, and he forthwith made arrangements whereby the decisions should be collected and regularly published.

The new court had scarcely got into working order, when the Dartmouth College Case came before it for adjudication. The Chief-Justice delivered the unanimous opinion of his court, and thus rescued his name from legal oblivion. This great lawsuit is pre-eminently the *cause célèbre* of the American bar, and will always remain so, owing to the remarkable combination of circumstances attending it. The Dred Scott Case depended entirely upon the social condition of the times for its renown, but the case of the College involved the gravest public policy, and brought forth from the highest tribunal in the land an interpretation of the National Constitution. But in a personal point of view the case was remarkable. Around none has such an array of superior intellect ever been gathered. The judges and the lawyers who actively took part in the trial and arguments bear the greatest names in American jurisprudence and statesmanship, — Webster, Marshall, Story, Mason, Kent, Wirt, Pinkney, Hopkinson, Smith, Richardson, Woodbury, and Bartlett. The decision of Judge Richardson and his associates, while overruled by Judge Marshall, was acknowledged to be able; and Mr. Webster declared it to be "plausible and ingenious," — qualifying terms emanating, maybe, from the great man's prejudice. For more than two decades, often distressed by illness, Judge Richardson kept toiling on; but at last disease wore him out, and he died March 23, 1838. He was industry personified, and his habits contributed largely to the better preparation and trial of causes. Judge Bell, who went on the bench at the same time, had resigned in 1819 to take his seat as Governor, while his associate, Woodbury, stayed a little longer, when he too resigned, in 1823, to become chief-magistrate of his State.

To the remotest generation of political students the name of Levi Woodbury will be known, for he was the sure possessor of that ability that history will keep fresh. His name is connected with the most honorable offices of the Republic and the State. Twice he was chosen to the Senate of the United States; twice he held cabinet positions, namely, Secretary of the Navy and Secretary of the Treasury; twice he was offered distinguished diplomatic missions, — once to Great Britain, — but declined them. On the death of Judge Story, in 1845, President Polk appointed Mr. Woodbury as his successor. Judge Woodbury was distinguished for practical wisdom and marvellous powers of analysis, and yet but few

public men exceeded him in that peculiar temperament that sees the ideal. His addresses are masterpieces of learning, and his mind was so receptive, and its richness so full, that he taught whenever he talked. Although he lived among a school of statesmen such as John Quincy Adams, Calhoun, Webster, Clay, and Benton, he was fully their equal in those cold powers of reason and logic that always characterize lofty intellects. In debate he was pre-eminently powerful; and his participation in the famous contest over the Foot resolution gained for him the sobriquet of "the Rock of the Democracy." Judge Woodbury died in 1851.



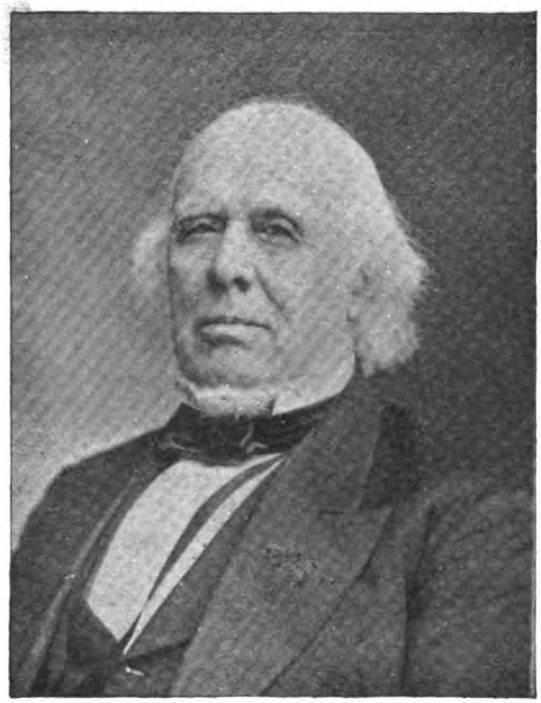
IRA PERLEY.

The places on the New Hampshire bench made vacant by the withdrawal of Bell and Woodbury were filled by Samuel Green and John Harris. They were careful and industrious lawyers, but laid no claim to brilliancy. The Superior Court was now reasonably secure from political overthrow, inasmuch as the old Republican party, under the new appellation of Democratic, had intrenched itself in every school-district throughout the State, beyond the power of the Whigs to dislodge it. Thus the administration of law went along smoothly and uneventfully till a few years later, when a lawyer came upon the bench who was destined to give it a world-wide reputation.

The Court of Common Pleas established by the Act of 1816 was abolished in 1832, when a law was passed allowing one justice to preside at the trial of all civil cases, and at all criminal trials except murder and treason. The effect of this was to put more work on the Superior Court; but it simplified practice, and was generally well received by practitioners. It so happened that the lawyer who prepared this bill was Joel Parker, who had been a member of the Legislature from Keene, and had labored hard to bring about a change in the judiciary; and he now quite unexpectedly found himself appointed to help in carrying out the provisions of his law, and to test their efficacy.

Like so many of New Hampshire's eminent judges, Joel Parker went on the bench while comparatively a young man. When his townsman, Governor Dinsmoor, offered him a seat on the Superior Court of Judicature, Mr. Parker had attained his thirty-eighth year; but his professional career had made his name widely known, and the appointment gave satisfaction to all. Judge Parker held this office till 1838, — a period of five years, — when Chief-Justice William M. Richardson died, and he immediately became his successor. Judge Parker's opinions are contained in thirteen volumes of the New Hampshire Reports, from the sixth to the eighteenth inclusive; and in those days, when judges were reporters as well, the industry and painstaking of this judge may be seen in the extraordinary number of opinions that he prepared. During the period that he sat as one of our

highest court, twelve hundred and forty-four cases were reported, comprising seven thousand four hundred and fifty pages, and of this number Judge Parker wrote five hundred and ten opinions, covering three thousand three hundred and fifty-six pages. He was independent in his reasoning, and he trusted thoroughly in himself. His natural abilities were largely reinforced by much study and reflection, and his courage was worthy an ancient crusader. He paused not at the "what have beens" in jurisprudence, but went boldly on to what he conceived to be the true reasoning; and if he found his path encumbered with the litter of former days, he brushed it aside, so that the way might be clear and open. Britton *v.* Turner, 6 N. H., one of his earliest cases, illustrates that superb independence of mind that always marked Judge Parker's judicial career. Here he clearly lays down a rule on the question of liability on a special contract for labor, and brings to his reasoning all that lucidity of statement for which he was noted.



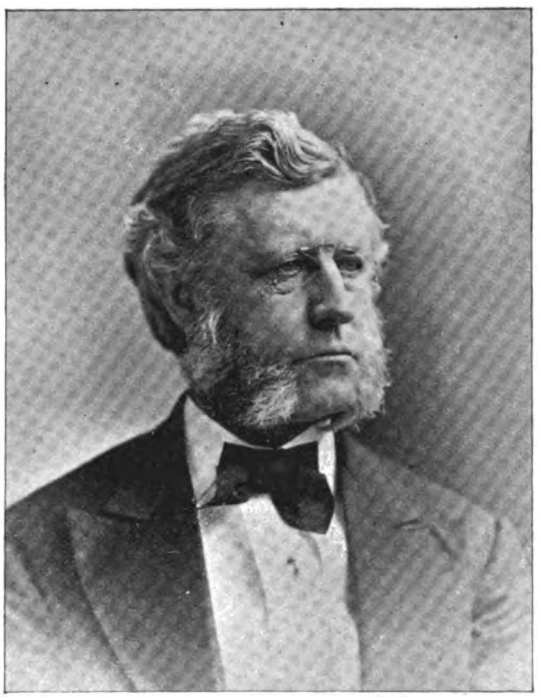
HENRY A. BELLOWS.

It was Judge Parker, — then a bachelor, to be sure, — who in Parsons *v.* Parsons, 9 N. H., and in subsequent decisions, recognized the rights of married women as against the creditors of their husbands. This was in advance of the authorities in many States; and Charles Sumner, then editing a law magazine, took occasion to accord to Judge Parker a high standing among the jurists of the country, although complaining that the New Hampshire bench in its learning did not show "the taste and tincture of distant antiquity." Joel Parker seems to have had an inborn disposition to trip up the unwary; and it began when he was a youngster. It is related that when he was a boy he was a member of the militia; and one day, as the orderly-sergeant was slowly going down the company front marking absentees, young Joel slyly thrust his musket between the non-commissioned legs, and sent the fellow sprawling. All through his life he stood ready to dispute with any one as to matters that seem too trifling for serious thought, and yet in his hands they became almost mighty. No man had a deeper respect for learning, and yet he never hesitated to question that learning if he thought there was a flaw in it. He did not apologize, but plunged in, and seizing the question shook it thoroughly. It was this fearlessness that caused the famous controversy with Joseph Story. This celebrated discussion came near getting New Hampshire into a serious misunderstanding with the General Government. But Judge Parker knew that he was right; so, regardless of everything, he buckled on his armor and did valiant battle. At times that verbal discussion touched closely the limits of judicial decorum, and a temperful spirit was plainly manifest; still on went the strife, only to be finally ended some years after Judge Story's death. The cause of this controversy, which created such excitement all over the country, was the question whether

an attachment was or was not a lien. The matter got into politics, and, after the manner of Granite State politics, was debated in every grocery-store, and argued after Sunday meetings on the green and in the adjacent horse-sheds.

The unmistakable symptoms of a State-rights fever began to show themselves, and for a while the temperature was dangerously high. Here is one of the resolutions passed by the House of Representatives of New Hampshire by a vote of 190 ayes to 19 noes:

"*Resolved*, That we highly appreciate and heartily approve the firm and decided stand which has been taken by the Judges of our Superior Court in opposition to the unwarrantable and dangerous assumptions of the Circuit Court of the United States in the recent controversy between said courts growing out of the operation of the Bankrupt Law; and that, in our opinion, they ought to and will be sustained in that stand, if need be, by the united voice and power of the government and people of this State."



WILLIAM L. FOSTER.

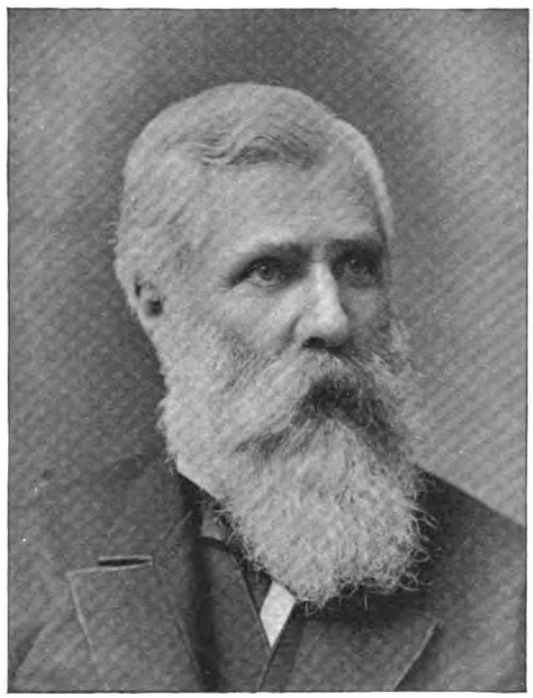
No blood was shed, for about that time the whole subject suddenly went out of sight, and the inauguration of civil war on the great question of whether an attachment was or was not a lien was happily averted.

Chief-Justice Parker resigned in June, 1848, and immediately entered upon his new duties as Royall Professor of Law at Cambridge. He carried with him those habits of profound labor and patient research acquired in his long career on the bench, and the records of his professorship prove his great industry. Twenty years was his term of service in the Law School, — a period of hard but lasting work, not unmixed with participation in the discussions of constitutional questions growing out of the war of the Rebellion. He resigned in 1868, and died at Cambridge in August, 1875. "He contributed largely to the sound foundation of the science of Jurisprudence in the State whose laws he administered, and spread his influence widely over the country through the pupils whose studies he guided and assisted."

Upon the retirement of Judge Parker, in 1848, his mantle descended on worthy shoulders, and the spotless integrity and intellectual strength of the Superior Court suffered no deterioration. John James Gilchrist, of Charlestown, became his successor. Gilchrist was a man of fine personal appearance and bearing, not unduly ambitious nor place-seeking, but a calm, even man, of splendid attainments both in law and literature. He was early distinguished among the older lawyers as a young man of decided legal ability; and in 1840, when he was called to the bench, every one acquiesced in the deserved promotion. He was in his thirty-first year; but his preparation had been ample, for he had enjoyed unusual advantages in the way of practice, and his learning was unquestioned.

It has often been the custom in New

Hampshire to put young men on the bench, and the practice has been amply justified by the results. They carry no prejudices of long standing to their position, and they are less likely to act in the dual capacity of judge and counsel. With substantial ability, and a sufficient stock of legal knowledge, and above all sound health, there certainly is more to be expected from the student-judge of thirty than from the lawyer-judge of fifty; and this has been conspicuously illustrated in several instances in the judicial history of our State. Judge Gilchrist soon attracted attention by his judicial excellences, and it was eminently fitting that he should succeed to the vacancy created by the resignation of his distinguished associate, the Chief-Justice. In this honorable position he remained until 1855, when his friend, President Pierce, appointed him Chief-Justice of the Court of Claims, then recently established at Washington. His learning was wide and exact, and he was a student to the hour of his death. He possessed an admirable judicial temperament, quite in accord with his equally admirable judicial understanding and intuition. The dust of antiquity was as rubbish to him, and the ponderous tomes of black letter never cumbered his shelves. In living law he firmly believed, and distinguished it from the accidental forms through which it had manifested itself, for he had the tact to perceive what must be done to adapt judicial utterances to the progress of the age.



WILLIAM H. H. ALLEN.

Chief-Justice Gilchrist was a gentleman of the old school, — a finished man; and during his fifteen years on the bench his influence was potent for correct law and correct deportment.

Associated with Judge Gilchrist at different times were Nathaniel G. Upham, Leonard Wilcox, Andrew S. Woods, Ira A. Eastman, Samuel D. Bell, and Ira Perley, — the last two becoming Chief-Justices under a subsequent political overturn of the judiciary.

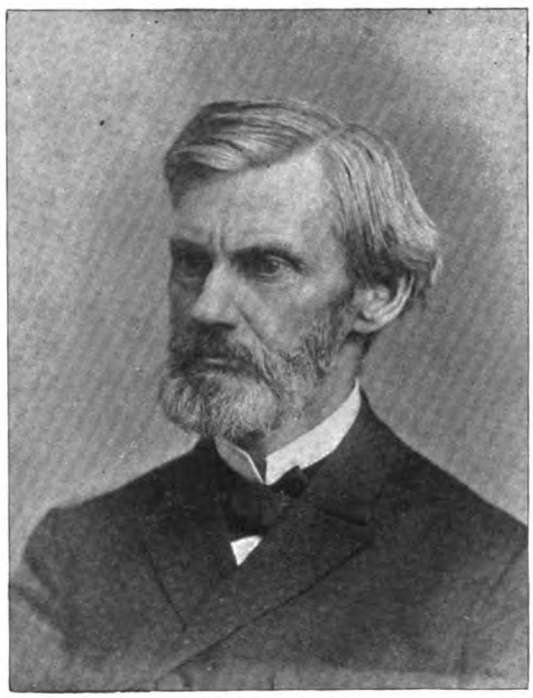
Judge Woods went on the bench a few months after Judge Gilchrist, and succeeded him as Chief-Justice; but unfortunately for his ambitions, the honor was an exceedingly empty one, for in four months a political revolution occurred which swept the Superior Court and all its judges into utter desuetude.

Judge Woods was a painstaking servant, devoting himself untiringly to his duties; and while not a prodigy of learning, was plentifully endowed with common-sense, and he knew when to apply it. He was exact and steady, and the lawyers understood what to expect from him. As a trial-justice he was at his best. His temper was calm, and nothing ruffled it, and yet he permitted no smart conceits and sleight of hand to take the place of sound reason. With him business was seasonably despatched, and litigants were promptly disposed of. His rulings were ready, but remarkably correct, few of them ever being set aside by the full bench.

It may be truly said that Judge Woods

was the last of that distinguished set of lawyers who made up the old Superior Court from its birth in 1816 to its demise in 1855. They were men of intense purposes, deeply conscious of their responsibility, hard-working, conservative, and faithful. They gave the best years of their lives to the service of the State, and by their devoted and unceasing labors made the courts of New Hampshire as illustrious as any in the land.

In the mean while the Court of Common Pleas, established in 1816 and abolished by the Parker bill in 1832, had come to life again in 1842, and went on until 1859, when its light was once more extinguished. On this bench sat some very eminent lawyers, who in later years were promoted to the Supreme Court. Among them were Judges Cushing, Bell, and Sargent, who became Chief-Justices under a new order of things, — all achieving signal distinction in the judicial walks of life. Of the many judges of this court, two only are living, — Charles R. Morrison and Josiah Minot, both of whom reside in Concord.



ISAAC W. SMITH.

The new court called into existence by the political overthrow of 1855 was known as the Supreme Judicial Court, and its judges received their commission from Governor Metcalf in July of that year. Ira Perley was the Chief, the associates being Ira A. Eastman, Asa Fowler, George Y. Sawyer, and Samuel Dana Bell. The salaries attached to the offices were rigidly Jeffersonian, the Chief-Justice receiving $2,000, and the others $1,800.

In Ira Perley the bench of New Hampshire found its beau ideal, —

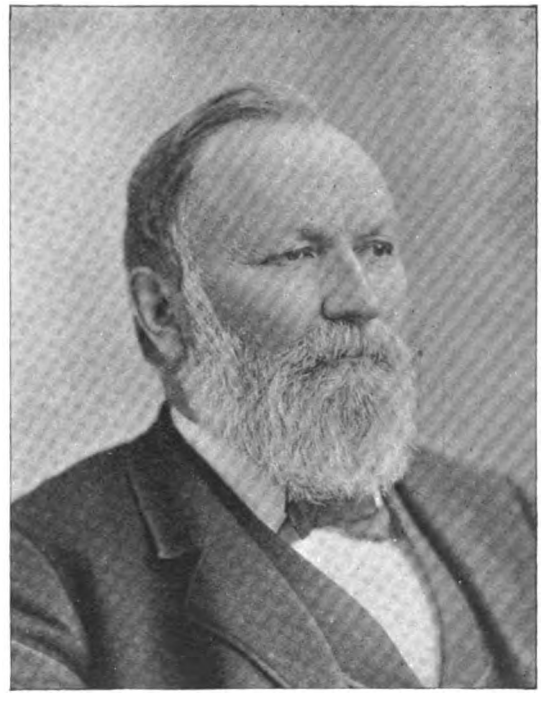
> "A giant in learning, a giant in mind;
> A lion in temper, both savage and kind."

In an intellectual point of view Ira Perley stood well-nigh solitary and alone. Rufus Choate said of him that he knew more law than any other lawyer in New England; and he might have added that he knew more of everything that could be learned than any other lawyer in New England. After graduating at Dartmouth he remained in the college as tutor for several years, and his classical learning was at that time accounted singularly wide and exact. While Latin and Greek were his life-long companions, the modern languages found in him a devoted lover.

He read everything, and his prodigious memory never failed to store away the riches of his acquisitive mind. His reading often followed the most unexpected subjects; and this was illustrated one morning when, overhearing his students discussing horse-racing, he forthwith delivered a lecture on the famous steeds of history, and wound up by giving accurate histories of the celebrated racers of the present day, their pedigrees and their records. And yet Judge Perley never drove a horse fifty miles in his life. During his career on the bench he was frequently required to pass upon grave questions affecting the constitutional policy of the State, but his great and mas-

terful mind was able to meet such emergencies; and although the domain had been previously unexplored, he fearlessly entered upon it with true statesmanlike views which have rarely been surpassed by any jurist either at home or abroad.

Judge Perley was a law-giver in the completest meaning of the word, and his opinions hold a high place in the judicial history of the country. He was not wholly happy at *nisi prius*, for his temper was quick, and easily irritated. His powers of tongue-stinging have never been surpassed, and the victim of his wrath never ventured to invite a repetition. He was utterly unable to conceal his feelings, and sometimes this weakness caused him much sorrow. On the other hand, it was just this weakness that made him so unique among men. Once a miserly old landlord called on him for advice, and in stating his case went on to tell how he had cunningly overreached a debtor, and made him pay twice; and chuckling at his shrewdness, asked the Judge his opinion. "My opinion is that you are a damned rascal." "What 's your fee?" whined the client. "Five dollars," answered the irate counsellor. Thus did he always deal with fraud and dishonesty wherever he found it.



LEWIS W. CLARK.

His mental operations possessed the rapidity of lightning, causing him to strike off his opinions at white heat. He was so full of law that he never knew what it was to incubate and elaborate. His associates all testify to his wonderful readiness, and relate how he could talk in the consulting-room much better than he ever wrote. But his opinions are superb models for students, — chaste and pure, with idiomatic English and exhaustive learning. Among his best are The Dublin Case, 38 N. H.; Horn *v.* Cole, 51 N. H.; Bowker *v.* Smith, 48 N. H.; Eastman *v.* Meredith, 36 N. H.; and Lock Co. *v.* R. R., 48 N. H.

Judge Perley was an admirable whist-player, — playing the game precisely as he worked at law, — tolerating no idle chatter, but insisting on strict discipline and attention. With him whist was merely another mental process. He enjoyed good stories, and in his earlier days a song by Counsellor Perley was one of the treats of the evening. There was no lover of country more devoted than he; the strongest patriotism dominated his body and soul, and in the darkness of rebellion his voice and purse were his country's. He believed that voting was the supreme duty of the citizen, and in the performance of that duty he never failed. With timeservers, especially in the war period, he had no patience, but denounced them one and all in his vigorous sentences, regardless of their standing in the community. When ex-President Pierce, whose position during war times was hardly as pronounced as his own, proffered a contribution to a soldier's charity, the Judge testily exclaimed, "Late, reluctant, and unimportant."

In 1859 Judge Perley left the bench and

resumed practice, being followed by two of his associates, Judges Eastman and Sawyer. The new Chief-Justice was Samuel D. Bell, who held the office till 1864, when he was succeeded by Judge Perley; thus these two eminent men, by an unusual course of events, were made to succeed each other. In 1869, having reached the constitutional limit as to age, Judge Perley left the bench, and as a consulting lawyer passed the remainder of his life, dying at his home in Concord in 1874.

In 1860 the Supreme Court consisted of the following justices,— Samuel D. Bell, Asa Fowler, J. Everett Sargent, Henry A. Bellows, Charles Doe, and George W. Nesmith. Within a year Judge Fowler resigned, and William H. Bartlett was appointed.

ISAAC N. BLODGETT.

Chief-Justice Bell came from that celebrated stock of men that have been identified with the history of New Hampshire for a century, holding offices of great trust and honor, and discharging their duties with exceeding ability. Judge Bell was a close student, a ready lawgiver, and an evenly balanced man. He brought to the bench learning and diligence, and contributed his share in the labors of the overworked court. He was a candidate for Congress in 1861, suffering defeat; but this diversion in no degree lessened his standing as a judge. His industry produced the well-known "Justice and Sheriff" and other legal works, besides papers and addresses on historical subjects. He took great interest in the work of the New Hampshire Historical Society, and was one of its most active members. He left the bench in 1864, and died in Manchester four years later.

Asa Fowler was a plain, methodical man, of extraordinary habits of work. He was a patient investigator, whom drudgery never frightened. After leaving the bench he resumed practice, continuing it until the last years of his life, when he gave his attention to extensive travelling, visiting Europe and California several times in quest of rest and pleasure.

Judge Bellows came from a distinguished family in the western part of the State, and he added more lustre to its honorable name. He was a jurist of high order, as his labors on the bench amply attest. His opinions run through fourteen volumes of the reports, and are proof of his wide and thorough learning. As a painstaking student few excelled him; his whole life was in the law and its intelligent interpretation, and he knew no such thing as leisure. With Judge Bellows it was always work; and when the end came with such shocking suddenness, it found him with harness on. In the still hours of the night death came unannounced, and the State mourned one of her purest sons. Unlike Perley, he was a slow worker, and his opinions cost him much labor; but he had a splendid genius for work, which always enabled him to keep abreast of the requirements of the docket.

Judge Bellows was a man of charming

personality, kind and sweet, yet dignified, as became his position. He was always the same courtly gentleman in all his relations, and his benevolence and lofty character made him beloved of all men. His mind was rich in anecdote and tradition, and he was a capital *raconteur*. On the second and last retirement of Chief-Justice Perley in 1869, Judge Bellows was at once appointed Chief, and he held that honor till his death in 1873.

His lamented decease created a vacancy in the highest judicial office, which was filled by the promotion of Judge Jonathan Everett Sargent, who enjoyed it little more than one year, when another political earthquake turned everything upside down, courts and all. Judge Sargent was well qualified by long judicial experience and habits of investigation for his position, for he was conservative and cautious, yet prone to yield rather than to dissent. After leaving the bench, — or more truly after the bench had left him and his associates, — Judge Sargent went into practice, which he soon abandoned for the more congenial pursuits of banking. He died in Concord in January of the present year.

In George W. Nesmith,[1] New Hampshire owns one of her most remarkable public men. He may be termed an extraordinary man. Born in the first year of this century, he still retains his faculties, scarcely impaired, and is as full of anecdote and love of jest as ever. In private life pure, in public life incorruptible, he furnishes a splendid example to our youth. He comes from that sturdy Scotch-Irish stock which has done so much in the making of the Granite State, and he illustrates in a very marked degree the peculiarities of mind and body that characterize that people. Judge Nesmith was not a close reader nor a hard student; but he was possessed of an intuition that, added to his great common-sense and knowledge of men, made him a most useful member of the bench. Few men in the State know as much of its history as Judge Nesmith. He counts among his acquaintances all the distinguished sons of New Hampshire; and there is no greater treat than to listen to his recital of reminiscences. He was one of Daniel Webster's closest friends, having known him from boyhood. Having attained the age prescribed by the Constitution as its limit for judicial officers, Judge Nesmith retired in 1870, followed by the warm affection and almost veneration of the people. He lives at Franklin, where his home is regarded as the Mecca of lawyers, for he is by common consent the tried and true Nestor of the bar.

One of the most brilliant of a long line of brilliant lawyers was William H. Bartlett, whose untimely death in 1867 was deeply deplored throughout the State. It is not too much to say that he was a superlative genius of juridical learning and temperament. Judge Perley, in speaking of him, said: "Few men have excelled him in quickness of apprehension; and this was a general trait of his mind, observable in whatever he undertook, — in his classical and mathematical studies, in the law, and even in any amusement or recreation in which he might be led to indulge. There was a playful ease in his way of doing the most difficult things, which made them look more like an amusement or a pastime than an irksome labor. With all his despatch, he was distinguished for accuracy and correctness. His memory was also tenacious and exact. In the law he united two things which are not often found together in the same individual, — a perfect mastery of principles, with great and ready recollection of points and authorities." He was a brilliant legal scholar and thinker, and his logistic powers were of a high order. He was a most lovable man, and he had hosts of devoted friends whose hearts were heavy, when, after a too brief career on the bench, he was called away by death.

The place thus made vacant was filled by the appointment of a distinguished son of a distinguished father, — Jeremiah Smith.

[1] Judge Nesmith has died since this article was written.

Judge Smith was a young man of thirty years; but his mind was thoroughly disciplined and matured. He quickly proved that he was possessed of great learning and reasoning powers, and the bench suffered a positive loss when ill-health compelled his resignation after a few years of service. It is a matter of public congratulation that his health was restored, thus sparing him for those brilliant successes that have uniformly attended him at the bar. It will not be disparaging to the present faculty of the Harvard Law School to predict that Judge Smith, in his new position of Story Professor, will add lustre to the annals of the school and fame to his own high character.

ALONZO P. CARPENTER.

Politics had long been rigorously applied to judicial appointments, and the bench was wholly partisan, to the disgrace of the State; but this bigotry was broken by the elevation of two Democrats — William S. Ladd and Ellery A. Hibbard — to the Supreme Judicial Court, and then began that custom, which has since obtained, of dividing the bench between the two political parties. These judges remained members of the court but a few years, though the former became one of the justices of the new court established in 1874. Judge Ladd is one of the strongest lawyers in the State, and his practice is highly remunerative. He is now the reporter of the decisions, — his work commencing with Volume 59 of the New Hampshire Reports.

The elections in 1874 resulted in a victory for the Democrats for the first time in nearly twenty years, and the managers of that party at once set about bench-making. When the Legislature convened, a judiciary bill was brought in and passed, and the Supreme Judicial Court went the way of its predecessors. The new law created two courts, — the name of the higher being "The Superior Court of Judicature," while the lower again took the name of "The Circuit Court." After considerable difficulty in persuading lawyers to accept the new honors, Governor Weston at last named Edmund L. Cushing as Chief, and William S. Ladd and Isaac W. Smith as associates, of the upper court, and William L. Foster as Chief, and Edward D. Rand and Clinton W. Stanley as associates, of the lower or Circuit Court. Judge Cushing had been prominent in the councils of his party, and entertained decided opinions on the political questions of the day; but his legal attainments were large, and his career on the bench was useful and honorable. Aside from his learning in his profession, he was a ripe scholar in polite literature, and an hour with him was always to be remembered. His taste for music was almost a passion, and for many years he presided at the organ of his village church. It must have been a novel sight to behold the learned and venerable Chief-Justice — his white locks falling on his coat — bending and swaying over the key-board of pianos and organs. Upon the demolition

of his court, after an existence of two years, Judge Cushing again gathered his faithful clients about him, and passed the remainder of his days amid the exquisite scenery of his native Charlestown.

Isaac W. Smith had been a member of the old court, and was to become a member of the new court which the exigencies of politics was soon to decree, thus furnishing a somewhat unusual experience of being a justice of three different courts in almost as many years.

In this anomalous experience the Chief-Justice of the Circuit Court, William L. Foster, was another participant. Judge Foster had been on the old bench since 1869; and although a Republican, the Democrats very becomingly made him the Chief of their new lower court. Judge Foster was pre-eminently distinguished by a gentleness and dignity that gained for him the immediate esteem of the bar and the good-will of the people. He was the ideal presiding-justice of the court, and his manner exercised a softening influence on the rude and sometimes boisterous performances of excited counsel. Judge Foster was early distinguished by his rare gift of classical oratory, which his elevation to the bench necessarily discouraged, but by no means destroyed. He is still recognized as the most finished advocate in the State, and his jury addresses are masterpieces of winning rhetoric. He is a man of decided literary tastes, with a strong leaning toward modern novels, which are the constant companions of his leisure hours. In 1876 the Republicans had their day, and like the Democrats of 1816, — or Republicans, as they were then called, — took summary revenge by creating their court and abolishing the judicial system of their opponents, which had been so recently established. To this court Judge Foster was appointed an associate, holding the office until 1881, when he resigned; and going into practice soon had the satisfaction of securing a large and lucrative clientage which calls him to every county in the State. Judge Foster enjoys a popularity unequalled by any other judge or lawyer, for he adds to his extensive legal lore and love of patient research that sweetness of manner and consideration of others that have gained for him a popular regard, as well as the filial affection of the younger members of the profession.

Edward D. Rand, one of the circuit judges, was a polished scholar, whose inclinations toward literature were strong; and had he yielded, and given himself to the service of the Muses, a brilliant memory would have been left in the realm of letters.

In July, 1876, Governor Cheney, the new Republican Executive, under the act of a Republican legislature remodelling the court presented these lawyers to the people of New Hampshire as their Supreme Court: Charles Doe, Chief-Justice; William L. Foster, Clinton W. Stanley, Aaron W. Sawyer, George A. Bingham, and William H. H. Allen, associates. This court is still *in esse*, although deaths and resignations have largely changed its members, so that to-day but two judges, Doe and Allen, have remained continuously from the first. In 1877 Judge Sawyer resigned, and ex-Judge Isaac W. Smith came on for the third time. The Legislature this year added another justice, and the Attorney-General, Lewis W. Clark, was appointed.

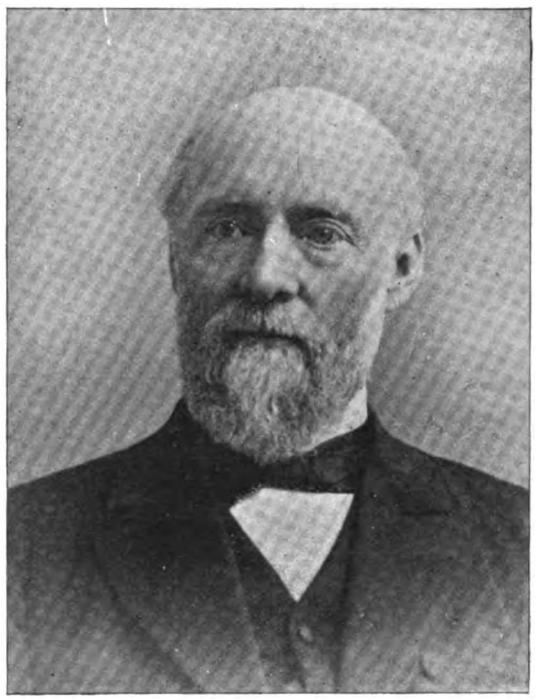
In 1880 Judge Bingham having been nominated for Congress left the bench, and Isaac N. Blodgett of Franklin took his place. In July, of the following year, Judge Foster retired, being succeeded by Alonzo P. Carpenter, a distinguished lawyer from the northern part of the State. Judge Stanley died in December, 1884, and ex-Judge Bingham resumed his old position.

The present court consists of Chief-Justice Doe, and Judges Allen, Smith, Clark, Blodgett, Carpenter, and Bingham. The Attorney-General, Daniel Barnard, succeeded Mason W. Tappan, who died in 1886. The salary of the Chief is $3,500, and of the associates, $3,300. The Attorney-General receives

$2,200, and the Reporter, ex-Judge Ladd, $1,000.

The judges are appointed by the Governor and Council, and hold their offices until they reach the age of seventy, when they retire without pension. They are removable only by address of both houses of the Legislature, assented to by the Governor and Council. They are, of course, subject to impeachment.

As has been shown in this article, the entire court may be swept out of existence by creating a successor, and this has been the general practice when politics demanded it. In every Legislature there is more or less talk about changing the judiciary system, but thus far no bill has been seriously considered, although several have been prepared. By an unwritten law the politics of the bench are divided between the two great parties; and if a Democratic vacancy occurs it will be filled by the appointment of a judge of like political faith, and the same with a Republican vacancy. In this way the reasons for overturns, set forth by excited partisans, are wholly obviated, and the shadow of the headsman banished from the precincts of the Hall of Justice. New Hampshire clings obstinately to the English method of appointment, and it is a matter worthy of remark that in the last two Constitutional Conventions no serious proposition was advanced looking toward an elective judiciary.



GEORGE A. BINGHAM.

The present Chief-Justice of our Supreme Court is indisputably one of the most brilliant and distinguished jurists that this country has ever known; and were it not for his exaggerated distaste for public life and notoriety, his name would be one of the most familiar in our judicial history. No man is more intensely averse to identity than Charles Doe. He is even eccentric in his endeavors to conceal himself, and yet this very practice always reveals him and marks him for observation. Simple in taste, and plain, even negligent, in dress, no one would recognize the learned judge in the awkward farmer-like form as he walks up the Capitol steps to preside at the law term. For more than thirty years he has studied law, and nothing but law, even refusing literature of every kind, including the daily newspapers. He is a man of independent fortune, mostly inherited, yet his mode of living is plainly severe, and wholly destitute of prevailing conventionalities. He carries this austerity of habit into court, where he conducts business with startling promptness and exactitude. He tolerates no formalism, sometimes dispensing with the customary proclamation of the sheriff, and never, I believe, allowing that functionary to accompany him from the hotel to the court-house. If a sheriff happens to overtake him, he may walk with the judge as a citizen, but not as a sheriff. In point of intellect, Judge Doe is *primus inter pares* of his contemporaries. His is a masterful mind. His mental powers are of the kind that made John Marshall and Lord Mansfield famous. With him law is

a science, yet an ever-moving science. No man is more glad of the to-morrow than Judge Doe. He welcomes changed conditions of things, and is ready to meet them with his strong, clear reason. "Perhaps the most remarkable thing about Judge Doe is the combination of mental qualities not often found in the same person. He unites extraordinary quickness of perception with great power of patient and thorough research. He dissects at once each case brought before him, discerning, as if by intuition, the vital legal point on which it turns." "Although familiar with legal literature, and having a keen scent for authorities, he has also a rare power of finding the true legal path in cases where there are no authorities to serve as guides. . . . He is fully capable of original investigation."

To those who would know the legal originality and ability of Chief-Justice Doe, I commend the following cases, — Boardman *v.* Woodman, 47 N. H., and State *v.* Pike, 49 N. H. In these opinions are thoughts that come pretty near the genius line.

In the Church Case (Holt *v.* Downes, 58 N. H.) he dissents from the famous decisions of Parker and Shaw in Massachusetts. In Orr *v.* Quimby, 54 N. H., Judge Doe does not agree with his court. Darling *v.* Westmoreland, 52 N. H., is highly interesting as bearing on collateral issues in evidence. Hoit *v.* Stratton Mills, 54 N. H., shows his independence of reasoning; also in Brown *v.* Whipple, 58 N. H. He discusses the point as to whether sharing profits constitutes partnership in Eastman *v.* Clark, 53 N. H. In Burke *v.* R. R., 61 N. H., Judge Doe lays down his ideas of the Powers of Corporations under a Charter. In Wooster *v.* Plymouth, 62 N. H., the Chief-Justice presents his views on Jury trials. Taxation is considered in State *v.* United States and Canada Express Co., 60 N. H.; while in 62 N. H., a will case (Sanborn *v.* Sanborn), we have a masterpiece both of legal learning and judicial rhetoric. In Wells *v.* Foster, 64 N. H., Judge Doe delivers an opinion in six lines.

When the vacancy on the bench of the Supreme Court of the United States, caused by the death of Nathan Clifford, was to be filled, Chief-Justice Doe was urged for that position; and among the recommendations at that time was one by Gov. Charles H. Bell, which illustrates the esteem with which the New Hampshire jurist is held.

To His Excellency the President:

I respectfully recommend Charles Doe, present Chief-Justice of the Supreme Court of New Hampshire, for appointment to the bench of the Supreme Court of the United States, in the place of the late Judge Clifford.

I regard Judge Doe as one of the ablest jurists of the country. He is a man of marked individuality, of decided convictions, a careful student, but not a mere book lawyer, being thoroughly imbued with the spirit of the law, and not afraid to overrule a clearly erroneous opinion of whatever standing.

I should regret extremely to lose Judge Doe from New Hampshire; but if he should be transferred to the National Court, the country would be the gainer.

CHARLES H. BELL.

EXETER, N. H., Oct. 14, 1881.

While presiding at the law term, Judges Allen, Clark, and Carpenter sit at the right of the Chief; at his left are Judges Smith, Blodgett, and Bingham, each having his place assigned according to the date of his appointment. William H. H. Allen is the senior justice, having come upon the bench at the establishment of the court. He is a man of strong and tenacious mind, a deep and persistent student, and in all things a hard worker. Before his promotion to the bench, Judge Allen had been registrar of bankruptcy, and brought to his new position a wide knowledge of that branch of jurisprudence. Other mental pursuits find their way to Judge Allen's leisure hours, for he has never neglected those college studies that brought him such high rank in the classes of his Alma Mater. Cavendish and Allen are intimate acquaintances.

At the left of the Chief is Isaac W. Smith, one of the real laborers of the law. He was once a prominent political factor, but since his elevation to the court politics have been forgotten, and he gives his days and nights to his professional duties. Judge Smith is a slim, delicate man, with the nervous air and stooping posture of the thorough student. He is a trustee of Dartmouth, and between his duties there and his work on the bench, he has no time for "soul inviting," as Walt Whitman calls it.

Lewis W. Clark is one of the most charming judges to be found in any court. Cool, patient, and courteous, he is the ideal *nisi prius* justice, and his coming is always hailed with gladness. He has a splendid mind, and knows how to use it. As Attorney-General he gained great laurels, which are kept green by his service on the bench.

Alonzo P. Carpenter is a pale, studious man, yet one of the most vigorous and original thinkers either on the bench or at the bar. He was long one of the leaders of Grafton County, and he came to the bench a widely read and thoroughly equipped lawyer. Unlike Judge Doe, Judge Carpenter is a reading man outside of law, and a critic of literature, — French and Latin, as well as English. He is an encyclopedia of reading, and may easily be considered the scholar of the court. But his legal acumen is high, and he is not afraid to use it in dissenting from his associates. It is related of Judge Carpenter, that when the leaders of the two parties were trying to divide the judgeships equally, they were always troubled by the odd number seven. There might be three Republicans and as many Democrats, but what about the seventh judge. At last Harry Bingham, the venerable sage of Granite State Jacksonianism, broke the puzzle by suggesting Carpenter, whom he declared was n't anything in politics. Whether this is true or not, it is certain that, unlike most of the judges, he had not been prominent in party councils. Smith, Blodgett, Bingham, Clark, and Allen had been Senators or Representatives, or had held lucrative offices as reward for party service. In 1889 Williams College conferred the degree of LL.D. upon Judge Carpenter.

Isaac N. Blodgett comes from a distinguished family, both in law and in politics. His brother Caleb is on the Superior bench of Massachusetts, and a cousin is a United States Senator from New Jersey. Judge Blodgett is a neatly dressed and good-looking judge, who adds credit to the bench both by his bright mind and painstaking work.

George A. Bingham, of Littleton, is the junior judge in appointment, but not in years, for his services at the bar have been long and varied. The firm of Bingham & Aldrich was one of the most famous in the State, having a large clientage and political influence as well. The present Chief-Justice of the District of Columbia is a brother of Judge Bingham, as is also the distinguished Harry Bingham of political renown.

The Attorney-General of New Hampshire is Daniel Barnard, of Franklin, who is not only a good jurist, but one of the most popular and lovable lawyers in the State. He has an unruffled disposition, is kindly in the treatment of witnesses, yet a skilful cross-examiner, who manages to discover all he wants. As an after-dinner speaker the Attorney-General has few equals; and it is on these occasions that he shows that delicate wit and humor that contribute so much to the making of his professional life agreeable and engaging.

The Supreme Court of New Hampshire is a hard-working court; and under the leadership of its Chief the judges continue to maintain the high standard set by their distinguished predecessors, who bestowed on the New Hampshire judiciary a name so lasting as to endure forever in the history of American jurisprudence.

THE UNGRATEFUL HUSBAND.

By Irving Browne.

REIF *v.* PAIGE, 55 Wis. 496; s. c. 42 Am. Rep. 731.

[*A. offered to give* $5,000 *to any person who would bring the body of his wife from a burning building, dead or alive. B., a paid member of the fire department, on the faith of the offer, and at great personal peril, but without notice of acceptance of the offer, brought the dead body from the building.* Held, *that he was entitled to the reward.*]

ONE Paige's house was all a-fire,
With Mrs. Paige inside,
And Mr. Paige did much desire
The rescue of his bride;
The engines worked, the engines played,
But naught the deadly foe delayed.

Thereat exclaimed that loving spouse,
"Who brings me forth my wife
From yonder wildly burning house,
Though destitute of life,
Five thousand dollars I'll give him,
For risk of injury to limb."

Then rushed the gallant fireman, Reif,
Into that hell of flame,
And to the crowd's intense relief
Soon safely out he came,
And in his arms the body bore—
Alas! of life it knew no more.

But Paige's zeal meantime had cooled
The money he refused.
"The courts," he said, "had often ruled
That payment was excused
Because acceptance of the offer
The other party did not proffer.

"And then again the fireman, Reif,
Was hired by the town,
And could not justly claim relief
Except the high renown;
For 't was his duty to take pains
To fetch inanimate remains."

Then loudly roared good Lyon, J.,
"Not so, good sir, I ween;
No such inequitable way
In any court I 've seen;
He was not bound to notify,
Because meanwhile your wife might die.

"Persons and goods he ought to save,
Whene'er he safely can,
But he 's not bound to risk the grave
To help another man;
This plaintiff risked his life for you,
So keep your word without ado."

That paltry Paige looked very blank,
His counsellors likewise,
And their ingratitude so rank
Excited great surprise.
But gallant Reif, now long live he!
We drink his health with three times three.

CAUSES CÉLÈBRES.

XX.

THE MYSTERY OF METZ.

[1669.]

A LITTLE after noon on the 25th of September, 1669, Wilhelmina, wife of Gilles Lemoine, the cartwright, residing in Glatigny, went to a spring a few hundred yards distant from the village to wash linen. She was followed by her little son Didier,—a pretty, rosy child, with fair, long curls, aged about three. As they went, the little boy stumbled and fell.

"Not hurt, not hurt, my mother!" shouted the young hero, jealous of being assisted. "I am coming, my mother. Go on!"

She did go on, never to hear her child's voice again.

Busied with her work, some minutes elapsed before Madame Lemoine became aware that she was alone. She then hastily retraced her steps, calling sharply as she went; for she fancied that the child had concealed himself, and she was at the moment in no mood for play. Receiving no answer, she ran back to the house, and not finding him there, hastened with her husband to the cottage of her father-in-law, which was close at hand. No one there had seen the child; and now seriously alarmed lest he should have strayed into the adjacent wolf-haunted forest, the anxious parents assembled their friends, and aided by the town-prefect in person, examined every inch of ground in the vicinity of the spring. Their search in this direction proved vain; but a shout from one of the party who had reached the high-road leading to Metz, brought every one to the spot, where, clearly traceable on the soft white dust, were seen the footprints of the little wanderer.

Soon, however, these tiny tracks were lost in the marks of wheels and hoofs, and again the searchers were at fault.

Suddenly there came up, riding from Metz, a horseman, wearing the livery of the Count de Vaudemont, who, to the question had he met a straying child, promptly answered that he had encountered, but a few minutes before, a huge black-bearded Jew, on a white horse, proceeding towards Metz, and carrying before him a little curly-headed boy, apparently between three and four years old. No sooner, he added, had the Jew caught sight of him, than he had quitted the highroad, so as to preserve in passing the distance of a pistol-shot.

There could be no question that the child was Didier; and the unhappy parents, hurrying on to Metz, inquired at what was called the German Gate of the city, if such a person as they described had been seen to enter.

Yes; a turner named Regnault, living close to the gate, had observed him pass in.

At this moment there came in through the gate an acquaintance of Lemoine, resident in the neighboring village of Hex, who, on being informed of what had occurred, at once identified the Jew as one Raphael Levi, of Boulay, whose face dwelt freshly enough in the speaker's recollection, inasmuch as less than two hours since, Levi had passed him on the road to Metz, carrying *something* before him, covered with a cloak.

Where did he lodge, this Raphael Levi?

At the house of his cousin Garçon, not a minute's walk from the gate.

To the eager demands of the Lemoines, Garçon's servant persistently declared that her master was absent, and that nothing was known of any strange child.

The baffled inquirers were about reluctantly to withdraw, when a young Jewess,

who had stopped in passing to listen to the debate, stepped forward, and addressing the servant in German, warned her to afford them no information.

Now it happened that Lemoine understood German, and with these ominous words stole into his heart the conviction that his child had been kidnapped by the Jew, for purposes too horrible to contemplate. Already it might be too late to save the little innocent; but revenge at least was left, and to this Lemoine, secretly despairing of his child's life, devoted himself heart and soul. No time was lost in laying a formal complaint before the lieutenant-criminel of Metz; but before the suspected Jew could be apprehended, those of his people resident in the city wrote to him, earnestly advising him to appear and answer frankly to the charge preferred. Raphael Levi obeyed.

In the process which followed, Raphael Levi was described as aged fifty-six, born at Xelaincourt, of middle stature, black curling hair, very full black beard; a bold, determined man; had travelled much in the Levant, in Italy, Spain, Holland, — whithersoever, in short, the affairs of his people summoned him; of late years, resident at Boulay, in the duchy of Lorraine (six French leagues from Metz), where he exercised the functions of rabbi and chief of the synagogue.

On the day of the alleged abduction of the child Lemoine, he had quitted Boulay at seven in the morning, arriving three hours later at Metz, his errand being to purchase a ram's horn for the next day's Feast of Trumpets, and also wine, oil, and fish. These articles he delivered to his son, and despatching him homeward, followed himself an hour after noon. The village of Glatigny is about a league and a half from Metz, and lies some two hundred paces from the highroad from Metz to Boulay. It has been mentioned that the child, in place of following his mother to the spring, had wandered into the road. The presumption was that Levi, finding him there alone, had caught him up on his horse, returned to Metz, delivered him into the keeping of others of his people, and finally retraced his way to Boulay to sleep. Eighteen witnesses were produced, five of whom testified to having observed, on the day mentioned in the process, a Jew answering the description of Levi enter by the German Gate. He rode a white horse, and carried before him, wrapped in his mantle, a child about three years of age, with long, bright curls escaping from his little crimson cap. One only of the witnesses, however, Beaisette Thomas, swore positively to the identity of the infant-carrying Jew, while the Vaudemont rider affirmed that the man he had encountered on the road exceeded the accused in height and size.

The Jews of Metz, who neglected nothing to secure the acquittal of Levi, now tendered proof that on the day in question he had been at three o'clock at Estangs, two leagues from Metz, and half a league from Glatigny, arriving at Boulay at four, accompanied by his son.

"Agreed!" replied the judges, "that is very possible;" and thereupon decreed that the accused, Raphael Levi, should be *burned alive*, — being previously subjected to the torture, ordinary and extraordinary, with the view of discovering what he had done with the child.

Appeal was instantly made to Parliament.

Two days after the first decree had been pronounced, — namely, on the 11th of November, — the jailer reported to the recorder that he had surprised Levi in the act of throwing out a letter to a servant of the prison, and on searching his cell, had found ten other letters, addressed at different times to the accused. These the servant, Marguerite Houster, admitted having received at the gate from the prisoner's son. The letters were in Hebrew and in German, the Jews of Metz habitually using the latter tongue for conversation. Some delay occurred in discovering an interpreter for the

Hebrew letters, but one was at last found in the person of a young man named Louis Anne, a shoemaker, formerly a Jew. He read his translations in the presence of the accused, who admitted their fidelity, with the exception of the letter taken from the servant Houster.

The communication in question was addressed to the principal Jewish residents of Metz. It was read to them. They were united enough in condemning the interpretation of Louis Anne, but differed widely among themselves as to actual meanings, — the accused himself repeatedly varying his rendering of the same passage. At length, in despair, the authorities summoned to their aid Monsieur Paul Duralier, formerly a Jew, and an eminent physician of Metz, but since of Kaiserburg, in Alsace.

This gentleman made a careful translation, the correctness of which Levi acknowledged, objecting to only one word, "bound" (*lié*), in place of which he affirmed he had written "found" (*trouvé*), his object being, it was supposed, to induce an idea either that the child was yet alive, or, if dead, to conceal the kind of death to which it had been subjected.

As the terms of this epistle are curious enough, and as to its testimony the result of the trial was principally due, it is here given literally after Duvalier's translation: —

Written by Raphael Levi, in his captivity, to the chief Jews of the Synagogue of Metz.

DEAR DIRECTORS, — I languish to learn what the Parliament hath pronounced, for the attorney of the king hath spoken, and I dwell in constant fear. Let me know, I pray you, the proceedings of the court, and what the controller[1] doth before it.

The jailer's servant told me that the Jew who brings my victuals said they bound (*lié*) the child. Ah! write to me concerning my witnesses. Write me everything, so that I may for once receive a little comfort.

That Homan[2] visited the prison to-day, and said that he would upset all that justice had hitherto effected. Look, therefore, to the Parliament. Invoke them that I may be released from this wretchedness, — debarred as I am from speaking to my dear wife and children; unable to reckon with the controller, my creditor. Ah, I am unhappy!

I will die like a son of Israel, and glorify the name of God. All I ask is that my daughter Blimelé (who is betrothed) be married, and that my wife and little ones be cared for.

I am plunged in this misery for the sake of the community. God will help me in it.

[1] A person at Boulay, to whom he was in debt.

[2] Corruption of "Haman," — the most injurious epithet a Jew can apply.

This letter bore no date; neither did any of the others, which contained little more than hints for the guidance of the prisoner when confronted with the witnesses. One of them, however, seems to have enclosed a piece of knotted straw, which the accused was earnestly exhorted to place under his tongue when called upon for his defence, pronouncing at the same time five Hebrew words, the purport of which neither he himself nor any of his interpreters could explain.

Another of the captured notes was acknowledged by the accused to be word for word as follows: —

To Raphael Levi in his captivity:

In case, O Raphael (the which Heaven forbid), thou art submitted to the torture, thou wilt repeat thrice the following words: *Moi Juif, Juif moi; vive Juif, Juif vive; mort Juif, Juif mort.*

Closely interrogated concerning these letters, especially the last, which was suspected to be a charm, Levi indignantly repudiated all dealings with sorcery, declaring that the above formula was nothing more than a prayer.

Still laboring to save their fellow, the Jews of Metz now had recourse to a stratagem, suggested, it may be, by the passage in Gen. xxxvii. 33: "An evil beast hath devoured him; Joseph is without doubt rent in pieces."

A report was industriously propagated

that the child had been carried off by wolves; and liberal rewards, emanating from the Jews themselves, were offered to any person who might succeed in recovering a portion of the remains or attire of the infant, sufficient to establish his identity. Within a day or two of the announcement of the rewards, the child's little shirt was discovered, hanging on a bush at the distance of three feet from the ground, in a dense part of the wood, about a quarter of a league from Glatigny.

Nor was this all. A woman living at Katonfai, a little village not far from Glatigny, affirmed on oath that she one day encountered on the road three Jews of Metz, whose names she did not know. These men entered into conversation with her, appearing anxious to learn what was thought and said in the neighborhood with respect to the missing child; and on her replying that even if he had been devoured by beasts, some portions of his dress might yet be found, one of the strangers eagerly assented, remarking, with significant emphasis, that the *head* at least might be forthcoming.

The observation seemed prophetic. Two days later, — that is, on the 26th of November, 1669, — four swineherds, passing through the wood, came upon the head of a child with the neck and part of the shoulders, two little frocks (one within the other), one woollen sock, and a little red bonnet, — none of the articles of dress being either torn or discolored with blood!

Thereupon the Parliament directed a commissioner to repair to Glatigny, and report upon the discovery. In the presence of this officer, Lemoine at once identified his child's dress. As for the head, so much was it mangled and disfigured, that the little features were no longer recognizable by mortal eyes. The flesh, notwithstanding, was singularly firm and fresh, and the blood in the veins seemed scarcely dried. The swineherd described the manner in which the articles had been found; and one of them boldly affirmed that it was impossible the child had been mangled by beasts, since, not to mention that the clothes were whole and unstained, he had observed that when a wolf attacked a sheep or any other domestic animal, it invariably preyed upon the head first.

Two master-surgeons, after minute examination, gave it as their opinion that the child had lived and breathed much within the period (two months and a day) that had elapsed since his disappearance.

The accused, in refuting the testimony that sought to fix his identity, returned to his *alibi*, and averring parenthetically that he had worn no mantle on the day of the supposed abduction, stated, as before, that he had arrived at his own dwelling at Boulay by four o'clock in the afternoon.

These two statements were contradicted, singularly enough, by two of his own witnesses, who asserted that on the 25th of September he had passed them, as though coming from Metz, at about half an hour before sunset (this, being about the equinox, would make it between half-past five and six); that he was mounted on a white horse, wore a mantle, was alone, and appeared so much agitated that he permitted his horse to wander from the road, to which they (the witnesses) reconducted him.

Certain neighbors of one Gideon Levi, a Jew residing at Hex, — one league from Glatigny and three from Metz, — deposed that ever since the loss of the child, Jews of Metz were perpetually visiting Levi's house, sometimes in parties of three and four, even five and six, — and this at all hours of the day and night. One swore to having seen Gideon Levi quit his house and go into the wood, carrying on his back a *hotte* (scuttle); and another declared that Gideon had advised him to join in the search for the remains, and even indicated the direction in which they would probably be discovered. Upon this evidence Gideon was apprehended and interrogated. He denied all knowledge of the crime; and admitted that, by the direction of the Jews of Metz,

he had sent persons to search the wood, and promised a hundred crowns for the discovery of any trace of the young Lemoine. Once only, during the protracted investigation, did the accused commit himself by inconsistent statements. He declared before the parliamentary commission that he could not possibly have carried the child upon his horse, the latter being already laden with barrels of oil and wine which he had purchased at Metz; whereas before the lieutenant-criminel, on the 14th of October, he stated that he had placed the barrels on his *son's* horse and sent him forward, remarking that he himself, travelling more lightly, would easily overtake him.

Upon the whole evidence, the Court decreed as follows: —

"Annulled the former judgment. Declared the accused, Raphael Levi, Jew, guilty of having, on the 25th September, 1669, upon or near the highway, near Glatigny, stolen the body of the child of Gilles Lemoine, aged three, whose head and neck have since been found exposed in the adjacent wood. In reparation, condemned the said Raphael Levi to make the *amende honorable* before the great door of the cathedral church of Metz; and kneeling in his shirt, a rope about his neck, and a burning taper of three pounds' weight in his hand, to confess his crime, declare his repentance, and ask pardon of God, the king, and the law. This done, the said Raphael Levi should be conveyed to the field of Seille, and there burned alive, and his ashes scattered to the winds; himself having been first submitted to the question ordinary and extraordinary, in order to discover in whose hands he deposited the child, and the manner of its death; the goods of the condemned to be confiscated — one thousand livres paid to the king, and one thousand five hundred to Gilles Lemoine, together with the expenses of the process.

"Ordered, further, that Gideon Levi be submitted to the question ordinary and extraordinary, to discover by whom the remains of the child Lemoine were placed in the wood; that Marguerite Houster be summoned before the council, and severely reprimanded for conveying letters to the said Raphael Levi; lastly, that Mayer Schaube, Jew, of Metz, be committed to prison, and his goods inventoried, with a view to more ample inquiry as to the place in which the child Lemoine was secreted. Done at Metz, in Parliament, in the chamber De la Tournelle, Jan. 16th, 1670."

Gideon Levi was subjected at once to the torture, but without obtaining from him any revelation; and as it was by that time late in the day, the execution of the sentence on Raphael Levi was postponed to the following morning. At eight o'clock, accordingly, the unhappy criminal was conducted to the torture-chamber. Casting one hasty glance around upon the terrible apparatus, he drew from his pocket a small volume in the Hebrew character, and proceeded to read from it certain words; but the jealous suspicion of Messieurs the Commissioners instantly took the alarm. These words might contain a spell similar to that contained in the formula he had been instructed to utter when submitted to the question. The book was taken away.

The sentence was then read; the condemned man evincing no emotion. When it was finished, he calmly observed that he had no complaint to make of his judges; but as for the witnesses, they had spoken falsely and betrayed him to death. He warned the Commissioners that, should the agonies of torture force any confession from his lips, he would revoke it within an hour. This declaration he repeated thrice.

The warning proved superfluous. So far from confessing anything, he never ceased, while consciousness lasted, to insist upon his innocence. It was remarked that during the severest moments of the torture — for example, while suspended in the air with heavy weights attached to his toes — the prisoner remained for a quarter of an hour in a kind of lethargy, apparently quite insensible to pain. Some of those present attributed this to the effect of the words they had imprudently permitted him to pronounce before the book was taken from him; "but,"

says the excellent advocate, gravely, "it is surely a simplicity on the part of any to believe that the speaking of certain syllables can be productive of such an effect."

Torture having done its miserable worst, the criminal was conveyed to the cell for the condemned, and handed over for a time to two reverend persons, — the Sieur d'Arras (curate of St. Marcel of Metz) and a Capuchin friar, — who were awaiting him with the benevolent purpose of exhorting him to embrace the Christian faith. The unhappy culprit, though acknowledging that he had not too deeply studied the mysteries of his own faith, still refused to substitute another, and turning away from his exhorters, seemed to await with impatience the closing scene.

Conducted at last towards the place of punishment, he tied round his left arm and forehead narrow strips of leather, with knots in the centre. One of the officers having demanded the meaning of this ceremony, Levi replied that in the knots were contained the commandments of his law, and that it was customary with his people at the point of death to attach them thus to the head and arm. Still haunted with the idea of some concealed spell, the intelligent Commissioners deprived the criminal of these symbols, and once more pressed him to acknowledge the abduction of the child, the place of its concealment, and the time and manner of its murder.

Raphael Levi returned thereupon to his first unqualified denial, asserting that he was perfectly innocent, and the witnesses forsworn. It was remarked that during the trial he had, nevertheless, made no exception to their testimony.

Still, the Church made one final effort to secure the convert. The curate and Capuchin pressed up to him, and were commencing a new exhortation, when the criminal, bound as he was, pushed them from him with his elbows, sternly desiring them to notice that he died as he had lived — a Jew; and that, dying in such a manner, his soul would assuredly be carried into Abraham's bosom; even adding that for the act imputed to him as a crime, he would not ask pardon of God himself! This last expression confirmed the then popular opinion that the Jews included the abstraction and murder of Christian children in the category of religious acts!

The courage and calmness of the condemned man, whatever their source, remained unabated to the end. Arrived at the pile, he dressed himself, unaided, in the garment in which he was to suffer. Attached to the stake, and pressed to the last moment on the one side to confess his crime, on the other to disavow his creed, the unhappy man continued to reply with as much courage as though he had not been standing on the verge of death.

At last, turning to the executioner, he begged him to put an end to the scene by strangling him with the rope that confined him to the stake.

And this was done. — *Judicial Dramas.*

POPULAR LAW.

IN Boswell's "Life of Johnson" a story is told of one Betty Flint who was charged with stealing a counterpane. The judge, who was partial to the fair sex, observed that the prisoner was good-looking, and let her off. "And now," said Miss Betty Flint, — "now that the counterpane is my own, I shall make it into a petticoat." The remark seemed uncalled for, and must have filled the minds of those present in court with a vague feeling that injustice had been done somehow and to somebody. But it is not unlikely that disinterested parties were pleased with the acquittal of the prisoner, because she was evidently a woman of some personal attractions. Now, it is a principle of English popular law, even to this day, that a pretty woman can commit no offence; or if she can, then that there are always extenuating circumstances. These extenuating circumstances are usually a good figure, bright eyes, plump cheeks, a well-shaped nose, and satisfactory lips.

When women produce an equal effect on public opinion with men, we shall probably find it laid down as a corollary to the principle above mentioned that a handsome man cannot transgress the law. The beauty of the race may then be expected to improve very rapidly, for it is clear that the ugly and law-abiding part of the community will be at the mercy of the unrestrained Venus and Adonis; they will consequently suffer severely in the battle of life, and probably not survive very long. It is already a noticeable fact that the handsome Latin races are less law-abiding than the pudgy-faced Teutons. Perhaps the explanation is to be found in the connection between good looks and inability to commit crime in the eye of so-called administrators of the law.

A second principle of popular law is that if a man has been nearly convicted of a crime he ought to be punished to some extent. In such cases moral certainty ought to override legal technicalities. Thus there is a sentence on record of a Western judge which probably gave general satisfaction at the time it was pronounced. A man was charged with forgery and a number of other offences, but the prosecution succeeded in establishing only the charge of forgery. For this the judge sentenced the prisoner to one year's imprisonment; "but," he added, "you are sentenced to an additional fourteen years for general cussedness." Nothing could be more in accordance with popular notions of justice.

Connected with this principle is the theory that when a serious crime has been committed a corresponding punishment ought to be meted out to some one or other, just as during the siege of Paris by the Germans it is related that people went about exclaiming that somebody ought to get shot. There were long periods when only buildings suffered, and though the French soldiers loudly proclaimed that they were ready to die for their country, somehow or other they failed to do it. This gave an air of unreality to the siege in its earlier stages, — it was not business, and it was not war. It is the same in popular law. Thus some English travellers were once touring in Arabia, when they were set upon by a band of robbers and deprived of their baggage. They proceeded to complain to the local Cadi, who promised to bring the marauders to justice. When the day came on which the Cadi was accustomed to administer the law, the Englishmen were invited to attend the court, and were accommodated with seats on what, for want of a better word, may be called the bench. Coffee was handed round, and everything was done to make the Englishmen feel that they were the objects of courteous sympathy. They were called upon to state their case, which they did, and found no difficulty in establishing it. "Well," said the Cadi, "what punishment would you like the prisoners to be subjected to? Shall they be scourged, or

bastinadoed, or thrown into a dungeon? You have only to name the sentence, and I will pronounce it." The Englishmen decided in favor of scourging. "Bring in the prisoners," exclaimed the Cadi; and now for the first time those unhappy men were introduced into the court. "You are convicted," said the magistrate in his sternest tones, "of robbing these honorable Englishmen. It is intolerable that this kind of lawlessness should prevail, and you are sentenced to be scourged." In a moment the prisoners were stripped and the punishment began. "Stop!" exclaimed one of the Englishmen, "those are not the men!" "My dear friend," replied the Cadi, while the scourging continued merrily, "of course they are not the men. But they will do very well. It is perfectly impossible for us to catch the scoundrels who robbed you; but it is necessary, in the interests of justice, that somebody should be punished for such offences, if only to bring home to the minds of the real robbers the kind of sentence that would be passed upon them if they were really caught." This theory of the scapegoat seems to have been almost instinctive with all peoples and at all times. In cases of doubt it insures that every offence shall be followed by an adequate punishment. If the offender can be punished, so much the better; if not, a "whipping boy" or scapegoat must be punished instead. It is a curious idea, and very repugnant to enlightened modern thought; but it lingers on in unwritten popular codes of law, as may be gathered from the free and easy way in which mobs are wont to wreak their vengeance on the innocent when they are unable to touch the guilty.

Mob law is the law of passion and emotion. "I hate you; I never hate without good reason; therefore you are bad and ought consequently to be punished," — this is its fundamental precept, and, *mutatis mutandis*, we may put "love" for "hate." But this kind of argument is not confined to localized mobs merely; there is the rabble rout of sentimentalists who find in certain newspayers (which shall be nameless) a common rallying-ground. These men are fond of talking of the "Spirit of the Age." They would condemn the advocates of Lynch law; they would despise a judge who was not impartial; but they think that in appealing to the Zeit-Geist, or Spirit of the Age, they are taking up a quite unexceptionable position. Now, the Spirit of the Age is nothing more than the emotions of Brown, Jones, and Robinson, the aforesaid sentimentalists, when they find that the law says one thing and they desire another. If a pretty woman is condemned to be hanged, Brown, Jones, and Robinson scream in chorus that hanging women is opposed to the Spirit of the Age. But if an ugly old hag is sentenced to death, these worthy gentlemen read the account of her execution with complacent satisfaction. Our modern prætors, the Home Secretaries, are always getting into hot water because they fail properly to interpret this vague and shifting spirit; but the petitions and deputations with which they are pestered during periods of excitement are really nothing more than a thinly veiled attempt to revert to emotional or mob law.

"Is it not lawful for me to do what I like with my own?" is a question that is very often asked by persons not accustomed to "exact thought." A man's wife is his own; therefore he may beat her. A man's house is his own; therefore he may make it a nuisance to his neighbors. A man's life is his own; therefore he may take it. These are some of the deductions which are made every day from the above maxim of popular law. And we find even well educated persons drawing conclusions hardly less valid than those given above. Thus it is the commonest thing for women who have jilted their adorers to endeavor to retain the household goods given them in contemplation of marriage. So, too, a man who has attached "fixtures" to the house he rents will often loudly bemoan his fate at not being allowed to remove them when he goes into fresh

quarters. The law of the land is here altogether out of sympathy with the popular notion of what law ought to be. The tenant has paid for the fixtures; he considers them his own; and yet he finds it is not lawful for him to do what he will with them.

There arises from all these conflicts between popular and statute law a vague distrust of the latter, which is not without its good results, inasmuch as it discourages too frequent lawsuits. "The law," wrote Charles Macklin, "is a sort of hocus-pocus saence, that smiles in yer face while it picks yer pocket; and the glorious uncertainty of it is of mair use to the professors than the justice of it." The above view has probably more followers than that of Hooker, who declared that "of law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power." Perhaps, however, Macklin and Hooper speak of different kinds of law. — *London Globe.*

The Green Bag.

PUBLISHED MONTHLY, AT $3.00 PER ANNUM. SINGLE NUMBERS, 35 CENTS.

Communications in regard to the contents of the Magazine should be addressed to the Editor, HORACE W. FULLER, 15½ Beacon Street, 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.

THE GREEN BAG.

OUR December number will contain an article on "The Supreme Court of Rhode Island," written by Stephen O. Edwards, Esq., of Providence. The illustrations will include portraits of Judges Greene, Ames, Bradley, Brayton, Staples, Durfee, Stiness, Wilbur, Tillinghast, and Matteson.

The December number will also contain an exceedingly interesting sketch of William A. Beach, by Horace Russell, Esq., of New York. A full-page portrait of Mr. Beach will accompany the sketch.

AFTER the portrait drawn of himself by himself in a recent number of the "Albany Law Journal," we cannot conceive how the "flirtatious" editor of that paper could have committed the oversight to which he pleads guilty below.

Editor of the "Green Bag":

A New York lawyer writes me: "How could you miss the 'Seven Sutherland Sisters' in your metrical report of Rex *v.* Carlile?"[1]

I move to add to the report as follows: —

And then the Seven Sisters Sutherland,
Who at an upper window took their stand
By turns, and combed their hair from morn till night,
While people gazed and wondered at the sight.
As "beauty draws us by a single hair,"
Much more these seven heads with locks so rare
Soon clogged the narrow way to overflow,
And spoiled a statuary's trade below.
'T was done to advertise their "hair restorer;"
And so the judge, who was no blind adorer
Of beauty, would not have the plea allowed
That 't was the statuary drew the crowd,
And said this mermaid toiletting must stop,
Or be conducted further in the shop.[2]

IRVING BROWNE.

[1] See "Green Bag" for June, p. 238.

[2] Ellis *v.* Sutherland, 18 Abbott N. C. 126.

A PROSECUTING attorney in one of the counties of a Western State sends the following: —

Editor of the "Green Bag":

I am prosecuting attorney of this county, and what follows actually took place. I give the facts just as they are, except, of course, I do not give the names of the parties, but only their initials.

Assault and battery had been committed in the county. The party "battered" went to see the prosecuting attorney about having the party who "battered" him arrested and tried in the name of the State for the offence. The guilty party and an uncle of his, getting wind of the fact that an information was about to be filed, and knowing that one could be convicted only once for the same offence, went before a justice of the peace in their own township, before whom the following proceedings were had, as shown by the transcript of said justice, spelling and all, as follows: —

Before S. L. C., J. P., etc.
G. F. C., Plaintiff, *v.* G. H., Defendant.

Be it remembered that on this —— day of ——, 1889, G. F. C., said Plaintiff, filed herein as his claim and cause of action against the Defendant, G. H., Chargeing him with strikeing one A.

Thereupon, I issued an original notice to said Defendant G. H. returnable before me in my office in said Township on the —— day of ——, 1889, at ten o'clock, A. M., and delivered the same to ———, Constable, for service.

Now, to-wit, on this —— day of ——, A. D. 1889, this cause coming on for hearing, the Defendant G. H. appeared and confessed to the charge made against him therefore I Fined him one Dalar and the costs which is two Dallars and fifty cents and the two Dallars & 50 cts Being Paid By the Defendant, I therefore Set the Prisner free.

S. L. C., Justice of the Peace.

It is needless to say that when the case came to trial, with the State as plaintiff, on the information filed by the prosecuting attorney, said transcript of the former conviction wherein the uncle was plaintiff and prosecuting witness, did not aid the defendant any, but he had to pay another fine and costs.

Probably his experience did not elevate his ideas of the law.

LEGAL ANTIQUITIES.

THE following notice to the profession is extracted from a New Jersey paper of 1821: —

"To be sold on the 8th of July, one hundred and thirty-one suits at law, the property of an eminent attorney about to retire from business. (NOTE. The clients are rich and obstinate.)"

A REMARKABLE feature of the legal system of the twelfth and thirteenth centuries was the use made of men who betrayed their accomplices and became King's evidence. When battle was a mode of defence which any criminal might claim, when most crimes required a private prosecutor, and when failure involved fine whether there was a duel or not, or imprisonment for false appeal, it was natural that men should shrink from the thankless and dangerous office of making the appeal. Hence, it may be, arose a certain readiness of the law to turn the approver, tainted though he was, into an officer of justice. He had to prove the truth of his charge, and presumably also the sincerity of his own repentance, by fighting his quondam companion in crime.

So far little objection on any score is admissible; but all the approver's functions were not so legitimate. Bracton says that the King might grant life and limb to a confessed criminal contingently on his ridding the land of a given number of malefactors by his body. He then gives a form of pardon dependent on the condition that the recipient should conquer in five duels. Possibly Bracton's form was taken from an actual case in 1221, in which a horse-thief became approver to fight five battles.

The approver's neck was in no small danger until he finished the last of his battles. If one of his five appeals broke down without battle at all, his life was the forfeit; and this was often the case where the appellee chose to be tried by assize, and not by battle. If in the battle itself the approver pronounced "that odious word recreant," — if he owned himself defeated, — death was equally the penalty. And if, with a catlike tenacity of life, he had the luck to survive to claim his pardon and permission to go into exile, carrying the scars of his five victories, it is doubtful if the hard-fought-for freedom was always his, after all. For there is a faint touch of expostulation in Bracton's tone when he says that when an approver has done what he promised, faith ought to be kept with him. It is certain that at times the approver, although victorious, was hanged.

FACETIÆ.

"I MUST and will have order in this court," sternly remarked a presiding magistrate; "I have disposed of three cases without hearing a word of the evidence."

A COUNTRY laird, who had lately been elected to the office of justice of the peace, meeting a clerical gentleman on horseback, attempted jocularity by remarking that he was more ambitious than his Master, who was content to ride upon an ass. "They canna be gotten noo," said the minister, "for they 're a' made justices of the peace."

UPON one occasion, while arguing a case in the Supreme Court of Missouri, Mr. Hayden was interrupted by the presiding judge, who asked, "Why is it, Mr. Hayden, that you spend so much time in arguing the weak points of your case, to the exclusion of the more important ones?" "Because," replied Mr. Hayden, "I have found, in my long practice in this court, that the weak points win fully as often as the strong ones."

A NEGRO being asked what he was in jail for, said it was for borrowing money. "But," said the questioner, "they don't put people in jail for borrowing money?" "Yes," said the darkey; "but I had to knock de man down free or fo' times before he would lend it to me."

A WITNESS was testifying that he met the defendant at breakfast, and the latter called the waiter and said —

"Stop!" exclaimed the counsel for the defence, "I object to what he said."

Then followed a legal argument of an hour and a half on the objection, which was overruled, and

the court decided that the witness might state what was said.

"Well, go on and state what was said to the waiter," remarked the winning counsel, flushed with his legal victory.

"Well," replied the witness, "he said, 'Bring me a beefsteak and fried potatoes.'"

JUDGE (*to Plaintiff*). Who was present when the defendant knocked you down?

PLAINTIFF. I was, your honor.

THE other day a juror noticed a brother-juryman sitting next him having a quiet doze. He nudged the sleepy man, and whispered: "Do you understand the judge's charge?"

"What?" exclaimed the drowsy juror, waking up with a start, — "what? He don't charge us anything for that, does he? I thought that we were going to get pay —"

A JUDGE delivering a charge to a jury, said: "Gentlemen, you have heard the evidence. The indictment charges the prisoner with stealing a pig. This offence seems to be becoming a common one. The time has come when it must be put a stop to; otherwise, gentlemen, none of you will be safe."

AT a Deemster's Court in Ramsay, in the Isle of Man, a Jew was about to be sworn to give evidence. As Jews are always sworn on the Old Testament, and not the New, the Deemster requested the constable in attendance to fetch an Old one. After a while that worthy returned, and handed to the witness an ancient-looking, dilapidated book, which on being examined proved to be a New Testament. The Deemster's attention being called to it, he asked the constable why he had not brought an Old Testament, to which the innocent reply was: "Please, your honor, it was the oldest one I could find."

DURING the trial of a case in the Camden County Circuit Court, the plaintiff's son (a raw country bumpkin) was testifying; and as he persisted in addressing all his answers to his own counsel, who sat back of him and at the farthest possible point from the jury, both the court and jury had great difficulty in understanding anything that he said. Finally, after repeated requests from the court that he speak louder, the judge stopped the witness and said, —

"You must speak so those gentlemen over there [pointing to the jury] can hear you."

"Why, Judge," replied the witness, "are those fellows interested in my case?"

This innocent remark, as can well be imagined, provoked great laughter, in which both court and jury joined.

A WESTERN judge delivering a severe lecture to a convicted prisoner in the presence of the jury, remarked: "You are one of the most unmitigated scoundrels I have ever known. A jury of your peers has just properly convicted you, and you must suffer the usual penalty of those who keep bad associates."

A LADY called at a lawyer's office the other day, and asked to have suit begun against a former lover for breach of promise. "He promised to marry me four times," she said; "but he has n't kept his word, and my affections are all blighted."

"How much damage do you wish to claim?" asked the polite lawyer.

"Well, I was blighted four times, and I think one hundred dollars a blight is none too much."

So suit was entered for four hundred dollars for four blights.

NOTES.

THE Advocate-General of Bengal, in addressing the High Court recently on the subject of Mohammedan oaths, in the old Supreme Court of Calcutta, said that the Moslem interpreter employed in administering oaths to witnesses made a good deal of money by means of a private understanding with the witness as to the mode of adjuring him. The form binding on the Mohammedan conscience is to make the Koran rest on the head while the oath is administered. But if the Koran is skilfully held just above the head, so as not to be in actual contact with it, the form is

not valid and the oath not binding. Many witnesses were thus enabled, through the aid of the interpreter, to lie without perjury. In an insolvency case, in which a Jew sought the benefit of the Act, a well-known barrister represented an opposing creditor. His instruction had been to question the applicant in regard to certain matters in which his answers, if affirmative, would disclose valid ground for refusing the application. To the surprise of counsel the Jew denied everything, and it seemed as if his instructions were not correct. At this juncture it was suggested that the Jew be required to swear on the life of his son. The advocate put this unusual suggestion to the presiding judge (Sir J. Colville), who adopted it, and the Jew was adjured accordingly. The same questions were again put to him; but this time they elicited affirmative replies, and counsel's object was accomplished. — *Irish Law Times.*

AN extraordinary story comes from America, — the land of cooling drinks, fearsome oaths, and all things strange and tall. It appears that a certain Mr. Peter de Quincy, possessed of many shekels, has recently thought fit to die, and has left his entire fortune to his wife. There was nothing calling for comment in this commendable act; but the manner in which this fortune was to be disposed of is remarkable. The widow is to receive the entire capital literally at the rate of £20 (or its American equivalent) per hour. For many months to come the lady will have to attend the lawyer's office, and as each hour strikes receive the correct amount from the cashier. History does not state whether this amusing game is to be played all night as well as all day; but if it is, the unhappy lady and the cashier may be expected to join the eccentric Peter at an early date. — *The Jurist.*

"TRUTH" records a very singular case from Ceylon. A man sold a horse; the purchaser did not pay for it, and the vendor claimed that the horse should be returned to him. This Mr. Mason, a magistrate, ordered should be done. But in the mean time the horse had been resold to the Chief-Justice. Mr. Mason ordered the horse to be produced. So a policeman, seeing the animal standing near the court in the carriage that had brought the Chief-Justice to the court, laid his sacrilegious hands upon it, took it out of the carriage, and delivered it over to Mr. Mason. This the Chief-Justice held to be contempt of court, and fined Mr. Mason £10.

"PRESUMPTIVE proof," observes the most agreeable of essayists, "is a very presumptuous personage. People circumstantially found guilty ought at the worst to undergo only a circumstantial hanging. A gallows should be paraded around them, the executioner should make a circuitous pretence of turning them off, and the bystanders should exclaim: 'There you are, not, indeed, positively hanged, but circumstantially. You may presume that you are dead; the proof of your being so is not direct, but strong symptoms of an execution are round about you. You may say that you have been in very hanging circumstances.'"

IN the case of Charles Areutzen *et als.*, who was arrested in Philadelphia for selling the "Kreutzer Sonata," on the ground that it was an obscene publication, Judge Thayer decided in favor of the book, and ordered the defendants to be discharged. In the course of his opinion the learned judge delivered himself as follows:—

"The Court was reminded upon the argument that the Czar of Russia and the Post-Office officials of the United States have condemned this book as an unlawful publication; that the former has prohibited its sale within his dominions, and the latter have forbidden its transmission through the mails.

"Without disparaging in any degree the respect due to these high officials within their respective spheres, I can only say that neither of them has ever been recognized in this county as a binding authority in questions of either law or literature."

HONEST witnesses, anxious to tell the truth, the whole truth, and nothing but the truth, do not receive from the bench the protection to which they are entitled. They are badgered, brow-beaten, and sometimes made to commit involuntary perjury, by "smart" lawyers, "the Court" smiling the while, and seeming to enjoy the overbearing insolence of the bar. It is a disgrace to the dignity of justice that such things are permitted and even tacitly encour-

aged. Why should a respectable citizen be brought into court to be made a butt for the stale wit and libellous innuendoes of so-called professional gentlemen? Why do judges allow the ordinary courtesies of life to be violated every day in the tribunals, where, if anywhere, the rules of decency and decorum should be rigidly enforced? Why should a pert attorney be permitted to imply by his mode of examination that a gentleman and a man of honor, whom he knows to be such, has appeared on the witness-stand for the express purpose of perjuring himself, and is, upon the whole, a suspicious character?

Is it not enough that an honest man should be taken from his business without compensation to testify in a case in which he has no personal interest, but he must also have his reputation assailed and his feelings wrung by a lawyer who is paid for the job? — *New York Ledger.*

A RATHER curious affair will, it is expected, shortly be brought under the notice of the Paris law courts. A French gentleman, the owner of an estate in the department of Seine-et-Oise, has, it appears, in his grounds a large number of hawthorns of a very rare species, and he is justly proud of them. A short time ago a letter was brought to him, the writer of which was no less a personage than Monsieur le Maire of the locality, who, to his surprise, informed him that the said hawthorn-trees were the bane of the Commune. According to the Mayor, so deleterious were the attributes of the peculiar variety of hawthorn that adorned the gentleman's grounds, that the whole country-side was, and had been for a long time past, suffering from their influence. In a word, the two years during which they had flowered had witnessed all kinds of calamities in the Commune, where neither the crops nor the health of the inhabitants had prospered. Therefore the worthy Mayor, being for some reason fully persuaded that the hawthorns were to blame, took the advice of the local Council, the result being an ultimatum that the gentleman must forthwith destroy these disastrous trees; or if he refused so to do, the Garde Champêtre would be instructed how to proceed. It need hardly be said that the owner of the hawthorns means neither to destroy them, nor to allow them to be destroyed by order of the Mayor, who is determined, if these terrible trees are not cut down, to bring the matter before the tribunals. — *London Standard.*

REVIEWS.

THE leading article in the LAW QUARTERLY REVIEW for October is on "The Law of Criminal Conspiracy in England and Ireland," by Kenelm E. Digby. The other contents are: "The Bourgoise Case, in London and Paris," by Malcolm McIlwraith; "The Compulsion of Subjects to leave the Realm," by Wm. F. Craies; "Remoteness and Perpetuity," by J. Savill Vaizey and G. H. Blakesley; "Tinkering Company Law," by Edward Manson; "Difficulties of Abstract Jurisprudence," by W. W. Buckland; "Gifts of Chattels without Delivery," by Sir Frederick Pollock.

THE October number, which completes the twentieth year of the CENTURY, opens with a frontispiece portrait of Joseph Jefferson. The last instalment of the autobiography accompanies the familiar face, — an instalment which the author considers the most important of all; perhaps because it contains, at considerable detail, his own final reflections upon the art of which he is an acknowledged master. Professor Darwin, of Cambridge, England, contributes a paper of high and original value on "Meteorites and the History of Stellar Systems." "A Hard Road to Travel out of Dixie," is the accurate title of a paper in the CENTURY'S new war-prison series. The present contribution is by the well-known artist and illustrator, Lieut. W. H. Shelton, of New York. Mr. Shelton naturally furnishes his own illustrations for his own story of hardship and adventure. "Prehistoric Cave-Dwellings" is a profusely and strikingly illustrated paper by F. T. Bickford, on the prehistoric and ruined pueblo structures in Chaco Cañon, New Mexico; the Cañon de Chelly, Arizona, — the ancient home of the most flourishing community of cave-dwellers, — and other extraordinary cave-villages not now inhabited. The first article in the number is a

pleasant travel sketch, — "Out-of-the-Ways in High Savoy," by Dr. Edward Eggleston, fully illustrated by Joseph Pennell. Mr. La Farge's "Letters from Japan" have for their most striking feature this month the description, in word and picture, of fishing by means of cormorants in a Japanese river. Mrs. Amelia Gere Mason closes in this number her first series of articles on "The Women of the French Salons." These articles having been so successful, Mrs. Mason has been asked to furnish a supplementary paper or two on Mesdames Récamier, De Stael, and Roland. Miss Helen Gray Cone contributes a paper on "Women in American Literature," in which she reviews the whole field of American female authorship. In fiction, the October number closes Mrs. Barr's story of "Olivia;" and gives a sketch by a new Southern writer (Mrs. Virginia Frazer Boyle), and a story by Miss Sarah Orne Jewett, — both illustrated by Kemble.

THE conclusion of Mrs. Deland's "Sidney" occupies the first place in the ATLANTIC for October, and the final chapters have that intensity of feeling which is called forth by the statement of the theory of her story; namely, that love and self-sacrifice are the things which alone make life worth having. "Felicia" comes to a climax in the marriage of the heroine with a man to whose occupation in life both she and all her friends strenuously object. Dr. Holmes's "Over the Teacups" also relates to marrying and giving in marriage; and, moreover, describes a visit to a certain college for women, not a thousand miles from Boston. The first chapters of a forthcoming serial story by Frank Stockton are announced for next month. The other striking papers of the number are a consideration of Henrik Ibsen's life abroad and his later dramas, Mr. Fiske's "Benedict Arnold's Treason," Mr. J. K. Paulding's "A Wandering Scholar of the Sixteenth Century," — Johannes Butzbach, — Mr. McCrackan's account of Altdorf and the open-air legislative assemblies which take place there, and Professor Royce's paper on General Frémont. Miss Jewett's Maine sketch, "By the Morning Boat," and a poem by Miss Thomas on "Sleep," should be especially remembered. The usual Contributors' Club, and several critical articles, one of which is a review of Jules Breton's "La Vie d'un Artiste," complete the issue.

No one can write sea-stories like W. Clark Russell. They are as healthful and invigorating as old Ocean itself. One of his most interesting tales, entitled "A Marriage at Sea," is published in full in LIPPINCOTT'S MAGAZINE for October. The other contents of this number are exceedingly attractive. "Tartuffe in Ebony" is an entertaining sketch by a young Southern writer, — Jeannie Drake. Rose Elizabeth Cleveland contributes an article entitled "My Florida;" and L. R. McCabe writes of "Le Prix de Rome," and of the advantages it offers to its winners. He advocates the establishment of some such institution in this country. Professor Skidmore contributes a thoughtful article on "University Extension;" Edward Fuller censures the American public for their want of taste in dramatic affairs, in a paper entitled "The Public and the Stage;" and M. Helen Lovett points out some of the "Fallacies of the Woman Suffragists." Julian Hawthorne has a discriminating essay on Rudyard Kipling, and a third instalment of the entertaining series of "Round-Robin Talks" is given.

THEODORE CHILD'S series of South American papers, which is attracting so general attention, is continued in HARPER'S MAGAZINE for October, in an article on "Agricultural Chili," describing the farming resources of that country, methods of cultivation and irrigation, wine culture, wages of laborers, etc. The article is accompanied by fourteen illustrations from photographs, and from drawings by leading American artists. Julian Ralph, in an article entitled "Antoine's Mooseyard" (illustrated by F. Remington), gives an interesting narrative of hunting adventures in the wilds of Canada. Joaquin Miller relates the story of a visit to the historic neighborhood of Sherwood Forest, and of some "Nights at Newstead Abbey" spent in the haunted bedchamber of Lord Byron. This article is illustrated from photographs and drawings by American artists. L. E. Chittenden gives a history of the "New Moneys of Lincoln's Administration," and George Ticknor Curtis contributes an interesting chapter

of "Reminiscences of N. P. Willis and Lydia Maria Child." Daudet's "Port Tarascon," of which the fifth instalment appears in this number, still maintains its interest, while it is evident that a crisis is approaching in the fortunes of the hero. The usual number of illustrations by French artists add interest to the story. The short stories are by George A. Hibbard, Anna C. Brackett, A. B. Ward, S. P. McLean Greene, and Jonathan Sturges. Among the poems are "Six Sonnets by Wordsworth," accompanied by eleven illustrations from drawings by Alfred Parsons; "The Dream of Phidias," by Rennell Rodd; and "An Autumn Song," by Nina F. Layard.

SCRIBNER'S MAGAZINE for October contains a varied selection of articles. Some treat of life and adventure; others of interesting natural phenomena; while still others are of great practical value. There is no lack of good fiction and poetry, and many rich illustrations. Herbert Laws Webb, who writes "With a Cable Expedition," was a member of the technical staff of a cable-ship, and from full experience describes the unique life on one of these vessels. "The City House in the West" is contributed to the "Home" series by John W. Root, a leading architect of Chicago. Mr. Zogbaum's second article on the "New Navy" pictures life with the "White Squadron" in ports of the Mediterranean. Rev. Newman Smyth contributes "The Lake Country of New England," — an illustrated account of camping and canoeing in the Maine Wilderness. Prof. N. S. Shaler's second paper on "Nature and Man in America" shows how the physical conditions of that part of North America east of the Mississippi "insure the profound diversifying influences which come to man from his occupations." There is a short story by a new writer, the scene of which is in the Bolivian Andes; a strong instalment of the dramatic novel "Jerry;" and poems by Edith M Thomas, Mrs. Fields, C. P. Cranch, and others. The frontispiece is the third of Mr. Weguelin's artistic illustrations for Odes of Horace. Mr. Gladstone's translation of the "Lovers' Quarrel" is reprinted with it. The Point of View discusses "A French View of American College Athletics," "A Study of Heirs," etc.

BOOK NOTICES.

COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS. By JOHN F. DILLON, LL.D. Fourth Edition, thoroughly revised and enlarged. Little, Brown, & Co., Boston, 1890. Two vols. Law sheep. $12.00 net.

No work has been given to the profession in recent years which has attained such a prominent position among legal text-books as this treatise of Mr. Dillon's. When the first edition was published, some eighteen years ago, the profession were quick to recognize its merits, and successive editions have only served to increase the admiration felt for the thorough, conscientious, and exhaustive treatment of the subject by its author. During the nine years which have elapsed since the last edition appeared, numerous decisions of the courts and legislative enactments have more or less changed, modified, and enlarged the law regarding Municipal Corporations; and as a result there is in this new edition scarcely a single section that is without alterations or additions. Judge Dillon, in his preface, says that "he has sought with diligent and loving care to make the revision thorough;" and chapter after chapter bears evidence of the diligence and care bestowed upon the task. Many of these chapters have been considerably enlarged, particularly those treating of constitutional limitations upon the powers, rights, duties, and obligations of municipal corporations and streets. Numerous additions have also been made to the chapters on Contracts, Eminent Domain, Taxation, and Actions and Liabilities. Two hundred and fifty-eight pages have been added to the text, and three hundred and fifty-nine to the entire work, and it now adequately presents the law relating to our municipalities as it exists to-day. The profession have to thank Judge Dillon for a treatise complete in every respect, and one which furnishes a concise and exhaustive setting forth of the law upon one of the most important subjects in jurisprudence.

A BRIEF DIGEST OF VOLUMES 7 TO 12 OF THE AMERICAN STATE REPORTS, together with an index to the notes and a table of cases reported in Volumes 1 to 12. The Bancroft-Whitney Company, San Francisco, 1890.

To those of the legal profession who use this series of reports this Digest will be found to be almost indispensable. The series is assuming such proportions that a great loss of time would be necessarily involved in the search for any desired case, and it is a most excellent idea of the publishers to give a good index digest for every six volumes.

THE UNWRITTEN CONSTITUTION OF THE UNITED STATES. A philosophical inquiry into the fundamentals of American Constitutional Law. By CHRISTOPHER G. TIEDMAN, A.M., LL.B. G. P. Putnam's Sons, New York. 1890. (W. B. Clarke, Boston.)

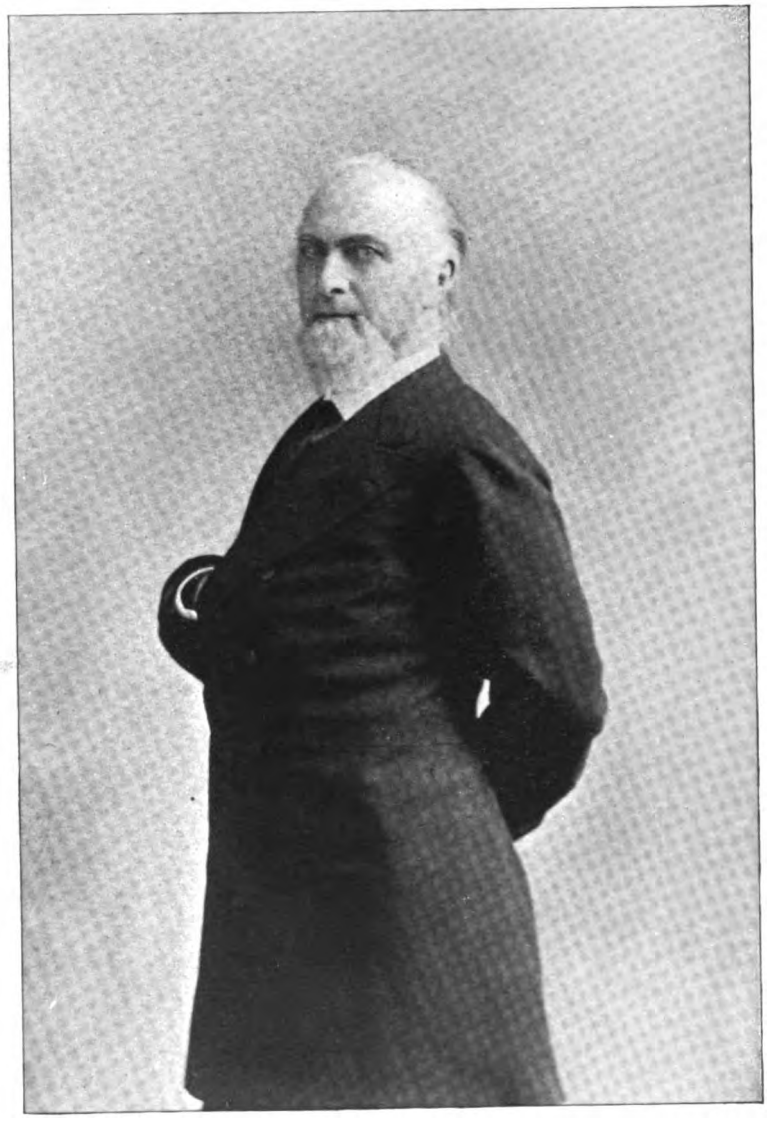
This little work cannot fail to be of great interest to those who desire to know something of the origin and development of American Constitutional law. Mr. Tiedman is a lawyer of profound learning and the author of several valuable legal text-books, and in the treatment of his subject in this present work, he displays a vast amount of learning and thorough knowledge of the matter with which he deals. The book should be read not only by every lawyer, but by every one interested in the political history of the United States.

THE DOCTRINE OF EQUITY. A COMMENTARY ON THE LAW AS ADMINISTERED BY THE COURT OF CHANCERY. By JOHN ADAMS. Eighth Edition, by Robert Ralston, of the Philadelphia Bar. T. & J. W. Johnson & Co., Philadelphia, 1890. $6.50.

But few law books can claim the distinction of an eighth edition, and the fact that Adams's Equity has attained this honor is most convincing proof of the high estimation with which it is regarded by the profession. On the subject of which it treats, it stands, perhaps, at the head of text-books. The work is written in a clear and concise style, and the original text has been added to and enriched by the labors of such well-known legal writers as Henry Wharton, George Sharswood, and George Tucker Bispham, who have edited successive editions. Mr. Ralston has still further enlarged the notes by adding references to American and English decisions since the publication of the last edition. In its present form it leaves nothing to be desired, and it will find such favor with the profession that we venture to predict that this eighth edition will not be the last.

THE LAW OF PRIVATE RIGHT. By GEORGE H. SMITH. The Humboldt Publishing Company, New York, 1890.

Mr. Smith believes that the theory of jurisprudence now generally prevailing in England and this country is fundamentally erroneous; and this little work is devoted to an attempt to expose the radical errors of the theory referred to, and also to an exposition of what he considers the true theory of the law. The work is prepared with evident care, and contains many suggestions worthy of consideration by the profession.



The Green Bag.

VOL. II. NO. 12. BOSTON. DECEMBER, 1890.

WILLIAM AUGUSTUS BEACH.

BY HORACE RUSSELL.

FOR more than forty years William A. Beach was a conspicuous figure — one of the most conspicuous — at the bar of the State of New York. He was engaged in a larger number and a greater variety of cases than any of his contemporaries, and it is not too much to say that his reputation as a forensic orator was second to that of no other man. Others, a few, had greater reputation for profound learning in the law, or as subtle reasoners or sagacious advisers; but for forensic eloquence, whether in trials before juries or arguments before appellate courts, he confessedly stood at the head of the bar of his State. His reputation was won and maintained in the forum alone. With the exception of the office of District Attorney of Saratoga County, which he occupied from 1843 to 1847, when he was comparatively a young man, he never held public office. He made no political speeches; he delivered no occasional addresses. His life and labors were concerned with his profession alone. He had no taste or ambition for any other career or employment. Indeed, it may be doubted whether he had any ambition, as such, in his profession, beyond the earnest desire to do all that in him lay in the service of the clients by whom he was retained. In that service he found ample scope for the exercise of all his great powers.

Of posthumous fame he was utterly careless. He never wrote out a speech either before or after its delivery. The record of his work can be found only in the meagre abstract of his "points" in the published reports, and the stenographers' notes of those trials which were of sufficient public importance to demand their publication.

Mr. Beach was born at Saratoga Springs, Dec. 9, 1809. His father, Miles Beach, was a reputable and wealthy merchant of that village. His mother, Cynthia Warren, the sister of Judge Warren, was a woman of rare mental endowments, possessing an acute and well-trained intellect, singular force of character, a wonderful command of language, with an ability for clear and accurate expression, which were inherited by her distinguished son.

Such scholastic training as Mr. Beach had was obtained at Partridge's Military School, at Norwich, Vt. Upon leaving that school, he at once entered upon the study of the law in the office of his uncle Judge Warren, and was, in due course, admitted to the bar in August, 1833.

College-bred men are apt to think a college education an indispensable prerequisite to eminence in the higher walks of the forum; and certainly its advantages are not to be disparaged or depreciated. Yet many of the most eminent of the past generation of lawyers at the bar of New York had not such advantages. Charles O'Conor, Nicholas Hill, James T. Brady, John H. Reynolds, Roscoe Conkling, and William A. Beach (not to mention many others whose names at once rise to memory) were conspicuous examples of great lawyers — not only profoundly versed in the technical learning, philosophy, and ethics of the law, but pre-eminently great

as forensic orators, remarkable for a style at once copious and pure, picturesque yet chaste, and never offending against the canons of good taste — who had not a college training. Of course they had great natural powers, which were developed on the lines of their own individuality; of course, those powers were trained somewhat by happy accident; of course they read widely and wisely; but may it not be that by early directing their minds to a specific object and pursuing it with all the enthusiasm and energy of youth, training their faculties to do as well as to acquire, and practising the great professional arts of which college students sometimes only read, they secured a mental discipline and a development of their natural powers quite as valuable as they could have obtained at the university? College training sometimes develops the critical faculties, while it leaves the productive faculties all undeveloped. There is often more veneer than growth. Culture sometimes refines away vigor and destroys individuality. Many a man leaves his college with a wide acquaintance with what others have done, and without ability to do anything himself. He has watched the flight of other birds, but has never practised the art of flying. His despair of being able to produce anything like the masterpieces with which he is familiar prevents his attempting to do anything at all. Every well-trained man has learned more from his own mistakes than from almost any other source. The man who begins early to do the things he must do in his life-work, and gets his education by constant practice, and by the observation of his own mistakes before it is too late to correct a settled fault, provided he has good natural judgment to guide him, sometimes gets a mental discipline, a power of persistent application and the ability to accomplish the work he is called to do, not less useful and effective than he can get from the conventional curriculum of the colleges. However that may be, certain it is there were not at the American bar in the generation that is past, six men of better trained minds, greater power of sustained application to thought and study, more thorough knowledge of the law as a science, and greater ability for profound reasoning and eloquent argument than the lawyers named above.

Upon his admission to the bar, Mr. Beach at once entered on an active and successful practice. He had none of that struggle with poverty which is often said to be essential to the development of a great lawyer. His father was a man of considerable fortune, and his own success was assured from the very beginning of his career.

He had a singularly handsome person.[1] He was tall, erect, and of a pleasing yet dignified and impressive presence. His features were aquiline, his hair was dark, and his eyes a bluish gray. He was an athlete in form, and a champion in athletic sports. He was possessed of a vigorous intellect, dauntless and serene courage, wonderful physical and mental endurance, a glowing enthusiasm, capacity for continuous application, a diction at once copious and elegant, and a voice whose sonorous melody "excelled the closes of sweetest rhyme," so that he seemed —

> "A combination and a form indeed,
> Where every god did seem to set his seal,
> To give the world assurance of a man."

Besides, he had an individuality which no pen can describe, but which, more than any quality that can be described, makes a man an interesting and unique figure among his fellows.

He at once challenged the respect of his seniors, and commanded the enthusiastic admiration of the young. From his earliest appearance at the bar, whenever it was known that he was to speak, crowds flocked to the court-room to hear "Gus Beach" (as

[1] The frontispiece was copied from a photograph taken when Mr. Beach was sixty-five years of age. Before that time no entreaty of friends or family could persuade him to sit even for a photograph.

he was familiarly called), as Lord Campbell says they did to the Queen's Bench when the rumor went round, "Murray is up." Nor, though his style was declamatory, could it justly be said that his eloquence was merely splendid declamation. Unlike most men who are endowed by nature with the fatal gift of oratory, he was a tireless student, both of the law and the facts of his case. When he appeared for the trial or argument of a case, it could be safely assumed that every preparation possible had been made, — a careful study of all the pertinent questions of law involved, and a thorough investigation of the facts by a personal examination of every witness. He had his eye, so to speak, not only on the verdict, but on the bill of exceptions.

One thing, however, he could never do, — prepare a speech by writing it out beforehand. It is said that Rufus Choate used to write out his summings up from time to time, as the trial of a case proceeded, and that, by the mere act of writing, the argument he wished to make became so fixed in his memory that he could always deliver it substantially in the language in which it was written. I once asked Mr. Beach if he did not sometimes write out his speeches, to which he replied, "Never but once in my life, and then I made a most dismal failure." It must not, however, be inferred that he did not prepare carefully. He often, indeed generally, wrote out the general plan and framework of his speeches, — topics, propositions, heads, and subdivisions of his arguments. The rest of his manuscript consisted of mere catchwords, full of meaning to him, but meaningless to any one else; and he seldom ever looked at such notes as he had made. The language in which his thoughts should be clothed was left for the occasion. He was one of a very few men who could compose best in the white heat of speaking. Seargent S. Prentiss — perhaps the most brilliant of American extemporaneous speakers — was another. Henry Ward Beecher was another, though he seemed to possess the faculty of invoking the divine glow in his study as well as before an audience. Roscoe Conkling was another, though for the sake of accuracy he wrote whenever he could. The Rev. Dr. Storrs, of Brooklyn, is another splendid example of this rare faculty. But investigation has proved that most of the speeches of great orators, which are popularly supposed to have been extemporaneous, so far as the language in which they were clothed was concerned, were carefully and laboriously prepared beforehand and committed to memory. Even Webster's reply to Hayne, which all school-boys were taught to believe the product of a night's reflection, turns out to have been prepared long before the occasion when it was delivered, and to have been twice revised after delivery before it was given to the public in the form in which it now appears. The manuscript of the speech as originally delivered is in the possession of the Massachusetts Historical Society, and differs in many important respects from the speech as printed in Webster's published works.

Mr. Beach's speech was always finished and artistic; no one ever listened to him without marvelling at its perfection of form. I once asked him how he acquired his wonderful command of language. His answer was: "In so far as the compliment is deserved, it is to be attributed to several causes, — first, to inheritance from my mother, whose command of language was remarkable; second, to her careful training from my earliest infancy. She made me a student of synonyms and subtle distinctions of meaning in my childhood, and the taste and habit have always continued. Then I have always been a wide reader of worthless literature. I have read very little of history or the sciences, but widely of novels, dramas, and essays. I could probably pass a better examination on the current literature of my time, and a worse on history or

the exact sciences, than any man whom I have the fortune to know."

While an audience was an incentive to Mr. Beach, it was not a necessary one. One of his contemporaries has said that the most eloquent and perfect piece of oratory he ever heard from his lips was delivered to a judge, at Schenectady, holding chambers in his private office, when no one was present but the judge, the opposing counsel, and the two lawyers who were waiting to argue the next motion.

When Mr. Beach came to the bar Saratoga was one of the legal centres of the State of New York. Chancellor Walworth resided there. The greatest lawyers of the State came there to argue cases before him. Esek Cowen lived there, engaged then in preparing his famous notes to "Phillips on Evidence." He was afterwards for many years a judge of the Supreme Court. Nicholas Hill, Jr., was Cowen's partner, and was assisting him in the preparation of his "Notes." They both appeared frequently at the bar in important cases. John K. Porter, whose career ran parallel with Beach's throughout their lives, then lived at Waterford, in Saratoga County. Beach and Porter were of about the same age. Both practised at the Saratoga Bar and that of the neighboring counties from about 1835 to 1850. Porter removed to Albany, and Beach to Troy, about 1851. Porter removed to New York City in 1869; Beach, in 1870. They were life-long antagonists and life-long friends. In the greater number of the important cases tried at Saratoga, Washington, Rensselaer, and Albany circuits, for a period of about thirty-five years, these two giants were engaged, — generally on opposite sides. Each put the other to the exercise of all his best powers. "It is he who contends with us that makes us strong." What Ichabod Bartlett and Jeremiah Mason did for Daniel Webster, Beach and Porter did for each other.

Though they had many qualities in common, they were singularly unlike. Beach has already been described. Porter was short, swarthy, and spectacled. He had not the charm of graceful and smooth-flowing oratory; but he had fluency, a dramatic — not to say theatrical — delivery, tireless energy, a fertile and suggestive mind, fecundity of illustration, great plausibility, and, withal, an intense and flaming earnestness that made his oratory magical and magnetic. There was something weird and fascinating about him. He won verdicts by the quality called "personal magnetism." His speech reminded one sometimes of a mountain torrent, sometimes of a conflagration. Beach's was always like a majestic, smooth-flowing river, with here and there a cataract. Each had the temperament of the advocate rather than that of the judge; but it must be admitted that Beach had the more candid judgment and character. It used to be said that Porter was equally earnest and effective on the good or the bad side of a case. This was not true of Beach, though it was one of the misfortunes of his eminence that he was frequently engaged on the desperate side of desperate cases. He could, indeed, present all the arguments that could fairly be made on the bad side of a case; but he scorned pettifogging, truckling, and humbug, and when he felt he was on the wrong side of a case, it was quite apparent to his friends, though perhaps a casual observer would have failed to notice that he was struggling against his own convictions. Porter could get down to the level of the jury; Beach always tried to raise them to his own. One of the criticisms frequently made upon him was that he "talked over the heads of the jury." Though Porter was perhaps as great a "verdict-getter," the palm of oratory was by almost universal opinion awarded to Beach. One defect they had in common, — neither had any humor. They could be sarcastic, even caustic, but neither ever set the table or the jury in a roar. They were always in deadly and dignified earnest.

While the great triumphs of both were gained in jury trials, both were equally able and effective in the argument of questions of

law before the appellate courts. It is to this day a question of dispute among their brethren at the bar, who were accustomed to hear them in both forums, in which they appeared to the better advantage.

While Mr. Beach was District Attorney of Saratoga County, he tried many important criminal cases, in most of which he was opposed by the leading lawyers of that section of the State. At that time the great lawyers uniformly appeared in the defence of persons charged with crime. Indeed, it was in criminal cases that forensic contests were fiercest, and forensic honors won. It was in these cases that Mr. Beach acquired his thorough knowledge of criminal law, as well as his reputation as an orator, which caused his services to be sought, during the remainder of his life, in every important criminal case in the State.

In 1851 Mr. Beach removed to Troy, to enter into partnership with Job Pierson and Levi Smith, the leading lawyers in that city; and the firm of Pierson, Beach, & Smith continued until the death of Mr. Pierson, and thereafter the firm of Beach & Smith continued until the removal of Mr. Beach to New York City.

Porter had removed to Albany, to join Nicholas Hill in the famous firm of Hill, Cagger, & Porter. Those two firms for twenty years monopolized the best part of the law business of that section of the State. Nicholas Hill argued more cases in the Court of Appeals than any lawyer of his time, but tried no cases before a jury after his removal to Albany. At the time of his death he was regarded as the head of the bar of the State of New York.

Mr. Beach was retained in almost every important jury trial, and his name appears very frequently in the reports of the cases in the Court of Appeals during that period.

He was the leading counsel for the plaintiff in the celebrated Albany Bridge case brought to prevent the construction of a bridge across the Hudson River, in which the complaint was finally dismissed because the Supreme Court of the United States were equally divided as to whether the action could be maintained.

He defended Canal Commissioner Dorn, who was impeached for malfeasance in office before the Court for the Trial of Impeachments, and secured his acquittal.

In 1867 he was associated with James T. Brady in the defence of General Cole, charged with the murder of L. Harris Hiscock. The case was tried at the Albany Oyer and Terminer, and attracted wide attention. On the first trial Brady summed up for the accused, and the jury disagreed. On the last trial Beach summed up, and the defendant was acquitted. It was in this case that the jury, after retiring, came into court and, stating that they found the defendant sane the moment before and the moment after the killing, but were in doubt as to his sanity at the moment of the killing, asked the instructions of the court. Their verdict of acquittal followed soon after the judge's instruction that on that point, as upon others, the jury must give the accused the benefit of any reasonable doubt.[1]

At the request of Governor Seymour, Mr. Beach went to Washington in 1865 to defend Colonel North, charged before a military tribunal with frauds in connection with the forwarding of the votes of the soldiers of the State of New York in the Presidential Election of 1864. His speech on that occasion, mainly directed to showing that a military court had not jurisdiction of the alleged offence, has always been regarded as one of the masterpieces of forensic eloquence. It may be found in the volume entitled "Great Speeches by Great Lawyers" (p. 449).

While Mr. Beach resided at Troy he had been retained in several trials of magnitude in the city of New York; notably in the suit of the Erie R.R.Co. *v.* Commodore Vanderbilt, popularly known as the "Five Million Dollar Suit," in which he was associated with Charles A. Rapallo, who was for many years the attorney and counsel for Commo-

[1] 7 Abb. P. N. S. 321.

dore Vanderbilt. In 1870 Mr. Rapallo was elected a Judge of the Court of Appeals, and solicited Mr. Beach to come to New York City to take his place in his firm. Mr. Beach removed to New York City in the summer of 1870, and formed the firm of Beach & Brown, consisting of himself; his son, the Hon. Miles Beach, now a Judge of the Court of Common Pleas of the City of New York; and Augustus C. Brown, who had theretofore been the partner of Judge Rapallo.

Though well known as a lawyer and advocate throughout the State of New York, Mr. Beach at this time had little reputation beyond the limits of that State. He at once acquired a national reputation, largely by reason of the celebrated cases in which he was constantly engaged, and the wide circulation of metropolitan newspapers which carried the reports of these cases throughout the country.

From 1870 until near the time of his death, in June, 1884, he was engaged in most of the great cases tried in the city of New York. An enumeration of these cases, with a few extracts from his addresses, may serve to give the reader some understanding and appreciation of Mr. Beach's position at the metropolitan bar, and of his style and manner as an advocate.

He continued and finished the railway litigations in which Commodore Vanderbilt was then involved.

He was one of the counsel for William H. Vanderbilt in the celebrated contest over Commodore Vanderbilt's will.

He was the leading counsel for the plaintiff in the divorce case of Brinkley *v.* Brinkley, in which a marriage was established by evidence of cohabitation and the holding of each other out as husband and wife. The following extract from Mr. Beach's address to the jury on that occasion affords a good illustration of his style: —

"Evidence of marriage! May it please your honor, what is evidence of marriage? Why, living together, may it please your honor; cohabiting together, may it please your honor; introducing each other as man and wife; walking in the sacred relations as such; rearing up children together, may it please your honor; that going down into the valley and shadow of death that a wife assumes in such relations. And for all these they were married: they were married when he enjoyed the bloom of her youth and loving tenderness; married when he drank deep of her heart's young affections; married when it flattered his fancy to control her beauty. But when we come to that after-stage of life, where the fire and fervor fade from the eye, and age comes stealing over the features and dims their brightness, — when, of all times, marriage is to life most sacred, when they should be leading each other hand in hand down the western slope of life's steep hill, to rest together at its foot in a long repose, — just as they entered on that sacred journey, then it is that this monster of humanity seeks to cast her off, and bastardize her children! Not married! not married! Who, then, is married?"

In June, 1872, he was the leading counsel in the defence of George G. Barnard, a justice of the Supreme Court, who was tried on articles of impeachment presented by the Assembly, before the Court for the Trial of Impeachments, consisting of the Court of Appeals and the Senate of the State of New York. Though Judge Barnard was convicted and removed from office, opinion was unanimous as to the great ability and eloquence with which his defence was conducted.

The following extracts are taken, somewhat at random, from his speech on that occasion. After quoting a passage from the speech of Sheridan on the trial of Warren Hastings, Mr. Beach continued: —

"If you please, Mr. President, I commend that sentiment to the consideration of the court. I demand legal justice for this respondent. I care not how severe and rigid it may be, but justice is my plea, although I know that by the strict course of justice none of us shall see

salvation; yet I make no prayer for mercy, although our own needs should lead us all to render deeds of mercy. I ask but a fair and unprejudiced judgment for this respondent. I ask from this court, as I have a right to ask, that its preconceptions and prejudices shall be surrendered. I ask that the members of this court shall disdain the dictation of those who assume to control it. I ask that the bitter and malevolent misrepresentations and perversions which are daily heralded throughout the land shall be dismissed; that in the high exercise of its prerogatives, from which no appeal lies, however cruel and dishonoring may be its judgment, every member of the court shall be governed by those exalted sentiments and by that spirit of fairness which becomes an American judge. And you will heed my claim, Mr. President; I but echo the demand of the Constitution and the law. I speak only those sentiments deeply rooted in our institutions and love. Incumbered and pressed as you may be, there is yet within us all a conscience, holding us to the discharge of duty. In the responsible position which you occupy under your oath of office, you dare not disregard its monitions. Heedless of personal consequences, disdaining the threats overhanging your judgment, you will rise above such considerations to the exalted standard of your calling. Mr. President, representing a gentleman in the situation of this respondent, standing, I think, in the greatest peril which can assail an American citizen, I have a right respectfully but earnestly to ask for this high exercise of independence and impartiality on the part of each member of the court. I have seen men struggling for life before court and jury, encompassed by the awful circumstances of guilt, — with an ignominious death upon the scaffold before them, — and yet I have never seen an intelligent human being standing in a more appalling situation than that now occupied by this respondent. It would be better for him that he should dangle from the scaffold than bear the humiliating and crushing weight of your condemnation. Better die than meet the reproachful silence of the wife who loves and the children who revere him. You are asked to degrade him, — to stigmatize him as unfit to wear the honors of office. This judgment is claimed against one who less than four years ago, by the verdict of his constituents, unexampled in the history of our elective franchise, was elevated to the conspicuous position he occupies. You are asked to disregard this high certificate granted by the sovereignty of the State. Mr. President, contemplating the character of this court and the consequences of its judgment, how mean and pitiful appear the schemes and strifes of political factions! How detestable the thought that its passions and ambitions should corrupt the pure fountains of justice!"[1]

. . . . . .

"I am frank to say I do not approve all the acts of this respondent. I think, sir, badmannered as I am, I might be able to improve him in dignity of demeanor and suavity of address. He has been educated, as have been many of our sons, in a rude school. He is a man of action, bold in his convictions, fearless in their expression. He is not the kind of metal of which tools and instruments are made. He might become a daring leader of bold adventurers, were he not well grounded upon principle. But never, sir, could he be made the petty and insignificant puppet of meaner men. If he descends to crime, it will be with a bravery which sometimes adds dignity to its commission. Once more, your honors, I entreat your serious attention to this notable example of his independence and fairness, of his readiness to repair an error and to restore a party to his just rights, whenever, by his action, they have been impaired. It expresses a spirit irreconcilable with the character pictured in these articles."[2]

. . . . . .

"If your honors please, sheltered by the doctrines I claim, with utmost respect for the court, I demand in this case clear and convincing proof of guilt. I protest against the indulgence of any uncharitable and inimical presumption or inferences. I demand an impartial and considerate criticism of the conduct of this respondent. I pray your honors to regard the conspicuous and shining examples illustrating the benignity of the law. I beseech your honors not to move in judgment with the persecuting and inhuman spirit of accusers, but with the

[1] Official Report, p. 1821. [2] Ibid., p. 1857.

exalted humanity of the righteous judge. It is only thus that upon this memorable occasion, and by this grand inquest of the State, an example can be exhibited, ennobling the judicial character and honoring the State. Be sure, your honors, that whenever principles of law are disregarded in the administration of justice, when the innocent citizen sinks beneath prejudiced judgment, the most stable institutions of our land are stricken with fatal blows. I repeat the belief, that individual and national safety depends upon the integrity of the bench, and the pure and bold administration of the law. Many dangers assail us ; we are travelling fast in the footsteps of the old republics. Luxury and corruption are eating into the foundations of society. Bribery and fraud poison our elective system, and infect our representative halls. But if our courts are true to their mission, firm in principle and uncontaminated by the venality and frauds of modern politics, the patriot need not fear. Political judges are the great danger of the republic. In the name of my client, on this rare proceeding, when a victim is sought for the bench beside you, I have a right to invoke the highest and purest exercise of your judgment. Your honors, shielded by these principles and protected by these ordinary presumptions, I again demand proof of the guilty purpose of this respondent. I care not how technically erroneous and faulty you may find him ; guided by superior wisdom and broader experience, you may discover many faults ; but I still demand clear and convincing proof of corruption. I would, your honors, I could address you in the spirit and with the language of the learned advocates from whom I have quoted ; that with their noble and inspired oratory I could adjure you to regard the rights of my client, the privileges of citizenship, the purity of the law ; and in their language demand from you, before conviction, not surmise and conjecture, not uncharitable and condemnatory presumption, but satisfactory proofs, — such proof as you would require in the administration of justice in any other court than this. Although, your honors, from this evidence, just and good men might indulge suspicions, if you, in the pure and honorable instincts of your nature, might suspect wrong, are you then to condemn ? Such is not the teaching of the illustrious advocates to whom I have referred. You have no right to disregard the presumptions of law, and upon mere suspicion render a disastrous judgment. I pray your honors to follow the ancient paths of justice. I speak to judges and learned senators, practised and experienced. They have no right to yield to the common and vulgar prejudices which so often mislead and betray human judgment. We look to them for a higher exercise of wisdom. You are bound to decide wisely and justly. You are bound to resist these insidious assaults of error, come from whatever quarter they may.

"I am sure, may it please the court, that I do not overstep the limits of advocacy when I thus emphatically and repeatedly address these appeals to the conscientiousness of each of its members." [1]

"Messrs. Managers, could you not have spared this respondent that other cruel and unnatural attack ? You represent the independence and dignity of the Assembly for New York. You are vested with its prerogatives and powers. Oh, in the charitable instincts of your nature, could you not have spared him the imputation that he left the bed of his dying mother at the beck of Fisk and Gould ? My learned friends have rung the changes upon this accusation. They know how to appeal most touchingly to the sentiments, — the blessed and holy sentiments of our nature. They knew how it would touch the hearts of this court and the community, could they fasten upon this respondent the unfilial crime of deserting the dying pillow of his mother to render corrupt service to dishonest men. But they have perverted the sentiment. They have played ingeniously, but falsely, upon the hearts of this court. Oh, at that hallowed name of mother, how many gentle and fervent emotions arise, — how we are carried back to the days of our childhood ; how we remember her gentle care and cheering encouragement ; how we recall the days when, at her knee, we learned to lisp those infant prayers which, if we have any purity within us, have been its origin and its stay ! And I thank God that with many of us, unlike this respondent, we are not driven

> 'To pine for the touch of a vanished hand,
> For the sound of a voice that is still.' " [2]

[1] Official Report, p. 1903. [2] Ibid., p. 1908.

This was his peroration :—

"Mr. President, I commit this respondent to the conscience of this court, persuaded that your judgment will exert a mightier influence upon the future than upon him. Whatever may come, he is thankful for this investigation. It makes him a better man and a purer judge than you supposed him to be. It will dissipate the cloud of obloquy which has enveloped him for years. It will lift him higher in the judgment of this community than he ever stood before, and it teaches us, Mr. President, how poor a reliance is that press which affects to educate and to civilize the world. But, sir, your judgment will define the jurisdiction of this court. It will signify to the judges of this State how far they are subject to the tyranny of party managers. It will determine whether the ancient independence of the bench is to be preserved, or whether it is to become the crawling sycophant of political caucuses. It will present to the people of this State the spectacle of a judge sacrificed to party policy, or of a court rising above prejudice and expediency, and firmly administering the law in the spirit of justice and truth. In these aspects this occasion is most impressive and solemn. Its personal relations are comparatively transitory and unimportant, however humiliating and cruel to this respondent it may be to debar him from that arena where honor is won, that noble heritage the good man leaves to those he loves. Sir, despite the influences encompassing us, I have unfaltering faith in your action. Misgivings have beset me, but I have seen prepossessions and prejudices fade away before the demonstrations of this trial. I have seen this respondent shaking himself free from the scurrilous libels of his accusers, and gradually but surely winning your convictions. However indiscreet you may think him, you will not, from this evidence, pronounce him a corrupt judge. I respectfully but boldly, Mr. President, demand his free deliverance from this gossiping prosecution. In the name of the law you are bound to administer, by the oaths you dare not break, pleading only for that justice which you hope, I pray you to return him to society a sobered and wiser man, not branded as an outcast by your judgment, but rightfully claiming the sacred privileges of American citizenship."[1]

[1] Official Report, p. 1920.

In January, 1873, associated with ex-Judge William Fullerton, he conducted the case for the people against Edward S. Stokes, for the murder of James Fisk, Jr. The defendant was convicted on this trial of murder in the first degree and sentenced to be hanged; but the verdict was afterwards set aside and a new trial ordered by the Court of Appeals for an error of the judge in his charge to the jury (53 N. Y. 164). On the third trial, conducted by the District Attorney and his assistant, the jury found a verdict of manslaughter in the third degree, and Stokes was sentenced to a term of four years in State's prison, which he served.

Mr. Beach was the leading counsel for the plaintiff in the celebrated Tilton-Beecher trial. Associated with him were ex-Judge William Fullerton, Gen. Roger A. Pryor, Samuel D. Morris, and Thomas S. Pearsall. For the defendant appeared William M. Evarts, John K. Porter, Benjamin F. Tracy (now Secretary of the Navy), Thomas G. Shearman, and Austin Abbott. To Judge Fullerton was assigned the examination and cross-examination of witnesses, — a task for which he was without a peer at the American bar. To Mr. Beach was assigned the argument of such questions as arose during the trial, and the summing-up for the plaintiff. The publishing firm which undertook to publish a full report of this most famous trial in the annals of American jurisprudence, failed before publishing the final volume which should contain the closing arguments. The following extracts are taken from the argument of Mr. Beach, in reply to Mr. Evarts, on the question whether Theodore Tilton, the plaintiff, was a competent witness :

"Sir, in answer to the illustrations of my learned friend, and to meet the practical issues presented by his argument, permit me to follow him in an illustration. I imagine, sir, a happy, an honored, and a cultured home, — the wife a frail, feeble, and delicate woman, eminently devotional and pious in all her impulses, and, as has been shown in this case, and will be shown hereafter, devoted to the husband of her early

choice and the father of her children. She had a pastor, learned and eminent, gifted beyond his fellows, one who stood at the very head of his honored and sacred profession, one whose words were listened to with deference and with acceptance. Ah! sir, he had those qualities of mind and heart, he had that persuasive power of eloquence, that insidious and silvered tongue, which would lure an angel from its paradise. He was her accepted and chosen teacher and guide. She looked up to him with a veneration second only to that with which she regarded her God. Nay, if the incarnate Christ had come down with the glory of Calvary upon his brow, and the love of sacrifice in his eye, she could not have bowed to him with more obedience and idolatrous deference than this woman rendered to her pastor and her earthly god. From her childhood, sir, she was under his teaching and dominion. He was almost an inmate of her home. In the confidence of a husband and a friend, a pupil of this aged and venerable and gifted man, he was welcomed with trust and affection. He exerted upon this wife, sir, all his arts, his specious wisdom, his prayerful devotion. All the efforts of his gifted nature were banded to the seduction of this happy and beloved wife and mother, and she fell. And do you wonder, sir? Is she to be blamed for the act? Is this a prosecution of *her?* Is the action brought by her wronged husband an action against *her* for *her* condemnation? Oh, no, sir! Consider how strong he was, and how weak she was. Consider how submissive she was to his teachings; and imagine with what a specious and insidious tongue he propounded to her the theory that fornication was but a natural expression of love! He taught her to believe in pious adultery. By slow but by steady steps, he led her along upon frail paths to the precipice from which she fell. The seducer is brought into a court of justice to answer for his crime. Husband wronged, seducer guilty, stand before the immaculate justice of the law to answer for the deeds done in respect to this woman. And we are told, sir, — should be told, sir, in such a case, according to the logic of my learned friend, — that this aged and venerable and gifted seducer may take the stand, and polish and apologize for his guilt, and present all the defences of his practised and learned ingenuity, and that the husband must be still and silent, and that this is the law, — the law, which is not a respecter of persons, which holds out steady and even justice to litigants before it; and with all the sophistry of his great powers, my learned friend subsidizes them to establish that doctrine of injustice and wrong. I say again, sir, that before your honor will adopt any such conclusion, before you will approve any such doctrine, you must be driven to it by the force of irresistible legal logic. Thank God there is, in my belief, no such rule in the law of this State! There is no such injustice in the policy of our legislation.

. . . . . .

"I am at a loss, sir, to perceive upon what theory, upon what principle, either of policy or of law, that exclusion can be maintained. I know that evidence may be drawn from this witness, if sworn, which will reflect upon the chastity and the honor of his wife. I know that this fact has given and will give to my learned friend an opportunity to descant upon the horrid and barbarous appearance of such disagreement and controversy between parties so holily and dearly connected; and he has drawn a painful and pitiful picture of the deserted and wronged wife, dishonored and crushed by the testimony of a husband in eager chase after the gold of his adversary. He has presented this wife, in an argumentative allegory, as listening to the accusations of her husband, hearing the revelation of her confessed dishonor published to all the world, and yet compelled to sit silent, without a possible answer from her lips to the supposed calumny. But the answer of the law is that which I have already given, sir, — that she is not interested in the event of this suit; that her rights are unimpaired and untouched, and she may claim all the privileges of the relation existing between her and the plaintiff. But that picture, sir, has another side. Will that be the first revelation of her asserted guilt? Will the testimony from the lips of the husband be the first dark shadow which gathers upon her womanly and wifely character? In this or in any other conceivable case of seduction, is it the action like this, or the testimony in the action like this, which crushes and ruins womanhood? No, sir! no, sir! The shame, the disgrace, the destruction, which this wife suffers and must suffer, starts earlier in the history of this unfor-

tunate transaction. It is not the husband who reveals the wife's dishonor; it is the seducer, sir. Long before this action was commenced, the dark cloud had enshrouded this wife. This action was not commenced until that wife, stimulated by her seducer, had deserted the home of her husband. This action was not commenced until that wife, led by that seducer, appeared before *his* chosen tribunal, and vented her spleen and indignation against this husband. Long before this action was commenced, the shadow had fallen over that household, and a happy and honored home was distracted and dissevered. The argument does not apply, sir. The picture is not appropriate to this occasion or this case. It is not appropriate to any occasion; because I assert it as an invariable consequence, that the dishonor and the ruin which follow the path of the seducer commence long before the husband is apprised of his own dishonor. It comes, sir, in alienated love; it comes in inevitable discord and contention; it comes, at last, in the clear revelation to the distracted heart of the husband of his wife's seduction and dishonor. Whatever may be said by Theodore Tilton upon that stand will not add a jot or tittle to the agony, the shame, or the remorse of that wife."

Mr. Beach was the leader for the plaintiff in the case of Bowen *v.* Chase, in which Bowen claimed title to the estate of the celebrated Madame Jumel. Charles O'Conor and James C. Carter were for the defendant. The trial occupied a month, and the jury disagreed. It was never tried again.

He defended Rubenstein, tried in January, 1876, for the murder of Sarah Alexander, in Brooklyn, in which the defendant was convicted on circumstantial evidence. A report of this trial, including Mr. Beach's summing up, was published.

In the summer of 1876 he was the leading counsel for the Executors of Alexander T. Stewart in proceedings brought by certain alleged heirs to revoke the probate of his will.

He defended John Scannell, tried at the New York Oyer and Terminer for the murder of Donohue; the defence being that Scannell had been made insane by the belief that Donohue murdered his brother, Florence Scannell, in a political quarrel some years before, and that Scannell had an insane delusion that it was his duty to avenge the murder of his brother. On the first trial the jury disagreed. On the second trial the jury acquitted Scannell on the ground of insanity. He was sent to an insane asylum, where he remained for about a year and was then discharged.

He defended James C. King, a noted gambler, tried for murder in the first degree, at the New York Oyer and Terminer. King was convicted of murder in the second degree, and sentenced to State's prison for life.

He prosecuted the famous divorce case of Compton *v.* Compton. The narration of his marvellous speech in that case, and how in the midst of it the defendant fell at his feet, clasped him about the knees, and begged for mercy, is one of the stories often told by lawyers of the New York Bar when they meet together and talk of "the giants that were in those days."

He defended Maggie Jordan, tried for aiding in the escape of William L. Sharkey from the Tombs, where he was imprisoned, awaiting execution upon a conviction of murder. The case was full of romantic interest. Maggie Jordan had been the mistress of Sharkey. She visited him at the Tombs, and obtained admission to his cell. She had come prepared, and quickly exchanged clothes with him, so that when the time came for her to depart Sharkey, dressed in her clothes, went out in her stead, while she remained in his. He escaped and was never recaptured. The last heard of him, he was in the army of Don Carlos in Spain. The evidence of Maggie Jordan's complicity in Sharkey's escape was perfectly clear; but Mr. Beach made such a powerful and touching appeal to the jury not to degrade and punish her for her self-sacrificing devotion, that the jury disagreed, and Maggie Jordan was discharged.

He was associated with Charles O'Conor

in the defence of Frank H. Walworth, tried for the murder of his father, Mansfield Tracy Walworth, the son of Chancellor Walworth.

He was the leader for the plaintiff in the celebrated Marie-Garrison suit, — involving millions of dollars, — and argued the appeal on a demurrer, in which the plaintiffs' right to recover was determined (83 N. Y. 16), though the case was not concluded at the time of his death, when Mr. Conkling succeeded him as counsel.

The last important criminal trial in which he was engaged was that of Jesse Billings, at Ballston Spa, charged with the murder of his wife. She was killed at about nine o'clock in the evening by some person who fired upon her from the outside, through the window of the room in which she was sitting. The evidence against Billings was circumstantial, but so strong that though the jury on the first trial — in which Mr. Beach did not take part — disagreed, a majority were for conviction. Mr. Beach was then seventy years of age, and had said he would never again take part in the trial of a criminal case. He felt the labors and anxieties of such trials too great and intense to be safely borne at his age. But Billings had been an acquaintance of his early days, and Mr. Beach could not resist the appeal to defend him. Indeed, it was one of his peculiarities that he could never resist an appeal for help, whether to his talents or his purse. Perhaps, too, the desire to appear once more in the old court-house where his early triumphs had been won, and among the friends of his youth, had something to do with persuading him to forego for that once his determination. The trial lasted two weeks. The evidence was substantially the same as on the first trial. Mr. Beach summed up for the defendant. His foot was upon his native heath. The crowds who had flocked to hear him in his youth were there; their hair whitened, as his was, with the frosts of seventy winters. He held their rapt and delighted attention, as he had in days of yore. His client was triumphantly acquitted, though the greater part of the community then believed and still believe he was guilty.

The cases I have enumerated were only those of a public character, which commanded such general attention that they rise at once to recollection. They constituted but a small part of the immense professional labors of Mr. Beach between 1870 and 1884. He was constantly engaged as counsel in the trial of ordinary civil cases before juries, before judges sitting in equity, and before the appellate courts; and he had a large chamber practice.

Though Mr. Beach will be remembered chiefly as a forensic orator, until he shares the speedy oblivion which is the common fate of great lawyers, this sketch would be incomplete without some mention of other qualities which made him a marked character and figure among his contemporaries.

A more independent spirit never lived. His independence was almost an eccentricity. He was undismayed by a hostile public opinion. The clamor of a denunciatory press had no terrors for him. He was never known to truckle to the bench or to fawn upon the jury. He asked no favors, as such, from either. He demanded his rights and those of his clients, and was willing to fight for them. In the days of ancient Rome he would have been a Coriolanus. He had an intense and manly scorn of pettifogging and sharp practice. No instance of either can be recalled against him. His generosity to his adversaries was proverbial. No one ever knew him to take a mean advantage even in the heat of battle. If he could not win by fair, open, manly, and honorable methods, he preferred not to win at all. I once knew him to refuse to try a case before a certain judge, because the client had urged that he bring on the case before him, as the judge was his intimate personal friend.

Unlike most lawyers of his time and school, he never "took down the young man on the other side." On the contrary, he was

chivalric in his treatment of young men. No young lawyer was ever his associate or his adversary in a case who was not his ardent admirer ever afterwards.

The first time I met him he was on the other side of a case I was to try for the plaintiff. I was young and callow. Had he been my own father and on my side of the case, he could not have been more considerately studious to keep my blunders concealed and make me appear to advantage, when he might easily have made me appear ridiculous, and might perhaps have won his case by taking advantage of my errors. A different experience with some others of the old-school lawyers of that time taught me how to appreciate his generosity.

Faults he had: who has not? Weaknesses he had: what mortal has not? It shall be no part of my task to speak of them here.

It can justly be said of him that no lawyer of his time had a greater pride in the dignity and honor of his profession, or entertained and lived up to a higher standard of professional ethics.

ABOUT WITNESSES.

THE strange statements, extraordinary admissions, prompt retorts, funny mistakes, crooked answers, and odd distortions of the Queen's English, heard in the courts, would make a plethoric volume of amusing reading. From an old English magazine we gather the following anecdotes of witnesses, some of which, we trust, will prove new to the readers of the "Green Bag."

The subjects of legal vivisection do not find the process so agreeable to themselves as it is interesting to uninterested listeners. The old fellow who had "married three wives and buried them lawful" would probably have preferred keeping to himself the fact that a buxom laundress declined to make him a happy man for the fourth time in his life, because he was not prepared to take her to church in a basket-carriage drawn by six donkeys.

The witness-box is prolific in malapropisms. The man whose friend could not appear in court by reason of his being just then superannuated with drink; the Irishwoman whose husband had often struck her with impunity, although he usually employed his fist; the gentleman who found a lady in the arms of Mopus; and the Chicago dame, who indignantly wanted to know who was telling the story, when the judge suggested that when she spoke of the existence of a family fuel, she must mean family feud, — might one and all claim kindred with Sheridan's deranger of epithets. Nor could Dogberry himself have shown to greater advantage than a police-officer, when, upon the stand in a New York court, he related how one Nelson had punched him twice in the head and scratched his face without aggravating him to use his club, because it went against his feelings to mistreat a human being; winding up what he termed his "conciseful" narration with: "I am willing to be let upon, your honor, but not altogether. The law must be dedicated; give him justice tampered with mercy."

The London policeman who found arrears of fat upon the blouses of two men suspected of purloining from a butcher would have smiled in scornful superiority to hear the Glasgow constable deposing that a riotous Irishman "came off the Bristol boat wi' the rest o' the cattle, and was making a crowd on the quay, offering to ficht him or any ither mon." "Well," asked the baillie, "did he stand on his defence when you told him to move on?" "No, your honor; he stood on the quay." Were members of the force always so exact, the magistrate who asked a street Arab, before putting him on his oath, what was done to people who swore falsely, would not have had his ears shocked with the reply, "They makes policemen out of 'em."

Euphemisms are wasted upon lawyers, since they will insist upon having their equivalents. Said one witness: "He resorted to an ingenious use of circumstantial evidence." "And pray, sir, what are we to understand by that?" inquired the counsel. "That he lied," was the reply of the witness, whose original statement was worthy of the doctor who testified that the victim of an assault had sustained a contusion of the integuments under the orbit, with extravasation of blood and ecchymosis of the surrounding tissue, which was in a tumefied state, with abrasion of the cuticle, — meaning simply that the sufferer had a black eye. Another witness testified that the plaintiff's character was "slightly matrimonial." Being called upon to explain, he answered, "She has been married seven times."

In a trial at Winchester a witness failing to make his version of a conversation intelligible by reason of his fondness for "says I" and "says he," was taken in hand by Baron Martin, with the following result: "My man, tell us now exactly what passed." "Yes, my lord. I said I would not have the pig." "And what was his answer?" "He

said he had been keeping it for me, and that he—" "No, no; he could not have said that; he spoke in the first person." "No, my lord; I was the first person that spoke." "I mean, don't bring in the third person; repeat his exact words." "There was no third person, my lord,—only him and me." "My good fellow, he did not say he had been keeping the pig; he said, '*I* have been keeping it.'" "I assure you, my lord, there was no mention of your lordship at all. We are on different stories. There was no third person there; and if anything had been said about your lordship, I must have heard it." The Baron gave in.

A Jew, speaking of a young man as his son-in-law, was accused of misleading the court, since the young man was really his son. Moses, however, persisted that the name he put to the relationship was the right one, and addressing the bench, said: "I was in Amsterdam two years and three quarters; when I come home I finds this lad. Now the law obliges me to maintain him, and consequently he is my son-in-law." "Well," said Lord Mansfield, "that is the best definition of a son-in-law I ever yet heard."

A most inexcusable want of recollection was displayed by a Benedict, who thought he had been married only three years, while he had not the faintest notion when or where he made his wife's acquaintance. A woman never pretends to ignorance on such matters, oblivious as she may be regarding the number of birthdays she has seen. Forgetting that a woman should be at least as old as she looks, a lady told a Paris magistrate she was twenty-five. As she stepped out of the box, a young man stepped in, who owned to twenty-seven. "Are you related to the previous witness?" he was asked. "Yes," said he, "I am her son." "Ah!" murmured the magistrate, "your mother must have married very young." The inquiry as to age was met by an Aberdeen spinster with a protest against an unmarried woman being expected to enlighten the public on such a subject. Finding that of no avail, she admitted she was fifty, and after a little pressure, owned to sixty. Counsel then presumed to inquire if she had any hopes of getting a husband, and was rebuffed for the impertinence with: "Weel, sir, I winna tell a lee. I hinna lost hope yet, but I wudna marry you, for I am sick o' your palaver."

An examiner's perseverance is not always successful in eliciting the desired answer. "Was there anything in the glass?" asked a counsel of a somewhat reluctant witness. "Well, there was something in it," he replied. "Ah! I thought we should get at it in time," observed the triumphant questioner. "Now, my good fellow, tell us what that something was." The good fellow took time to think over it; at last he drawled out, "It were a spoon." Equally unsatisfactory from a legal point of view was the following short dialogue: "You have property, you say; did you make it yourself?" "Partly." "Are you married?" "Yes." Did your wife bring you anything?" "Yes." "What?" "Three children." The witness had the best of that bout. The information imparted was as little to the purpose as the answer to the question: "When you called upon Mr. Roberts, what did he say?" propounded to a voter before an election committee. Before the man could open his mouth to reply, the question was objected to. For half an hour counsel argued the matter; then the room was cleared that the committee might consider the subject. After the lapse of another half-hour the doors were opened, and the chairman announced that the question might be put. All ears were strained to catch the impending disclosure. But the mountain did not bring forth even a mouse. "What did Mr. Roberts say?" asked the counsel; and the witness replied: "He was n't at home, sir; so I did n't see him."

CAPITAL PUNISHMENT.

SOME time ago Sir James Mackintosh, a most cool and dispassionate observer, declared that, taking a long period of time, one innocent man was hanged in every three years. The late Chief-Baron Kelly stated as the result of his experience, that from 1802 to 1840 no fewer than twenty-two innocent men had been sentenced to death, of whom seven were actually executed. These terrible mistakes are not confined to England. Mittermaler refers to cases of a similar kind in Ireland, Italy, France, and Germany. In comparatively recent years there have been several striking instances of the fallibility of the most carefully construed tribunals. In 1865, for instance, an Italian named Pelizzioni was tried before Baron Martin for the murder of a fellow-countryman in an affray at Saffron Hill. After an elaborate trial he was found guilty and sentenced to death. In passing sentence the judge took occasion to make the following remarks, which should always be remembered when the acumen begotten of a "sound legal training" and long experience is relied on as a safeguard against error: "In my judgment, it was utterly impossible for the jury to have come to any other conclusion. The evidence was about the clearest and most direct that, after a long course of experience in the administration of criminal justice, I have ever known. . . . I am as satisfied as I can be of anything that Gregorio did not inflict this wound, and that you were the person who did." The trial was over. The Home Secretary would most certainly, after the judge's expression of opinion, never have interfered. The date of execution was fixed. Yet the unhappy prisoner was guiltless of the crime, and it was only through the exertions of a private individual that an innocent man was saved from the gallows. A fellow-countryman of his, a Mr. Negretti, succeeded in persuading the real culprit (the Gregorio so expressly exculpated by the judge) to come forward and acknowledge the crime. He was subsequently tried for manslaughter and convicted, while Pelizzioni received a free pardon. Again, in 1877, two men named Jackson and Greenwood were tried at the Liverpool Assizes for a serious offence. They were found guilty. The judge expressed approval of the verdict, and sentenced them to ten years' penal servitude. Subsequently fresh facts came to light, and the men received a free pardon. Once more, in 1879, one Habron was tried for the murder of a policeman. He was found guilty and sentenced to death. An agitation for a reprieve immediately followed. The sentence was commuted to penal servitude for life. Three years after, the notorious Peace, just before his execution for the murder of Dr. Dyson, confessed that he had committed the murder for which Habron had been sentenced. With these incidents fresh in our minds, let us turn once more to St. Giles and St. James, and listen to the indignant words of Douglas Jerrold:—

"Oh, that the ghosts of all the martyrs of the Old Bailey — and though our professions of faith may make moral antiquarians stare, it is our invincible belief that the Newgate Calendar has its black array of martyrs; victims to ignorance, perverseness, prejudice; creatures doomed by the bigotry of the Council table, by the old haunting love of blood as the best of cures for the worst of ills, — oh, that the faces of all these could look from Newgate walls! That but for a moment the men who stickle for the laws of death as for some sweet domestic privilege might behold the grim mistake, the awful sacrilegious blunder of the past, and seeing, make amendments for the future." — *The Fortnightly Review.*

THE SUPREME COURT OF RHODE ISLAND.

By Stephen O. Edwards.

THE first General Assembly convened in Rhode Island met at Portsmouth in 1647. This assembly adopted the charter obtained from the Long Parliament by Roger Williams, and organized under it a government for the united settlements. The code of laws enacted at this session provided for a General Court of trials for the whole colony. The general executive officers of the colony, consisting of a president and four assistants, one from each town, composed this court. These officers were elected for one year, or until their successors were chosen. Their judicial functions were regarded as incidental to the other duties imposed upon them. The General Court of trials was the highest judicial tribunal in the colony, and though differing widely both in jurisdiction and in constitution, was the predecessor of the present Supreme Court of the State. Among those who administered justice in this early court, appear the historic names of Roger Williams, William Coddington, John Clarke, Samuel Gorton, and others less known, who were instrumental in shaping the destinies of the infant colony.

The Code of 1647 conferred upon the General Court jurisdiction of the higher class of crimes, of cases judged too weighty for determination by the town councils, of cases between different towns or between citizens of different towns, of cases against citizens of other colonies, and generally of cases of great importance, and such as were not referred to other tribunals.

A spirit of local pride and jealousy of central authority seems to have been prevalent even in this little colony. It was not enough that each town had a representative on the board of assistants, and thus a judge upon the bench. The sessions of the General Court of trials were held from town to town. The Code of 1647 provided that the head officers of the town where the court might be held should sit with the general officers "for council and helpe." This concession to local pride and prejudice was soon discovered to be unavailing. Officers who were denied the right to vote found their "council and helpe" unheeded. It was accordingly enacted in 1650 that the town officers should have "equal authority to vote and act with the general officers." It is not improbable that the local element in the composition of the court was dictated in part by the thought that judges of the vicinage, because of their more intimate knowledge of the parties, and being personally conversant with the cause, might be able to form a juster judgment than strangers. In 1651 a change was made in the jurisdiction of the court. It was enacted that all causes, except prosecutions for certain crimes of the highest grade, should be tried in the first place in the town courts, thus converting the General Court for the most part into a court of appeal or review.

While our forefathers did not deem it necessary that judges should be learned in the law, they did not fail to recognize the importance of the bar, or appreciate the peculiarities which appear in all ages to have characterized the members of that profession. They seem to have had a lurking fear that the learning and subtlety of the bar might mislead the common-sense of the bench. It was accordingly provided by an early enactment that a litigant who preferred might "use the attorney that belongs to the court" instead of pleading his own cause, or having his own attorney plead for him. These court attorneys were required by the statute to be "discreet, honest, and able men for understanding," and were solemnly engaged by the head officer of the town not "to use any manner of deceit to

beguile either court or party." Violation of this obligation drew down upon the offender the penalty of being forever disbarred.

Regulation of the proceedings of the General Court, even in matters of detail, was in those days the subject of legislation. The legislators were solicitous that the sittings of the court should be conducted with dignity and decorum, and that the reproach of the law's delay should not attach to the judiciary of the colony. It was therefore enacted by the General Assembly, as that which added to the "comely and commendable order of the Court of Judicature," that "at the farthest on Court days" they should meet at eight o'clock in the morning. Having thus provided for the sitting of the court at proper hours, and thrown the mantle of legislative protection about the judges to guard them from the wiles of the bar, our early legislators attempted to shield the jury from the undue influence of the court. For this purpose it was enacted that the judges in charging the jury "shall mind the inquest of the most material passages and arguments that are brought by one and other for the case and against it without alteration or leaning to one party or another, which is too commonly seen." The closing phrase of this act is perhaps intended as an expression of condemnation upon some of the courts with which the early settlers were acquainted.

The royal charter of 1663 vested the powers of government in a governor, a deputy governor, ten assistants, and a body of deputies. These officers, or a quorum of them when convened, constituted the legislative department of the government. The charter provided that the General Assembly might create such "courts of jurisdiction" as they might see fit. The first General Assembly under this charter enacted that either the governor or deputy-governor, with at least six of the ten assistants, should hold the General Court of trials at Newport each year in May and October. The general officers who were thus designated to exercise judicial functions were elected annually by the freemen of the several towns.

Local interests did not receive the recognition under the new, that they had under the old judicial system. The experience of the several settlements as members of the united colony under the first Charter had perhaps allayed their fears of the central authority. The representation of the towns in the board of assistants and in the chamber of deputies was no longer equal. The old court held its sessions from town to town, and the town officers sat as members of the court, with equal voice with the general officers in its deliberations. The town officers had no place in the new court, and the sessions of the court were held at Newport only. Original jurisdiction, which had been conferred almost exclusively upon the town courts by the Act of 1651, was now exercised more extensively by the higher court. The jurisdiction of the General Court of trials was not defined by the act creating it; but it is probable that except for its enlarged original jurisdiction the authority of the new court was similar to that of the old.

The difficulty and often hardship of making the journey to Newport from the more remote parts of the colony, and the fact that the judges received no compensation for their services made it difficult to obtain a quorum of the court for the transaction of business. To remedy this evil the General Assembly reduced the number of assistants necessary for a quorum to four, and later to three. As an inducement to regularity in attendance upon court duties, it was provided that the judges should each be paid three, later four shillings a day for attendance at court, and be fined twice as much for being absent without sufficient excuse. If, however, there was no quorum present, this fine was increased to five pounds for each absentee. The preamble to the law assigns as a reason for its enactment that the judges "might see themselves strongly obliged, partly through hope of reward in case of attendance, and partly through fear of penalty in case of neg-

lect." "It must be confessed," says Chief-Justice Durfee, in his "Gleanings from the Judicial History of Rhode Island," "that our worthy ancestors in appealing to those master motives were as parsimonious of reward as prodigal of punishment." Either tempted by the reward or influenced by the penalty, the judges seem, after this law went into effect, to have been more regular in attendance upon judicial duties.

An account given of the court at this period does not portray an ideal judicial tribunal. The Earl of Bellomont, in a report to the Lords of Trade in 1699, says:[1] —

"Their courts of justice are held by the governor and assistants, who sit as judges therein, more for constituting the court than for searching out the right of the causes coming before them, or delivering their opinion in points of law (whereof it 's said they know very little). They give no directions to the jury, nor sum up the evidences to them, pointing unto the issue which they are to try. Their proceedings are very unmethodical, no ways agreeable to the course and practice of the courts in England, and many times very arbitrary and contrary to the laws of the place."

RICHARD W. GREENE.

This account, written by an unfriendly hand, while in the main a just criticism on judicial proceedings at this time, probably exaggerates the unfavorable feature in the character and conduct of the court.

In 1729 a general reorganization of the judicial system of the State took place. With the increase of population and of judicial business consequent thereon, the inhabitants of the colony found themselves "put to great trouble and difficulty in prosecuting their affairs in the common course of justice." To remedy this evil the colony was divided into three counties, and a civil and criminal court was established for each county. The higher court now denominated "The Superior Court of Judicature, Court of Assize, and General Goal Delivery," became largely a court of appeal or review, except in capital cases.

From the organization of the government under the royal charter until the creation of the judiciary as a separate department of the colonial government, eighteen governors presided over the higher court. Elected for political reasons, their careers are of interest in the political rather than in the judicial history of the State. Their judicial decisions are unreported and forgotten. This lay court does not seem to have inspired the bar with the highest respect for its learning and ability. Lawyers depended rather upon their ready wit and eloquence than upon their legal learning to win their causes. An anecdote told by Henry Bull of himself illustrates the preparation for practice that lawyers sometimes made in the early times, and perhaps also the estimation in which the lay bench was held by the bar. Bull was a carpenter, but becoming dissatisfied with his trade decided to prepare himself for the bar. He sub-

[1] Quoted from Durfee's Gleanings from the Judicial History of Rhode Island.

sequently became Attorney-General of the State, and is reputed to have been a lawyer of considerable ability. "When," he says, "he made up his mind to practise law, he went into the garden to exercise his talents in addressing court and jury. He selected five cabbages in one row for judges, and twelve in another row for jurors; after trying his hand thus awhile, he went boldly into court and took upon himself the duties of an advocate; and a little observation and experience there convinced him that the same cabbages were in the court-house which he thought he had left in the garden, five in one row and twelve in another."

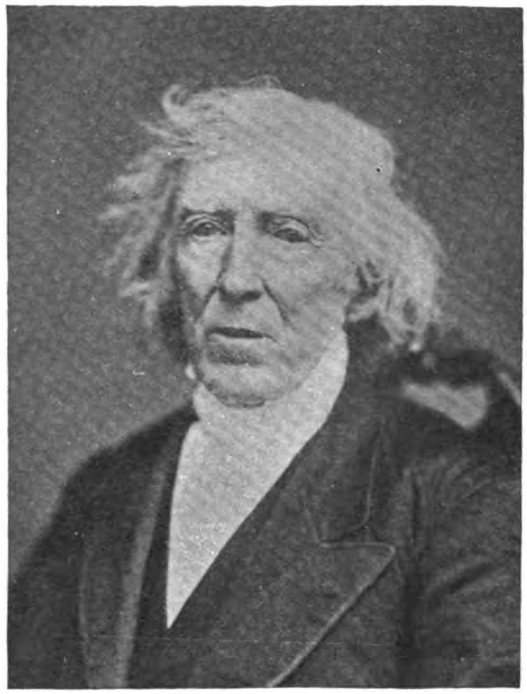
In the year 1747 an important change was made in the judicial system of the colony. The political principle of distribution of the powers of government into co-ordinate branches, so generally recognized at a later day, had hitherto been little understood. From 1695, when the assembly was first divided into two houses, the members of the Council, or upper house, constituted the Superior Court, and were vested with executive powers as well. With changed social and political conditions, the need of a tribunal independent of the other departments of government, and better qualified to administer justice, was felt more and more. Accordingly, in 1747 the General Assembly enacted a law which established the judiciary as a separate branch of the colonial government. It provided that a chief and four associates should be chosen annually by the assembly to hold the court. The inconvenience of transacting all of the business of the court at Newport was also remedied by providing that two terms of the court annually should be held in each county. Although the judiciary was thus established as a separate branch of the colonial government, yet in many instances the same persons were members of the assembly and of the court, until 1780, when it was enacted that after the next election no member of either house of the General Assembly should hold the office of a justice of the Supreme Court. The preamble to this act declared that it was incompatible with the Constitution of the State that legislative and judicial powers should be vested in the same persons. In 1798 the name of the court was changed to the Supreme Judicial Court.

The case of Trevett *v.* Weeden has perhaps greater historical interest than any other case decided by the court in the eighteenth century. For the first time in the history of the State, and preceded only by the case of Holmes *v.* Walton in New Jersey, the court adjudged an act of the Legislature to be unconstitutional, and so absolutely void; or perhaps I should say the court dismissed the action for want of jurisdiction, and this was construed by the assembly as deciding that the statute under which the action was brought was unconstitutional.

The Legislature had passed one of the numerous legal-tender laws of the period, for the purpose of enforcing the people to accept the paper money of the State at its face value. A heavy penalty was attached to the refusal of any party to accept this money, and it was provided that the offence should be tried before a special court composed of three superior court judges, sitting without a jury. The case was tried on pleas to the jurisdiction, one of which set up the defence that the act was unconstitutional and void. The action was dismissed on the ground that the court did not have jurisdiction. The General Assembly cited the judges to appear before them to assign the reason and ground for the judgment, reciting in the summons that the judges of the Supreme Court had "adjudged an act of the supreme legislature of this State to be unconstitutional and so absolutely void," and that "the said judgment is unprecedented in this State, and may tend to abolish the legislative authority thereof."

The defence of the court was made by Mr. Justice Howell, an accomplished jurist, who laid down the principle that the judges were not accountable to the General Assembly for the reasons of their opinions, and that

right of trial by jury is a fundamental right which the General Assembly cannot take away. The reasons given were not satisfactory to the General Assembly, but the judges were allowed to serve out their year, though they were not honored with a re-election. The decision, however, resulted in the repeal of the statute; and "thenceforth the independence of the judiciary became, notwithstanding the judges continued long to be annually elected, one of the grand traditions of the State, carrying with it the authority almost of constitutional law."[1]



WILLIAM R. STAPLES.

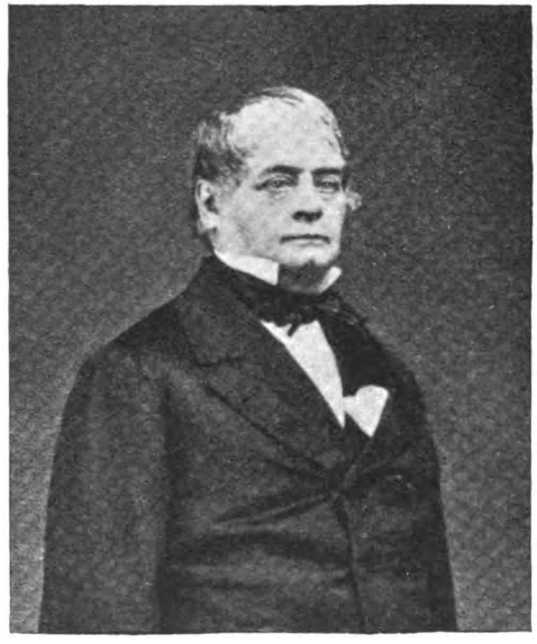
During the entire period of government under the Charter, and for more than a decade under the Constitution, the General Assembly exercised judicial powers which have from time to time been transferred to the Supreme Court. Thus until 1822 the appellate jurisdiction in matters of probate continued in the Governor and Council, as "supreme ordinary or judge of probates." In the year named this jurisdiction was transferred to the Supreme Court, where it has since remained. The General Assembly also exercised jurisdiction in matters of appeal and petitions for new trial. The right of appeal was granted in 1680, to any party aggrieved by any judgment of the Supreme Court. The right of appeal to the General Assembly was repealed in 1741; but jurisdiction on petitions for new trials continued to be exercised until some years after the adoption of the Constitution. New trials were granted, not only for the usual reasons, but for almost any cause including errors of law committed by the court.

The assembly continued to entertain petitions for divorce until a late day, and it exercised various phases of equity jurisdiction until the adoption of the Constitution in 1843. By a judicious admixture of legislation with its judicial action, the assembly, with little deference to precedents and rules of law, aimed to do justice between parties.

The Constitution adopted in 1843 provided that the "General Assembly shall continue to exercise the powers they have heretofore exercised, unless prohibited in this Constitution." It seems to have been taken for granted that this clause continued in the assembly the judicial powers formerly exercised by it. Along with this grant of power to the legislative department was the provision that "the judicial power of this State shall be vested in one supreme court and in such inferior courts as the General Assembly may from time to time ordain and establish." In January, 1857, an act was passed by the General Assembly directing the clerk of the Supreme Court to write across the record of their judgment against Thomas W. Dorr, convicting him of treason, the words, "Reversed and annulled by order of the General Assembly, at their January session, A. D. 1854." The following year there was a change in the political complexion of the assembly; and the court being

[1] Durfee's Gleanings from the Judicial History of Rhode Island.

called upon by resolution of the assembly for its opinion of the constitutionality of the act, declared it unconstitutional. The court held that the Constitution, by vesting "the judicial power" in the courts, gives the judicial power exclusively to the courts, and by implication denies it to the General Assembly. While the court denied the power of the assembly to pass the act in question, it inconsistently conceded to the assembly the right to exercise such judicial powers as it had exercised just before and subsequently to the adoption of the Constitution. In 1856 the decision in Taylor *v.* Place settled this question, and denied to the General Assembly the right to exercise judicial powers in any instance.



SAMUEL AMES.

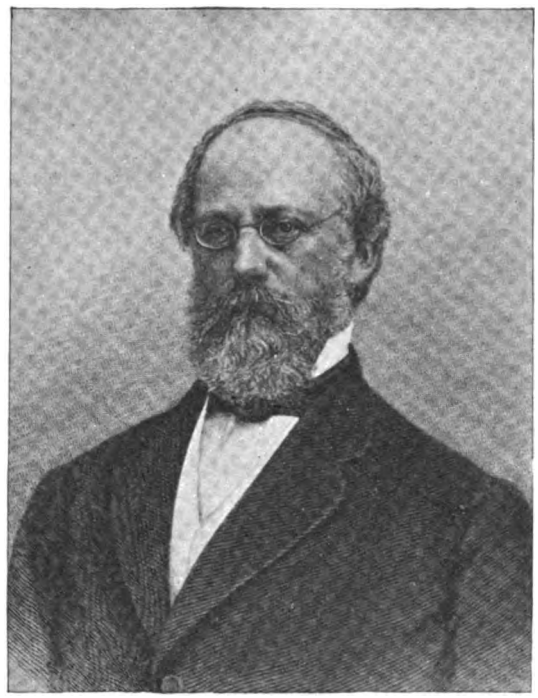
The General Assembly grudgingly and by piecemeal yielded up its equity jurisdiction to the court. In 1667 an act authorized the court to chancerize forfeitures and to proceed according to rules of equity when any penalty, conditional estate, or equity of redemption was sued for. The court was empowered in 1798 to entertain a bill to redeem, and in 1822 a bill for foreclosure and jurisdiction on appeals from town-councils was conferred over property held for charitable uses. In 1836 the jurisdiction was extended to trusts and to controversies between partners and to proceedings against banks for forfeitures of charters. In 1841 full equity powers in cases of fraud were given the court.

The new Constitution empowered the General Assembly to confer chancery powers upon the Supreme Court. In the revision of the statutes which followed, the court was invested with the complete equity jurisdiction which it now enjoys.

Since 1847 the court has been vested with original jurisdiction concurrently with the Court of Common Pleas in civil suits for one hundred dollars and over. The amount sued for in Providence County must now be at least three hundred dollars.

Since the adoption of the Constitution the court has been entitled "The Supreme Court." The Constitution does not define the jurisdiction of the court, but it provides that it shall be vested with such jurisdiction as might be prescribed by law. There were four judges until 1875, when the number was increased to five. The judges are elected by the two houses of the General Assembly in grand committee. If elected at the annual session of the General Assembly for the election of public officers, the judges hold office for life, unless they resign or are removed. If a vacancy occurs during the year, the office may be filled by the grand committee until the next annual election, and the judge then elected holds office as stated. Judges may be removed at the annual election by a concurrent vote of the two houses of the assembly, a majority of all the members of each house voting for such removal. This power, however, has never been exercised by the assembly. Two of the Supreme Court judges are designated by a

majority of the court to hold the Courts of Common Pleas in the several counties of the State. Two terms of the Supreme Court are held yearly in each county, but the judicial business of the county of Providence far exceeds that of the other counties combined. The court, as has been stated, is vested with original jurisdiction concurrently with the Court of Common Pleas in civil suits. It also has concurrent criminal jurisdiction with the Common Pleas; as a matter of practice, however, this jurisdiction is exercised in Providence County entirely by the Court of Common Pleas. A considerable part of the time of the Supreme Court is occupied with trials at *nisi prius*. At the last January session of the General Assembly an act was passed providing for the appointment of a commission to revise the statutes of the State. This commission is empowered to present to the assembly a plan for a judicial system for the State. They have given hearings to the bench and bar, and it is probable that they will report at the next session of the General Assembly.

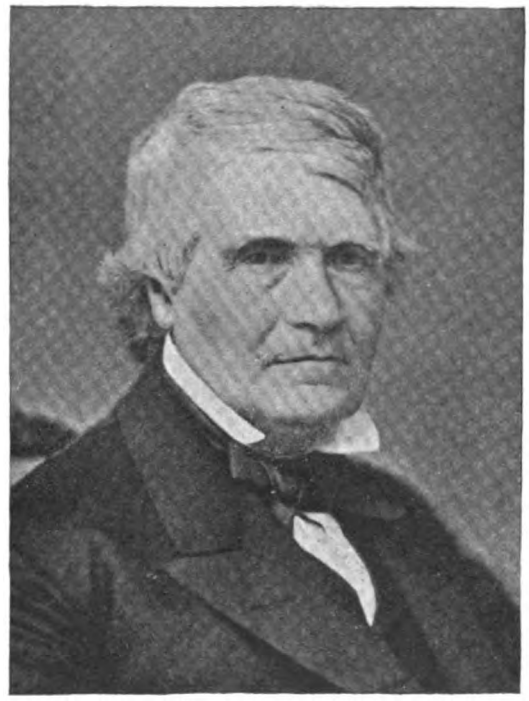


CHARLES S. BRADLEY.

From 1875 until the present year the Chief-Justice received as salary $4,500, and the Associate Justices $4,000 each. At the last January session of the General Assembly these salaries were increased $1,000 each. Previous to 1852 the court sat in banc for almost all purposes; but now one justice is a quorum for many, and two for all purposes. The business of the court is despatched with reasonable promptness, considering that the work of the Supreme Court as well as that of the Common Pleas all devolves upon five judges. It was not until the year 1847 that provision was made for reporting the decisions of the court. Among those who have held the office of reporter are Joseph K. Angell, Chief-Justices Ames and Thomas Durfee, and the present incumbent, Mr. Arnold Green.

There are some distinguished names on the roll of judges from 1747 to 1827. Stephen Hopkins, a signer of the Declaration of Independence was Chief-Justice from 1751 to 1755, and again from 1770 to 1776. In civil affairs he was the foremost Rhode Islander of his generation. He was a man of wide information and extraordinary ability, with a genius for public affairs. Another name, immortalized by being affixed to the Declaration of Independence, appears upon the list of judges, — William Ellery, Chief-Justice, 1785–1786. He was a graduate of Harvard, distinguished for his scholarly attainments, a lawyer by profession, and a statesman of high order. James Burrill was a lawyer of large practice, a statesman who won fame in the United States Senate. He was Chief-Justice for but one year; but his learning and ability qualified him for eminent judicial service. Following Judge Burrill was Tristam Burges, the orator, statesman, and professor of oratory and belles lettres. He was Chief-Justice in 1817–1818. James Fenner was another of those who held the office for a single year. He was a born politician, a

man of resolute and vigorous intellect, a Senator in the National Congress, and for fourteen years Governor of the State. Impetuous, irascible, and of despotic will, he was little qualified to perform the duties of judge. The last of the lay Chief-Justices was Isaac Wilbour, who held the office from 1819 to 1826. A farmer by occupation, he was elected Lieutenant-Governor, and later a Representative in Congress. When succeeded by Judge Eddy, some one said that "though the public might get more law, they would not get more justice."



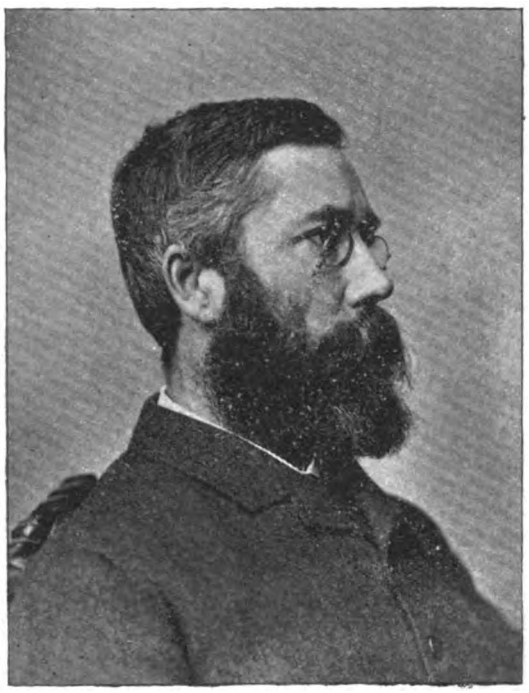
GEORGE A. BRAYTON.

The number of judges was reduced from five to three in 1827, and Samuel Eddy was elected Chief-Justice. His election marks a new period in the history of the court, as from this time the new judges elected were taken from the legal profession. The adjudications of the court now become of interest, not merely as historical studies, but as judicial precedents. A general knowledge of affairs and good common-sense, which had hitherto been thought sufficient qualifications for judicial service, were no longer regarded as competent, when unaided by learning in the law to solve the intricate legal questions now requiring decision.

Samuel Eddy.

Judge Eddy was born in Johnston, March 3, 1769. Educated in the country schools, and under the tuition of Rev. James Manning, D.D., he entered Brown University in 1783, and graduated in 1787. The following year he began the study of the law, and in 1790 was admitted to the bar. From this time until 1835, except for short intervals, he held public office. His reputation for scholarly ability and integrity early won for him the confidence of the people; and his gradual promotion through the different grades of the public service to positions of highest honor and trust shows that this confidence was well placed. In 1790, shortly before his admission to practice, he was chosen a delegate to the State Convention which ratified the Constitution of the United States. From 1790 to 1794 he was Clerk of the Supreme Court, and in 1793 Clerk of the General Assembly. From 1797 he was for twenty-two years annually elected to the office of Secretary of State. In 1818 he was elected a member of Congress without opposition, and he continued to hold the office for six years. He was elected an Associate Justice of the Supreme Court in 1826, and in the year following Chief-Justice. He held the latter office until 1835. No provision was made for reporting the decisions of the court at the time Judge Eddy was on the bench. In 1847 Joseph K. Angell, the well-known law-writer, was elected first reporter of the court. The opinion in the first case in the State reports was written by Judge Eddy. This is the only case decided by him which appears in the reports. He is reputed to have been an able judge, and a man of the highest integrity.

Associated with Judge Eddy on the bench, were Charles Brayton and Samuel Randall. Judge Brayton was a representative of the old order of judges. A blacksmith by trade, his education was limited and largely acquired by private study. He was a diligent student of public affairs, and ambitiously marked out for himself a public career. From 1814 to 1818, and again from 1827 until his death in 1834, he was an Associate Justice of the Supreme Court. It is said of him that "such confidence was reposed in his knowledge and sense of equity that a multitude of cases were privately submitted to him, and his advice was accepted as a finality in the matters in controversy."



GEORGE M. CARPENTER.

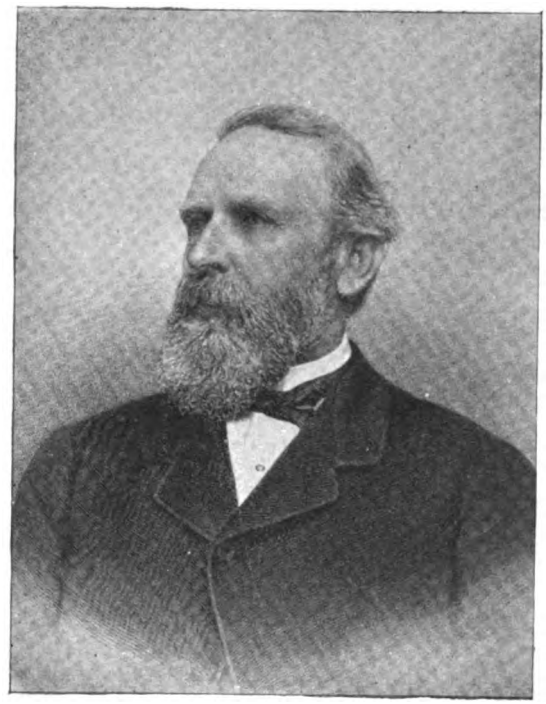
Samuel Randall was a graduate of Brown University in the class of 1804. He studied law one year with Judge Howell, and then for several years devoted himself to teaching and editing a country newspaper. From 1822 to 1832 he was an Associate Justice of the Supreme Court. Two years after retiring from the bench he was admitted to the bar.

Job Durfee.

In 1835 Job Durfee, then an Associate Justice, was elected to succeed Judge Eddy as Chief-Justice. He held the office until his death in 1848. The period during which he was Chief-Justice was a time of turbulence and political disorder in the State, out of which grew grave constitutional questions, requiring judicial solution. Judge Durfee was born at Tiverton in 1790. He was the son of Thomas Durfee, a lawyer who for some years was Chief-Justice of the Court of Common Pleas for Newport County. Graduating at Brown University in 1813, he studied law with his father, was admitted to the bar in 1817, and began practice in connection with his father at Tiverton. Not finding his time fully occupied with professional labors, he devoted his leisure to literature and politics. From 1816 to 1821 he was a Representative in the General Assembly. In 1820, and again in 1822, he was elected a representative in Congress. He disliked speaking for display, and infrequently took part in the debates. Modest and moderate, neither a ready nor an eloquent debater, he was nevertheless clear, forcible, and convincing in argument. After retiring from Congress he served three years as Representative in the General Assembly, during two of which he was Speaker. Early in life he had cultivated the poetic art, and now in the maturity of his intellectual powers he wrote poetry in the intervals of his more serious labors. In 1832 he published a poem entitled "What Cheer; or Roger Williams in Banishment." This was published in England, and received flattering notice from English critics. Judge Durfee was a zealous student of aboriginal and colonial history, and from these sources he drew themes for popular addresses, which he delivered in Providence and Boston. His most pretentious literary effort was entitled "Panidea, or

an Omnipresent Reason considered as the Creative and Sustaining Logos." This is a metaphysical work, embodying a system of pure idealism, and displays unusual power as a philosophical thinker on the part of the author.

In the earlier years of his career as a judge his charges to the grand jury drew public attention to him. It was not until the last year of Judge Durfee's judicial service that provision was made for reporting the decisions of the court. For this reason his name is not conspicuous in the reports. His few published opinions are clear, compact, well reasoned. He did not laboriously collect the precedents and carefully weigh the authorities for and against a legal proposition. He preferred to reason out his own conclusions, to decide on principle rather than on the weight of authority. The precedents of the courts were used by him for the purpose of justifying the conclusions he had reached rather than as the means of reaching those conclusions.



THOMAS DURFEE.

Judge Durfee's exposition of the law of treason during the Dorr Rebellion, so called, and in the trials for treason which followed it, constitutes his most signal judicial service. The Dorrites contended that if the people are sovereign, they, or a majority of them, have the right, with or without law, to change the form of government. Judge Durfee maintained that it is only under the law that the people are sovereign. The law by giving them unity makes them a State, and it is as a State that they are sovereign. If they undertake to change the government, such change is an act of sovereignty; and if they attempt to carry this into effect, it is treason.

Judge Durfee is described by his son as having been of medium height, portly in person, and physically indolent. His face was massive and heavy, but powerful in the expression of strong emotion; generally taciturn, modest, unassuming, candid, charitable, accessible to anger, but harboring no malice.

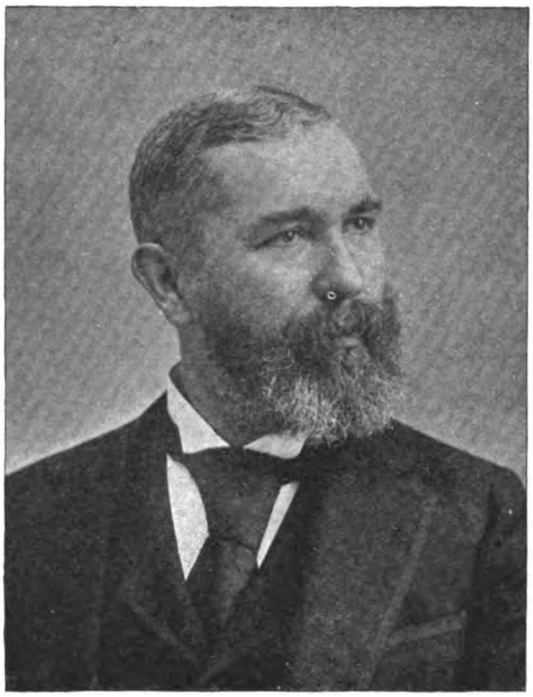
Levi Haile.

Judge Haile was a native of Warren, Rhode Island, where he studied and practised law until his election as Associate Justice in 1835. He graduated at Brown University in the class of 1821, and represented his town in the General Assembly from 1824 to 1835. He remained upon the bench until his death in 1854. It was said of him by the late Professor Goddard that "as a member of the court he was patient, attentive to business, and kind and courteous in his intercourse with the bar. No member of the bar was more familiar with the judicial history of the State, and with questions of local law and practice, than Judge Haile."

Richard Ward Greene.

After the death of Chief-Justice Job Durfee, Richard W. Greene was elected Chief-Justice of the State. Judge Greene was born at Warwick, Rhode Island, in 1792,

graduated from Brown University in 1812, and studied law at the Litchfield Law School and in the office of Ebenezer Rockwell in Boston. In 1826 he was appointed United States District Attorney for Rhode Island, by President John Quincy Adams, and he continued to hold this office under succeeding administrations until 1845. He served for several years as Representative and Senator in the General Assembly. Judge Greene rose rapidly in his profession, until he had the largest and most lucrative practice of any lawyer in the State. "He was," says Judge Durfee, in his oration delivered at the dedication of the Providence County Court House, "the safe counsellor, loving the light of ancient precedent, learned in the common law and greatly versed in equity jurisprudence before any court of the State had as yet any considerable equity jurisdiction; not a moving orator, but a consummate master of analysis, pre-eminent for his power of perspicuous statement." Though not eloquent, the late Abram Payne said of him that when he had laid out his papers and obtained a pinch of snuff from the sheriff, it was a pleasure to hear him. He was calm and not easily excited, but withal very earnest when the occasion demanded it. "In one instance," says Mr. Payne, "I remember he was followed by Mr. Whipple, who said, 'Your Honors can see by the manner of Brother Greene that he is earning a large fee; he is like a locomotive whose speed depends on the amount of fuel with which it is supplied.'"



CHARLES MATTESON.

In accepting the office of Chief-Justice, to which he was elected in 1848, Judge Greene is said to have relinquished a practice of eight thousand dollars a year for a salary of seven hundred and fifty dollars and a few fees. His reported opinions are contained for the most part in the first and second volumes of the State Reports.

William R. Staples.

Judge Staples was born in Providence in 1798, graduated from Brown University in 1817, and was admitted to the bar in 1819. In 1832 he was a member of the Common Council of Providence, and later he served for two years as Justice of the Police Court. From 1835 to 1854 he was an Associate Justice of the Supreme Court, and soon after the resignation of Chief-Justice Greene in 1854 he was elected Chief-Justice. After holding the office for two years, he resigned in consequence of failing health.

Judge Staples's chief delight was found in historical studies and antiquarian research. In 1843 he published his "Annals of Providence," a work which covers the history of the city from its founding until 1832. He was the author and compiler of several works upon subjects connected with the early history of Rhode Island. At the request of the General Assembly, he prepared a valuable history of the State Convention of 1790 which adopted the Federal Constitution.

The act providing for a reporter of the decisions of the court seems not to have been received with highest favor by some of the judges. Mr. Payne relates that shortly after the passage of the act the office of reporter was offered to him. He consulted Judge Staples in regard to accepting it, who said: "You can take the office if you choose, but we shall make you all the trouble we can. We shall give you no written opinions unless we are compelled to do so. We don't want any reporter or any reports. We mean to decide cases rightly, but we don't want to be hampered by rules, the effect of which would be to defeat justice." Mr. Payne did not accept the office. The judge seems to have had as little desire to make precedents for his successors as he had regard for those of his predecessors.

Judge Staples died in 1868, after a life of wonderful industry. He despised all sham and display, and his life was characterized by decision of character and the highest integrity. His reported opinions are few. The most of them are very short, and are mainly brief statements of the conclusions reached by the court rather than elaborate statements of the reasons upon which the decision rests.

Associated with Chief-Justice Staples were Alfred Bosworth and Sylvester G. Shearman.

Alfred Bosworth.

Judge Bosworth was born at Warren in 1812. He graduated from Brown University in 1835, and studied law with Judge Haile. For fifteen years he represented his town in the General Assembly. Upon the decease of Judge Haile in 1854, Mr. Bosworth was elected to succeed him as an Associate Justice of the Supreme Court, which office he continued to hold until his death in 1862. Judge Bosworth was of counsel for Rhode Island in suits growing out of the boundary question between Rhode Island and Massachusetts. His name is not conspicuous in the reports.

Sylvester G. Shearman.

Judge Shearman was born in North Kingstown, Rhode Island, in 1802. He practised law at Wickford, and was elected Representative to the General Assembly at the first election under the Constitution, and in 1848 was Speaker of the House. He was an Associate Justice of the Supreme Court from 1855 to 1868.

While a member of the court, he was assigned to hold the Court of Common Pleas. "He was a man," says Mr. Payne, in his "Reminiscences of the Rhode Island Bar," "without any pretence to superior sanctity, vast acquirements, or greatness of any kind; he was a good man, knew what was worth knowing, and discharged faithfully the duties of all the positions in which it had pleased God or the people to place him." He had a keen but homely wit, and a fund of illustration and anecdote at command. Though a dangerous man to cross swords with in repartee, he "had no malice in his nature and no sting in his wit." Mr. Payne gives the following, among many other examples of his ready wit. When James T. Brady, impressed by the ability of Mr. Shearman, said to him, "Why do you stay in such a little place as Wickford? Why don't you remove to New York, where there is a wider field for your talents?" Mr. Shearman replied, naming certain disreputable classes in Saxon tongue, "Take these people out of New York, and it is not much bigger than Wickford, after all." When he wanted to express the longevity of a certain family, he said: "I never knew a —— who did not outlive the Almighty's Statute of Limitations, his friends, his fortune, and his reputation."

Samuel Ames.

In 1856 Samuel Ames was elected Chief-Justice. He performed the duties of the office for nine years with such signal ability, learning, and integrity that he is often spoken of as the Great Chief-Justice. Born at Providence in 1806, at the early age of seventeen

he graduated from Brown University, and at once entered upon the study of the law. He completed his professional course at the Litchfield Law School, and at the age of twenty was admitted to the bar. He early gained distinction for unusual attainments in the learning of the law. "A more learned lawyer," said Mr. Abraham Payne, "I have neither known nor read about."

Endowed with a ready and retentive memory and acute reasoning powers, he possessed also the gifts of a clear, ready, and forcible speaker, and the genius for work. This powerful mind was cast in a frame of vigorous mould. Judge Ames was of medium height, and athletic, with a physique indicative of strength and endurance. His handsome face bore the impress of the mind and soul within. Every lineament betokened a genial, frank, but firm and positive character. With such gifts, industry, and learning, it was but natural that he should have soon reached the heights of the profession.

JOHN H. STINESS.

In 1832 he became associated with Joseph K. Angell in writing the treatise on the law of corporations which bears the authors' names, and which has since been a standard authority with the profession.

Judge Ames took an active interest in public affairs. For several years he represented the city of Providence in the House of Representatives of the General Assembly, and in 1844 he was Speaker of that body. He was a vigilant guardian of what he felt to be the true interests of the State, and a ready and effective debater. He entered the contests of the forum with the determination to overwhelm his adversary by the weight of his learning and the irresistible force of his logic. Though always generous and dignified, he was sometimes outspoken and caustic. Mr. Payne applies to him the remark made of Lord Keppel by Burke, "Though it never showed itself in insult to any human being, Lord Keppel was somewhat high;" and adds, "But no man had a kinder heart, or felt more keen regret when he knew he had hurt the feelings of another man." Lawyers who had ill prepared their cases, or who had a bad cause to maintain, received stern treatment from Judge Ames. His own attainments made him impatient with men of little learning and less industry; and his passionate love of justice made him at times severe toward an advocate who sought to make the worse appear the better cause.

In history, literature, science, and theology he was deeply versed. Added to this, he was endowed with brilliant conversational powers, which made him the charm of the social circle.

He possessed the judicial temperament in an unusually high degree. His associate on the bench, Judge Brayton, says of him: "He had an earnest desire to do justice and to administer justice, and took pleasure in being occupied upon the bench in its administration." In a conversation with him upon this matter, I said to him, "I wonder that a

man of your standing at the bar should have assumed a place upon the bench where your emoluments will be so much less, and your labor so much more." "My dear sir," said he, "I never designed to continue at the bar all my days. . . . I do not like to be at the bar. I do not desire to be compelled to make an endeavor to make the worse appear the better cause. I wish to pursue the better reason."

Judge Ames possessed the attainments and qualities which go to make the great judge. He was widely read in case law, and had reliable recollection of the facts of the cases and of the exact points decided. "I do not recollect," says Chief-Justice Greene, "any judge in the course of my own knowledge who was superior or perhaps equal to Chief-Justice Ames, except Judge Story; and in this respect these two gentlemen very much resembled each other." He was also deeply versed in the law as a science. He was not content with a knowledge of the principles of the law, but he looked to the reasons upon which those principles rested. He had a clear and comprehensive view of the principles and science of law considered as a system intended for the administration of justice in the community. He also possessed the power of ready and accurate analysis, and of applying the law to the facts in the case.

Hon. Samuel Curry relates a conversation which he overheard in Washington, when a coterie of Southern gentlemen were comparing Northern and Southern men. The Southerners criticised their Northern brethren as being cold and phlegmatic, and wanting in the spirit, vivacity, and eloquence of the South. Governor McDowell, of Virginia, sitting by, said, "No, gentlemen, I have been listening for the last two or three days to a young man from Rhode Island. He knows more law than all the judges of the Supreme Court; he knows all the law from Doomsday book to the present time, and has it all by heart, and he can talk like a Virginian." He combined with these intellectual gifts and attainments corresponding moral qualities, patient and untiring industry, the sternest integrity, uprightness, and fearlessness of popular clamor. "Upright, learned, fearless, just, sincere," are the words inscribed upon his monument, and they are a truthful epitome of his character. His contributions to the Rhode Island reports are exceeded by those of the present Chief-Justice alone, who says, in speaking of these opinions, that they do not "duly represent the brimming exuberance and facility of his intellect. No Rhode Island lawyer ever exhibited so full and so supple a mastery of the complex and enormous system of English jurisprudence." The opinion in Taylor *v.* Place, already referred to, is a good example of his powers as a writer. His able and fearless exposition of the law in this case is an enduring monument to his fearlessness and ability as a judge.

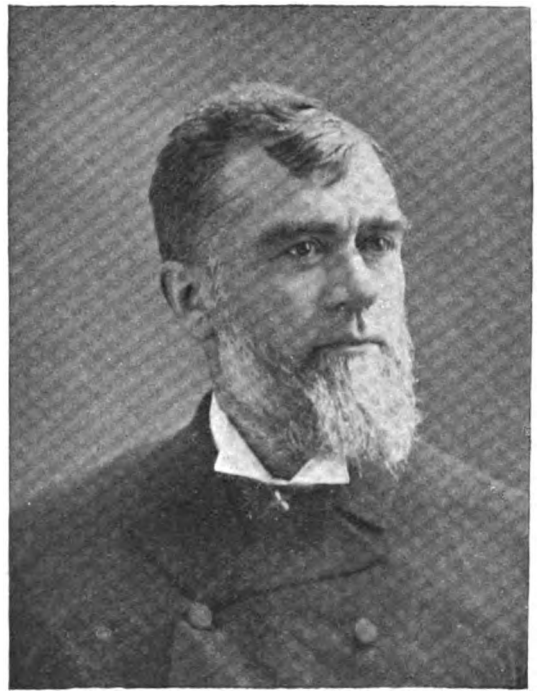
Charles S. Bradley.

In February, 1866, Charles Smith Bradley was elected by the General Assembly Chief-Justice of Rhode Island. His career at the bar had hitherto been one of brilliant success. For two years only he held this office, and then resigned to resume the practice of his profession, to him a more congenial occupation than the performance of judicial duties.

Chief-Justice Bradley was born in 1819. He graduated at Brown University in 1838, the foremost scholar of a class distinguished for its men of learning and ability. Mr. Charles S. Congdon, in his "Reminiscences of a Journalist," says: "In the class of 1838 was Mr. Justice Bradley, of Rhode Island, the first scholar, I think, of his year, of whom we did predict great things. . . . So we all talked of Bradley. When he was to speak in the chapel after evening prayers, how irreverently eager we were for the devotions to be over, that we might listen to our favorite! . . . He handled all topics, philosophical, political, and literary, with such force and ease that we held the matter

hardly second to the manner, though the manner was as nearly perfect as any elocution could be."

He studied law partly at the Harvard Law School, and partly in the office of Charles F. Tillinghast, then a leading member of the Rhode Island bar. Admitted to the bar in 1841, he soon rose to a prominent place in the profession, and for more than forty years was one of its acknowledged leaders. In legal knowledge, quickness of apprehension, professional tact and ingenuity, and in the versatility of his powers he had few equals at the bar. He was a thorough advocate. He came very near being a great orator. His presence was commanding and dignified; his delivery was graceful and energetic; his thought acute and profound, and clothed in the choicest diction of the scholar. These traits early won for him remarkable success as a jury lawyer. He was also an accomplished and successful equity lawyer, and during the years of his active professional life he was retained on one side or the other of most of the great causes tried in Rhode Island.



PARDON E. TILLINGHAST.

The brief term during which Judge Bradley held his judicial office (1866–1868) was hardly sufficient to demonstrate his ability as a judge. It is doubtful if he possessed the judicial temperament in high degree. He was somewhat stern and impatient with minds of less attainment and slower movement than his own. He found little satisfaction in the performance of judicial labors. The exciting contests of the forum afforded him a greater delight, and he resigned his office to engage again in the active practice of his profession. He was for several years a professor in the Harvard Law School.

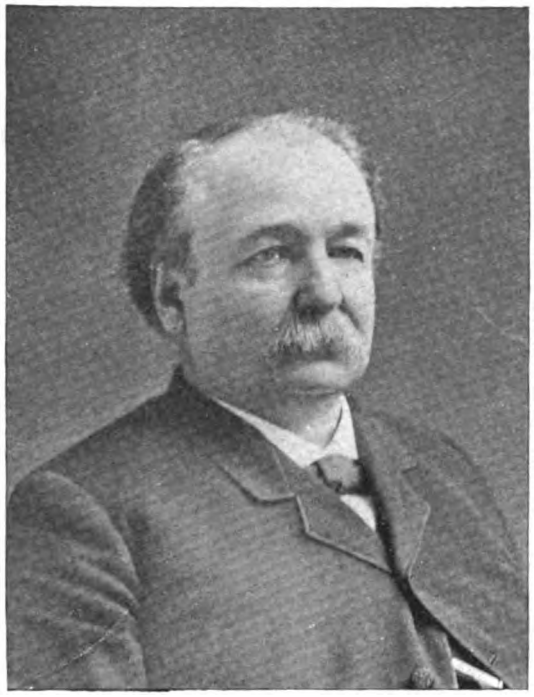
Judge Bradley took an active part in public affairs, and for years was the leader of the forlorn hope of the Democratic party in Rhode Island. He labored long and earnestly to secure freer suffrage and a more liberal Constitution for the State. In this connection he published a learned and valuable pamphlet upon the methods of amending the constitutions of our States; in this he attacked an opinion of the judges of the Supreme Court. He was answered by Chief-Justice Durfee in a pamphlet entitled "Some Thoughts on the Constitution of Rhode Island."

During the last few years of his life Judge Bradley retired largely from practice, and devoted his time to his private affairs and to the delightful companionship of books and art and friends; here he found congenial society and pursuits for his declining days. "There was in him," says one of his friends, "a certain elegance about his intellectual structure and movement, a mixture of grace and sentiment and imagination with his logical and practical power, which lifted him above the dry professional road he travelled with so much success."

George A. Brayton.

Judge Brayton was born in Warwick, Rhode Island, in 1803. He graduated at

Brown University in 1824, and studied law in the office of Hon. Albert C. Greene, afterwards Attorney-General of the State and United States Senator, and at the Litchfield Law School. In 1832, and again in 1843, he was a member of the General Assembly. He was a member of the Constitutional Convention in 1842. In 1843 he was elected an Associate Justice of the Supreme Court, and after nearly twenty-five years' service was promoted to the Chief-Justiceship. In his eulogistic remarks upon Judge Brayton before the Bar Association shortly after his death, the present Chief-Justice said: "If I wished to express him in a word, my word would be 'Fidelity.' . . . Other judges have doubtless been more learned, more eloquent, more gifted, and greater or stronger minded; but seldom, if ever, has any one excelled him in judicial faithfulness." His opinions are well reasoned, and show careful and thorough research. "He excelled chiefly as a judge *in banc*, though he frequently presided at *nisi prius*. He lacked the qualities of an accomplished jury judge, — quickness of perception, readiness of resource, fluency of utterance, — but nevertheless he was so patient, so fair, and while so succinct, so clear in his statements of the law, and so careful not to encroach upon the province of either counsel or jury, that he was a favorite with many lawyers, even in the trial of jury cases."



GEORGE A. WILBUR.

Judge Brayton resigned in 1874, after the longest term of judicial service in the history of the State. He died April 21, 1880.

Among the later Associate Justices of the Supreme Court were J. Russell Bullock, Walter S. Burges, Elisha R. Potter, and George M. Carpenter. Judge Bullock was a member of the court from 1862 to 1864. Before his appointment to the bench he had occupied in succession the offices of a Representative and Senator in the General Assembly, Collector of Customs, and Lieutenant-Governor. In 1864 he resigned as Associate Justice, having been appointed by President Lincoln Judge of the District Court of the United States for Rhode Island. He resigned this office in 1869.

Judge Burges is a nephew of Tristam Burges, who for one year was Chief-Justice of Rhode Island. He was United States District Attorney for Rhode Island from 1845 to 1849. For eight years he was Attorney-General of the State. He was elected an Associate Justice in 1868, and continued in office until 1881, when he resigned. He has since devoted himself to his private affairs.

Judge Potter was a member of the court from 1868 until his death in 1882. He was for fifteen years Commissioner of Schools. In 1842 he was elected a delegate to the Constitutional Convention, and in 1843 a Representative in Congress. As a judge he was learned and diligent. No other judge in Rhode Island ever wrote so many

dissenting opinions. He especially delighted, in the examination of legal questions, to investigate the subject historically, and his opinions abound in citations of authorities. Though positive and having confidence in his own opinions, he was kind and accommodating to a fault. He found more pleasure in the study than in the practice of the law, and it is said that after having mastered the law of a case, he would settle rather than try it.

George M. Carpenter.

Judge Carpenter was elected by the General Assembly, in 1882, an associate justice of the Supreme Court, to fill the vacancy caused by the death of Judge Potter. He was educated in the public schools of Rhode Island and at Brown University, from which he graduated in 1864. Admitted to the bar in 1867, he practised law in Providence until his election as associate justice. He was a member of the commission which revised the statutes in 1882. In 1885, after having served but three years as associate justice, he resigned to accept the office of judge of the District Court of the United States for the district of Rhode Island, which position he now occupies.

Thomas Durfee.

For three generations the family of the present Chief-Justice has had a representation upon the Rhode Island bench. The son of a chief-justice of the Supreme Court, and a grandson of a chief-justice of the Court of Common Pleas for Newport County, Judge Durfee inherited a judicial mind, and was brought up in an atmosphere adapted to prepare him for judicial service. Born at Tiverton in 1826, his boyhood days were spent along the shores of Narragansett Bay, amid scenes of natural beauty and historic interest. He graduated with honor from Brown University in 1846, and after studying law for two years in Providence, was admitted to the bar. In the year following he was appointed reporter of the decisions of the Supreme Court. His judicial service began in 1854, when he was elected an assistant magistrate of the court of magistrates of the City of Providence, — a local court of inferior jurisdiction. From 1855 to 1860 he was presiding magistrate of this court. During the early years of his professional life he wrote jointly with Joseph K. Angell a "Treatise on the Law of Highways." He was a representative in the General Assembly in 1863, Speaker of the House in 1864, and State Senator in 1865.

The literary instinct so strong in the elder Chief-Justice Durfee descended to the son. During the Rebellion he was a frequent contributor to the papers, and his pen was powerful in support of the Union cause. In 1872 he published a small volume of poems. His literary talent has given to his judicial opinions a perfection of style that is not too common in judicial writings. He is a devoted lover of Rhode Island, — her people, her institutions, and her history. His "Thoughts on the Constitution of Rhode Island" is a good example of his powers as a controversialist, and is a vigorous defence of the institutions of the State. In his oration delivered at the two hundred and fiftieth anniversary of the founding of Providence, Judge Durfee made a masterly defence of the conduct of Roger Williams while a resident within the Massachusetts Colony. Perhaps no better example could be given of his style as a writer and of his skill and power in argument than that part of his oration which deals with the controversy between the founder of Providence on the one side and the clergy and General Court of Massachusetts on the other. His "Gleanings from the Judicial History of Rhode Island" illustrates his style as a writer of narrative, and his skill in investing the commonplace with the charm of fiction and the dignity of history. The characteristics of the early bench and bar are faithfully delineated, and the trial scenes of the olden times are vividly and picturesquely portrayed. His discussion of the changes in the character of the busi-

ness coming before the courts, and in the methods of the bar in the trial of causes, shows him to be a close observer and a discriminating critic in whatever pertains to the administration of justice. The State reports abound in examples of his powers as a writer of judicial opinions, his contributions to the Reports exceeding those of any other judge in the history of the court.

Judge Durfee's term of service on the Supreme Court bench extends over a period of more than twenty-five years, for a little more than fifteen of which he has been chief-justice. Although entitled to retire upon full salary, he continues to perform his judicial duties. In appreciative recognition of his long and valuable services to the State, and as a mark of the esteem in which he is held by the profession, the members of the Rhode Island bar have recently arranged for a portrait of Judge Durfee to be placed in the law library of the State.

The present Associate Justices of the Supreme Court are Charles Matteson, John H. Stiness, Pardon E. Tillinghast, and George A. Wilbur.

Charles Matteson.

Judge Matteson, the senior Associate Justice, is fifty years of age, and has been on the Supreme Court bench fifteen years. He graduated from Brown University in 1861, and studied law with Wingate Hayes, then United States District Attorney for Rhode Island, and later at the Harvard Law School. He was admitted to the bar in 1864, and for a time was a partner with Mr. Hayes. He soon acquired an extensive practice, especially in the line of corporation law. In 1875 he was elected Associate Justice, to fill the vacancy caused by the promotion of Judge Durfee to the office of Chief-Justice.

John H. Stiness.

In 1875 the number of Associate Justices was increased from four to five, and Mr. Stiness was elected to fill the place thus created. He was born in 1840. He studied at Brown University from 1857 to 1859, and then taught school for two years. In 1861 he enlisted in the army, and was for some months stationed at Staten Island recruiting and drilling detachments. On account of sickness he was discharged from the army in 1862, after having seen much active service. He then took up the study of law in the office of Thurston & Ripley, and was admitted to the bar in 1865. He rapidly made his way to success in his profession. In 1874–1875 he represented the City of Providence in the General Assembly, and while there was a member of the Judiciary Committee. Like many of his predecessors, Judge Stiness is a diligent student of the history of the State, and is well versed in whatever pertains to the origin and development of Rhode Island institutions.

Pardon E. Tillinghast.

Judge Tillinghast is fifty-three years of age, and has seen nine years of judicial service. While still a boy he set out to prepare himself for the profession of teaching. He attained an academic and normal school education by teaching school winters. For seven years he followed his chosen calling, and then, in 1862, enlisted in the army. Upon the expiration of his term of service he began the study of the law at Pawtucket with Thomas K. King, afterwards United States Consul at Belfast. He was admitted to the bar in 1867, and met with excellent success in his profession, making a specialty of municipal law. From 1874 to 1881 he was town solicitor of Pawtucket. For three years he was a Representative in the General Assembly, and for four years a State Senator. During the full term of his service in the Senate he was chairman of the Judiciary Committee. In 1881 he was elected to fill the vacancy on the bench caused by the resignation of Judge Burges. He is one of the judges assigned by the court to hold the Common Pleas, and his chief duty is the trial of the civil docket in that court.

George A. Wilbur.

Judge Wilbur was born in 1832, and was admitted to the bar in 1862. Though coming to the bar late, he did not permit his desire to begin his professional career to gain the mastery over his patriotism. He enlisted in 1862, was promoted to the rank of captain, and after having seen much hard service in the field, was mustered out at the end of the war. From 1865 till 1872 he was presiding justice of the Woonsocket court of magistrates. From 1872 till 1885 he was Trial Justice of the Justice Court of Woonsocket. He was for five years State Senator, and during a portion of that time chairman of the Judiciary Committee. Upon the resignation of Judge Carpenter, in 1885, Judge Wilbur was elected an Associate Justice. By assignment of the court he holds the Court of Common Pleas, his time being largely taken in the trial of the criminal docket.

The names of many of the judges of the Supreme Court appear infrequently in the reports. The reason of this is apparent. The chief judicial service performed by some of them has been that of presiding at the trial of cases at *nisi prius*. They served their generation faithfully, and rendered valuable service to the State; but the results of their labors are unrecorded, and exist only in the memory of men.

The method of electing the judges by the General Assembly has worked well in the main, and it is doubtful if either election by the people or appointment by the Governor would have given the State judges of higher ability. The legislators have not always made their selection of judges from the political party having a majority. Judge Bradley and George H. Brown were elected chief-justices by their political opponents. The latter, however, declined to accept the office. Personal rather than political considerations have sometimes influenced the legislators, and it has been the subject of adverse criticism that the General Assembly has with great frequency raised its own members to the Supreme Court bench.

The judicial system of Rhode Island is a logical development from the political and social organization of the State. The land of historic individuality, and the most democratic of the American colonies, the people have ever held fast to the idea that they are the safest repository of all the powers of government, and that frequent elections are the best means of keeping their officers in touch with public sentiment, and the only safeguard against official encroachment upon popular rights. In obedience to this idea, the judges were elected annually for nearly two hundred years, and under the Constitution the people still retain the power of removing the judges by the vote of their representatives in the General Assembly.

LEGAL INCIDENTS.

V.

A GREAT LEGAL VICTORY.

"PRIVATE John Allen," of Mississippi, who became the wit of the House of Representatives with the death of Sunset Cox, tells a good story on himself of how he came to be a profound lawyer.

A party of members were telling yarns in the cloak-room of the House, and when Allen's turn came he told this one: —

"I want to tell you of the greatest legal victory of my life," said Allen, as he lighted a cigar and propped his feet against the wall in true Southern style. "It was down in Tupelo, during the trying period just after the war. I was at that time a practising lawyer, — that is, I practised when I had any cases to practise with. One day old 'Uncle' Pompey, one of the old negroes of the settlement, came into my office and said, —

"'Mars John, I wants you to cl'ar me. I'se gwine to be 'rested for stealin' of two hams out en de cross-road store.'

"'Well, Pompey,' I asked, 'did you really steal the hams?'

"'Mars John, I just took 'em.'

"'Did any one see you?' I asked.

"'Yar, boss,' said the old negro, disconsolately; 'two ole white buckrats.'

"'Well, Pompey,' I replied, 'I can't do anything for you under the circumstances.'

"'Now, Mars John,' said old Pompey, 'here's ten dollars. I jist want you to try.'

"Well, I consented to try," said Allen. "The case was to be heard before an old magistrate named Johnson. He was totally uneducated, and was moreover a perfect dictator; and no negro ever came before him who was not fined the maximum penalty, and sent to his field to expiate the crime in the sweat of his brow.

"The magistrate heard the case. Every possible proof was brought to show that Pompey stole the hams. There could be no doubt of it from the testimony. I did not put a single question to any of the witnesses; but when the testimony was all in I arose, and in my most dignified manner addressed the magistrate: —

"'May it please your honor, it would be useless for me to argue the position he holds, and before one who would adorn the Superior if not the Supreme Court bench of this grand old Commonwealth; and I may say that those who know you best say that you would grace even the Supreme Court of the United States, — the highest tribunal in the land. It will be useless to dwell upon the testimony; you have heard it, and know the case as well as I do. However, it may not be out of order for me to call your honor's attention to a short passage in the old English law which clearly decides this case, and which for the moment your honor may have forgotten.'

"Then I fished down into my pocket and drew forth, with a great flourish, an old copy of 'Julius Cæsar.' I opened it with great dignity to the first page, and read the line which is familiar to every schoolboy: 'Omnia Gallia in partes tres divisa est.' 'That decides the case,' said I, throwing the book upon the table. 'That clearly acquits the defendant.'

"With great dignity and solemnity I then took my seat. The old magistrate was completely nonplussed. He looked at me a moment quizzically, and scratched his head; then, turning to Pompey, he raised himself to his full height, and said, —

"'Pompey, I know you stole them hams; but by the ingenuity of your lawyer I've got to let you go. Git out!' said he, as he planted his No. 9 in the seat of Pompey's trousers; 'and if you ever come here again, lawyer or no lawyer, you git six months.'" — *Atlanta Constitution.*

THE WIDOW AND HER GUN.

[*A gun passes to a widow under her husband's will giving her all the "household property in the dwelling-house," and the use of the house for her life.*]

MATTER OF FRAZER, 92 New York, 239.

FRAZER preparing to depart this life,
The household property within his house,
Likewise the use throughout her natural life
Of the said house, he willed unto his spouse.

Among those properties there was a gun
Wherewith at Bloody Creek or Bunker Hill
Perchance his ancestor had thought it fun
With shot some red-skin or red-coat to fill.

Or possibly it was of later date,
And from behind a fabled cotton bale
Had sent intrusive Briton to his fate,
And forced his gallant comrades to turn tail.

Perhaps against the wall of Monterey
It may have made the tropic echoes start;
Perhaps from Bull Run it had run away,
Exemplifying valor's better part.

Perhaps 't was but a humble fowling-piece,
Or possibly designed for "turkey-shoot,"
Or rats, or skunks, or dogs too fond of fleece,
Or for marauding boys too fond of fruit.

Or maybe it had shone with brightest ray
When it had helped to make a host retreat
In fierce sham-fight, on general training-day,
Predestined to unmerited defeat.

On this great point the book affords no history;
And lest the reader think that I have mocked,
I leave the matter in its pristine mystery, —
I will not, like a gun, "go off half-cocked."

But Frazer's most unnatural next of kin
Were vexed to have the widow get the gun;
Said 't was not "household property" within
A solitary case since time had run.

Their counsel argued that they could n't find
Its use about the house in law or grammar;
It could not saw nor chop nor wash nor grind,
Nor serve for poker, rolling-pin, nor hammer.

But they forgot its immemorial use,
As fastened to the ceiling by two hooks,
It served to dry the vigorous, pungent juice
Of strings of apples hung there by the cooks.

But Bangs, the lawyer on the other side,—
And most appropriately named was he,—
This foolish argument did much deride,
And doubtless in the end did dance with glee;

For this wise court let Mrs. Frazer go,
Loaded for bear or prison-bird or grouse,
Because the next-of-kin had failed to show
She might not need it "to defend the house."

Most just decision; for as all men know,
A house in wilds of Caledonia village
Is much exposed to dangers high and low,
Of riot, burglary, and theft and pillage,

From tramp and beggar and from harvest-hand,
And dog of wits bereft, which to and fro
Prey unrestrained on that unhappy land,
And full of apple-pie and mutton go.

No matter if the widow could n't shoot,
Nor knew the muzzle from the deadly breach,
It just as well her purposes did suit
To have the empty gun within her reach.

Just let her at a window, gun in hand,
  But draw a bead on tramp in quest of pie,
And he 'd indubitably understand
  By one means or the other he must die.

The parties therefore were discharged from court;
  The widow with her husband's gun went off;
The gun in 92 New York makes its report,
  And leaves the next of kin to legal scoff.

As 't was a serious matter of o-pinion,
  'T was wisely left to Finch, judicial fowl,
As sound in subjects of the law's dominion
  As if he were Minerva's big-eyed owl.

OLDEST OF KNOWN WILLS.

THE discovery of the earliest known will is an event which possesses an interest for others besides lawyers, and there seems no reason to question either the authenticity or antiquity of the unique document which Mr. Flinders Petrie has unearthed at Kahun, or, as the town was known forty-five hundred years ago, Illahun. The document is so curiously modern in form that it might almost be granted probate to-day. But, in any case, it may be assumed that it marks one of the earliest epochs of legal history, and curiously illustrates the continuity of legal methods. It is, however, needless to labor the value, socially, legally, and historically, of a will that dates back to patriarchal times.

It consists of a settlement made by one Sekhenren in the year 44, second month of Pert, day 19, — that is, it is estimated, the 44th of Amenemhat III., or 2550 B. C., in favor of his brother, a priest of Osiris, of all his property and goods; and of another document, which bears date from the time of Amenemhat IV., or 2548 B. C. This latter instrument is, in form, nothing more nor less than a will, by which, in phraseology that might well be used to-day, the testator settles upon his wife, Teta, all the property given him by his brother for life, but forbids in categorical terms to pull down the houses "which my brother built for me," although it empowers her to give them to any of her children that she pleases. A "lieutenant," Siou, is to act as guardian of the infant children.

This remarkable instrument is witnessed by two scribes, with an attestation clause that might almost have been drafted yesterday. The papyrus is a valuable contribution to the study of ancient law, and shows, with a graphic realism, what a pitch of civilization the ancient Egyptians had reached, at least from a lawyer's point of view. It has hitherto been believed that in the infancy of the human race wills were practically unknown. There probably never was a time when testaments, in some form or other, did not ex-

ist; but, in the earliest ages, it has so far been assumed that they were never written, but were nuncupatory, or delivered orally, probably at the death-bed of the testator. Among the Hindus to this day the law of succession hinges upon the due solemnization of fixed ceremonies at the dead man's funeral, not upon any written will. And it is because early wills were verbal only that their history is so obscure. It has been asserted that among the barbarian races the bare conception of a will was unknown; that we must search for the infancy of testamentary dispositions in the early Roman law. Indeed, until the ecclesiastical power assumed the prerogative of intervening at every break in the succession of the family, wills did not come into vogue in the West. But Mr. Petrie's papyrus seems to show that the system of settlement or disposition by deed or will was long antecedently practised in the East.

And this archaic instrument is also remarkable as the first recognition of the power of woman to acquire and exercise rights of property, a fact which in itself affords evidence of the advanced code of thought that prevailed in Egypt with regard to woman's rights. The story of Hatshepsu, the Elizabeth of Egyptian history (whose throne is now preserved in the British Museum), supports this view, although it is true that that energetic queen long reigned in the name of the brother whose throne she had usurped. It was only when the fraud was discovered that she resorted to the expedient of clothing herself in man's attire, and adorning herself with all the insignia of royalty. Since she is represented on the sculptures at El-Assaseef as bearded, and most of the allusions to her have the masculine prefix, we must, however, assume that she had exceeded the rights of her sex. But this gift of property to the wife of a priest of Osiris by her lord and master shows, unless the lady possessed peculiar ecclesiastical privileges, that in Egypt women actually enjoyed, long before the time of Hatshepsu, very solid rights.

It is further clear that no known will — not the Roman will, nor the indigenous will of Bengal — can any longer be accepted as the most primitive form. Among the Jews we all know that there was no provision for the privileges of testatorship. It was a *causus omissi* in the Mosaic law, and it was only the later Rabbinical jurisprudence that allowed the power of disposition to attach when all the kindred entitled under the Mosaic system to succeed had failed or become undiscoverable. Again, allodial property was, among the primitive Teutons, strictly reserved to the kindred, and was incapable of being disposed of by testament, or even by conveyance. Among the early Germans, as among the Hindus, male children were coproprietors with their father, and the endowment of the family could not be varied except by common consent.

It is, therefore, not surprising to find that in Teutonic countries it was only other sorts of property of a more modern character — chattels and the like — that could be disposed of in this way, or be succeeded to by women at all. This papyrus illustrates a phenomenally early variation from the rule of succession. According to ancient usage, it would have been supposed that the principle of inheritance, which was a fundamental part of the patriarchal system, would have insured the succession of the sons to the very property which is by this settlement given to their mother for life; so that the whole history of the family becomes unsettled by this bold departure from what has been believed to be immemorial custom. Even in the early days of modern jurisprudence, wills were rarely allowed to dispose absolutely of a dead man's assets. And yet here we have an instrument which seems to indicate the possession of an absolute power of disposition over property of all kinds, including lands and houses, recognized both in theory and practice more than four thousand years ago.

The survival of a will executed, as alleged, before the time of Abraham, overturns, of course, the notion which has hitherto been

accepted unconditionally, that the right of inheritance or descent was allowed much earlier than the right of devising by testament. Abraham himself, prior to the promise that his seed should succeed him, had chosen Eliezer, his steward, as his heir, in accordance with the primitive usage which allowed a man, on the failure of children, to appoint his servants born in his house his successors. But this is readily distinguishable from the right of testamentary disposition; and it is, withal, impossible to trace the true analogies between this Egyptian will and wills as we know them, or even the wills of the Romans. The gap is too wide ever to be filled up. The rarity of evidence of testamentary power in archaic communities is such that its bare existence prior to Roman times is commonly disputed, and students have always suspected all rudimentary and inchoate forms of it to be of Roman origin. This may perhaps now be doubted.

The Athenian will, if not indigenous, may have been borrowed, not from Rome, but from Egypt. The pedigree of modern wills cannot, if Mr. Petrie's suggestions be correct, be traced back finally to the plebeian will, legalized by the law of the Twelve Tables, which, it is conjectured, first gave the power of putting a will into writing and of giving legacies. It is no longer the Old Testament, "with the copper and the scales," which is the first step in the evolution of its modern counterpart. The oldest English will, it may be remarked, of which any record is extant, is that of Alfred the Great, which was preserved in the register of the Abbey of Newminster, at Winchester. In this, it is curious to notice, — subject to the sanction and support of the Witenagemote, — he devised and bequeathed his lands and moneys in various proportions among his sons and daughters. William the Conqueror, too, as every school-boy knows, did not scruple to devise the realm of England by will to William Rufus. But in general, the old Frisian customary law of inheritance prevailed in this country, in spite of the efforts of the ecclesiastical authorities, and it was not until the reign of Henry VIII. that a will of lands was permitted. As for our modern wills and their intricate incidents, all that need be said is that they are the creatures of statute. It would be a difficult task to establish the analogies between them and this testament of an Egyptian priest, made forty-five hundred years ago. But, nevertheless, it seems to put the period of legal evolution some twenty centuries back. — *Standard.*

NOBLESSE DE LA ROBE.

IN these degenerate days, when the dignity of the legal profession is but indifferently regarded by some of its members, and some "counsellors at law" are not ashamed to set up capacious shingles and boards of advertisement on their premises, as a means of attracting public attention, of a size which would more appropriately give notice of a dry-goods store or a grocery, — it may not be inappropriate to recall the high and proud position which in other countries the profession and the office of advocate has sustained. Nowhere, perhaps, did the profession of the law ever attain a prouder position than in the fair land of France in former times. Mr. Forsyth, in his admirable work "Hortensius," gives an interesting account of the palmy days of advocacy in France. Beside her mailed chivalry stood an order of men known as the *Noblesse de la robe*, whose only patent of nobility was admission on the rôle of advocates, and from whose ranks were taken the magistrates who, as members of the Parliament of Paris,

represented the feudal court and council of the ancient kings. The Parliament, it is true, might be called on to act as an advising council to the sovereign; but as regards law promulgation, its principal duty was merely to register the royal decree. Beyond it was the great court of justice of the kingdom, corresponding to the *Aula Regis* of England, which followed the monarch of that kingdom. The reign of Philip the Fair presents the most important epoch in the history of the Bar of France; and the law then administered consisted of feudal, canon, and civil law, and for the proper study of the two latter it became necessary to call in the assistance of the clergy, who alone in those times were capable of undertaking it. The clerical element, however, diminished in subsequent reigns. The advocates who attended Parliament were always spoken of as *an order*, — a name which they retained until the Revolution of 1789. Every one admitted as a member of it, or allowed to enroll his name on the list, was obliged to take an oath of advocacy. This oath, however, could not be administered without previous examination, "in order that people might not be deceived and betrayed into placing their affairs in the hands of an advocate who could do nothing in a cause." The candidate then became an *avocat écoutant*, and entered upon a novitiate for several years of study and attendance on the court, before his name was actually inscribed upon the roll of advocates. He then became a duly qualified member of the order, and subject to its rules and discipline. Among many other prohibitions, we find the following: —

1. He was not to undertake just and unjust causes alike without distinction, nor maintain such as he undertook, with trickery, fallacies, and misquotations of authorities.

2. He was not in his pleadings to indulge in abuse of the opposite party or his counsel.

3. He was not to compromise the interests of his clients, by absence from court when the cause in which he was retained was called on.

4. He was not to violate the respect due to the court, by either improper expressions or unbecoming gestures.

5. He was not to exhibit a sordid avidity of gain, by putting too high a price upon his services.

6. He was not to make any bargain with his client for a share in the fruits of the judgment he might recover.

7. He was not to lead a dissipated life, or one contrary to the modesty and gravity of his calling.

8. He was not, under pain of being disbarred, to refuse his services to the indigent and oppressed.

While these rules breathe the very spirit of chivalry, they form an admirable code for the guidance of advocates even in the present age. Purity of life and disinterested zeal in the cause of the poor and friendless were enjoined upon the chevalier and advocate alike; and doubtless the resemblance between the two professions, of which the latter was thus reminded, had a powerful effect in producing a tone of high-minded feeling, which ought ever to be characteristic of the bar.

CAUSES CÉLÈBRES.

XXI.

A GHOST IN COURT.

WHETHER or not the defective ventilation of our courts of law be inimical to the subtle fluid of which phantoms are composed, or whether these sensitive essences, oppressed with the absurdities of forensic costume and manners, take fright at the first glimmer of a counsellor's wig or at the titter which follows a counsellor's joke, there can be no question of the extreme difficulty that has always been experienced in bringing a spectre fairly to judicial book.

So long as the proceedings retain an extra-judicial character, no gentleman on the extensive rôle of attorneys could devote his time and abilities more zealously to the getting up of a case than has your unfee'd film. Not content with fulfilling the office of detective, the indefatigable phantom has suggested needful testimony, indicated lines of prosecution, collected witnesses, and — all being ready — marched, so to speak, up to the very door of the judgment hall. There, however, for some reason or other, the spectre has invariably come to a stand. The prospect of a cross-examination by a sceptical counsellor, whose incredulity goes the length of doubting one's very existence, may have something to do with it. Whatever the cause may be, certain it is that his ghostship remains outside, and a tacit understanding seems to have been arrived at to eliminate the accusing shade altogether.

In the French courts the questions of ghost or no ghost — and if the former, what might be the worth of the ghost's testimony — seem to have been permitted a wider range. Counsel have been freely heard on either part. In a case that many years ago stirred up the whole philosophy of the subject, so much curious matter was elicited as to make the record worth preserving. It is an illustration of the familiar manner in which a not distant generation dealt with the subject.

Honoré Mirabel, a poor laborer, on the estate of a family named Gay, near Marseilles, invoked the protection of the law under the following extraordinary circumstances: —

He declared that while lying under an almond-tree, late one night, striving to sleep, he suddenly noticed a man of remarkable appearance standing, in the full moonlight, at the window of a neighboring house. Knowing the house to be unoccupied, he rose to question the intruder, when the latter disappeared. A ladder being at hand, Mirabel mounted to the window, and on entering found no one. Struck with a feeling of terror, he descended the ladder with all speed, and had barely touched the ground, when a voice at his back accosted him, —

"Pertuisan [he was of Pertuis], there is a large treasure buried close at hand. Dig, and it is yours."

A small stone was dropped on the terrace, as if to mark the spot alluded to.

For reasons not explained, the favored Mirabel shrank from pursuing the adventure alone, but communicated with a friend, one Bernard, a laborer in the employ of the farmeress Paret. This lady being admitted to their confidence, the three assembled next night at the place indicated by the spectre, and, after digging to a considerable depth, came upon a large parcel wrapped in many folds of linen. Struck with the pickaxe, it returned unmistakably the melodious sound of coin; but the filthy and, as Paret suggested, plague-stricken appearance of the covering checked their eager curiosity, un-

til, having been conveyed home and well soaked in wine, the parcel was opened, and revealed to their delighted gaze more than a thousand large gold pieces, subsequently ascertained to be Portuguese.

It was remarkable, yet so it was, that Mirabel was allowed to retain the whole of the treasure. Perhaps his friends felt some scruple in interfering with the manifest intentions of the ghost. But Mirabel was not much the happier for it. He feared for the safety of his wealth, — he feared for his own life. Moreover, the prevailing laws respecting "treasure-trove" were peculiarly explicit, and it was questionable how far the decision of the ghost might be held to override them. In France, of treasure found in highway, half belonged to the king, half to the finder; if in any other public place, half to the high-justiciary, half to the finder; if discovered by magical arts, the whole to the king, with a penalty upon the finder. If, when discovered, the treasure were concealed from the proprietor of the ground, the finder forfeited his share. To these existing claims the phantom had made no allusion. In his perplexity, honest Mirabel bethought him of another friend, one Auguier, substantial tradesman of Marseilles.

The advice of this gentleman was that the secret should be rigorously confined to those who already knew it, while he himself (Auguier) was prepared to devote himself, heart and soul, to his friend's best interests, lend him any cash he needed (so as to obviate the necessity of changing the foreign money), attend him whithersoever he went, and, in fine, become his perpetual solace, monitor, and guard.

To prevent the possibility of his motives being misinterpreted, the worthy Auguier took occasion to exhibit to his friend a casket, in which was visible much gold and silver coin, besides a jewel or two of some value.

The friendship thus happily inaugurated grew and strengthened, until Mirabel came to the prudent resolution of intrusting the whole treasure to the custody of his friend, and appointed a place and time for that purpose.

On the way to the rendezvous, Mirabel met with an acquaintance, Gaspard Deleuil, whom — Auguier being already in sight — Mirabel requested to wait for him at the side of a thicket; then, going forward, he handed to the trusty Auguier two sealed bags, one of them secured with a red ribbon, the other with a blue, and received in return an instrument conceived in the following satisfactory terms: —

> I acknowledge myself indebted to Honoré Mirabel twenty thousand livres, which I promise to pay on demand, acquitting him, moreover, of forty livres which he owes me. Done at Marseilles this seventh of September.
>
> (Signed) LOUIS AUGUIER.

This little matter settled, Mirabel rejoined Deleuil, and next day departed for his native village. After starring it there for a few weeks, the man of wealth revisited Marseilles, and having passed a jovial evening with his friend and banker Auguier, was on his way home, when, at a dark part of the road, he was set upon by a powerful ruffian, who dealt him several blows with some sharp weapon, flung him to the ground, and escaped. Fortunately, the wounds proved superficial.

This incident begat a certain suspicion in the mind of Mirabel. As soon as he was able, he repaired to Marseilles, and demanded of Auguier the return of his money or liquidation of the bond. His friend expressed his extreme surprise. What an extraordinary application was here! Money! What money? He indignantly denied the whole transaction. Mirabel must be mad.

To establish his sanity, and at the same time refresh the memory of his friend, Mirabel without further ceremony appealed to the law; and in due course the Lieutenant-Criminel, with his officer, made his appearance at the house of Auguier, to conduct the perquisition. Search being made on the

premises, no money was found; but there were discovered two bags and a red ribbon, which were identified by Mirabel as those which he had delivered to his friend.

The account given by the latter differed, in some material particulars, from that of Mirabel. He had enjoyed, indeed, some casual acquaintance with that gentleman. They had dined together once at his (Auguier's) house. He had accepted the hospitality of Monsieur Mirabel, as often, at a tavern. He had advanced that gentleman a crown. Mirabel had spoken of a ghost and money, and had talked of placing the latter in his charge. At present, he had, however, limited his confidence to the deposit of two empty bags and a red ribbon. All the other allegations he indignantly denied.

Deeply impressed with the marvellous history, the Lieutenant-Criminel decided that the matter should be sifted to the bottom. The process continued.

Magdalene Paret deposed that Mirabel had called on her one day, looking pale and agitated, and declared that he had been holding converse with an apparition, which had revealed to him the situation of some buried treasure. She was present when the parcel, apparently containing money, was found, and she remembered Mirabel's stating, subsequently, that he had placed it for safety in the hands of Auguier.

Gaspard Deleuil repeated the narrative told by Mirabel of the ghost and the gold, adding that he had met him on the 7th of September, near the Porte des Fainéants (Idlers' Gate), carrying two bags; that he saw him hand them over to a man who appeared to be waiting for him, and saw him receive in return a piece of paper; and that, on joining him, Mirabel stated that he had intrusted to Auguier some newly found treasure, taking his acknowledgment for the same.

François Fournière, the third witness, confirmed the story of the spectre and the money, as related by Mirabel, who appeared deeply stricken by the extraordinary favor shown him in this supernatural visitation. On his pressing for a sight of the treasure, Mirabel took the witness to his chamber, and removing some bricks from the chimney, displayed a large bag filled with gold coin. Having afterwards heard of Auguier's alleged dishonesty, the witness reproached him with it; when he became deadly pale, and entreated that the subject might be dropped.

Other witnesses deposed to the sudden intimacy, more noticeable on account of their difference in station, that had sprung up between Mirabel and Auguier, dating from the period of the discovery of the gold. Sundry experts bore testimony to the resemblance of the writing of the receipt, signed "Louis Auguier," to the autograph of the latter.

The ghost and Mirabel carried the day. In fact, it was a mere walk over the course. The Lieutenant-Criminel, entirely with them, decreed that Auguier should be arrested and submitted to the question.

Appeal, however, was made to the Parliament of Aix, and the matter began to excite considerable notice. Persons were found to censure the ready credence given by the Lieutenant-Criminel to the story of the ghost; and, the case coming to hearing, an able advocate of the day buckled on his armor to do battle with the shade.

Is it credible, he asked, that a spirit should quit the repose of another world expressly to inform M. de Mirabel, a gentleman with whose existence it seems to have had no previous acquaintance, of the hiding-place of this treasure? How officious must be the nature of that ghost which should select, in a caprice, a man it did not personally know, to enrich him with a treasure for the due enjoyment of which his social position made him so unfit? How slight must be the prescience of a spirit that could not foresee that Mirabel would be deprived of his treasure by the first knave he had the misfortune to trust! There could be no such spirit, be assured!

If there were no spectre, there was, according to all human probability, no gold; and if no gold, no ground for the accusation of Auguier.

Descending to the earthly reasoning, was it likely that Mirabel would intrust to Anguier a treasure of whose actual value he knew nothing, or that he would take in return a receipt he had not seen the giver write? How was it, pray, that the woman Paret and Gaspard Deleuil demanded no share in the treasure so discovered? Were these excellent persons superior to the common weaknesses of humanity, — curiosity, and the lust of gain? The witness Paret certainly saw the discovery of a parcel, but the rest of her evidence was hearsay. The witness Deleuil saw the exchange of bags and paper; but all the rest — spectre included — was hearsay. And when the witness Fournière declared that Auguier, being taxed with robbery, turned deadly pale, Auguier frankly — nay, proudly — confessed it, stricken as that honorable burgher was with horror at a charge so foul and unexpected! The climax of injustice was surely reached when this respected, estimable, substantial merchant of France's proudest seamart was, on the uncorroborated word of a ghost (for on this it must be traced), submitted to the torture. In criminal even more than in civil cases, that which seems repugnant to probability is reputed false. Let a hundred witnesses testify to that which is contrary to nature and the light of reason, their evidence is worthless and vain. Take, as example, the famous tradition which gives an additional interest to the noble house of Lusignan, and say that certain persons swore that the fairy Melusina, who had the tail of a serpent, and bathed every Saturday in a marble cellar, had revealed a treasure to some weak idiot, who was immediately robbed of it by another. What would be thought of a judge who should, on such testimony, condemn the accused? Is it on such a fairy fable that Auguier, the just, the respected family-father, the loyal patriot, must be adjudged guilty? Never! Such justice might be found at Cathay, might prevail in the yet undiscovered islands of the Eastern Archipelago; but in France — no. There remained, in short, but one manifest duty to the court; namely, to acquit, with all honor, this much-abused man, and to render him such noble compensation as the injuries he had suffered deserved.

It was now, however, the phantom's innings. Turning on the court the night-side of Nature, the spectre's advocate pointed out that the gist of Auguier's defence consisted of a narrow and senseless satire upon supernatural visitations, involving a most unauthorized assumption that such things did never occur. Was it intended to contradict Holy Writ, and to deny a truth attested by Scripture, by the Fathers of the Church, by every wide experience testimony; finally, by the Faculty of Theology of Paris? The speaker here adduced the appearance of the prophet Samuel at Endor (of which Le Brun remarked that it was, past question, a work commenced by the power of evil, but taken from his hand and completed by a stronger than he); that of the bodies of buried saints after our Lord's resurrection; and that of Saint Felix, who, according to Saint Augustine, appeared to the besieged inhabitants of Uola. But say that any doubts could rationally exist, were they not completely set at rest by a recent decision of the Faculty of Theology? "Desiring," says this enlightened decree, "to satisfy pious scruples, we have, after a very careful consideration of the subject, resolved that the spirits of the departed may, and do by supernatural power and divine license, reappear unto the living." And this opinion was in conformity with that pronounced at Sorbonne two centuries before.

However, it was not dogmatically affirmed that the spirit which had evinced this interest in Mirabel was the ghost of any departed person. It might have been a spirit, whether good or evil, of another kind.

That such a spirit can assume the human form few will deny when they recall that the Apostles held that belief, mistaking their Lord, walking on the waves of Galilee, for such an one. The weight of probability, nevertheless, inclines to the side of this singular apparition being, as was first suggested, the spirit of one deceased, — perhaps a remote ancestor of Mirabel, — perhaps one who in this life sympathized with honest endeavor, and sought to endow the struggling, toiling peasant with the means of rest and ease. And with regard to this reappearance a striking modern instance seemed pertinent to the question at issue. The Marquis de Rambouillet and the Sieur de Précy, aged respectively twenty-five and thirty, were intimate friends. Speaking one day of the prospect of a future state of being, their conversation ended with a mutual compact that the first who died should reveal himself to the survivor. Three months afterwards the Marquis went to the war in Flanders, while De Précy, sick with fever, remained in Paris. One night the latter, while in bed, heard the curtains move, and turning, recognized his friend, in buff coat and riding-boots, standing by the bed. Starting up, he attempted to embrace the visitor; but the latter, evading him, drew apart, and in a solemn tone informed him that such greetings were no longer fitting; that he had been slain the previous night in a skirmish; that he had come to redeem his promise, and to announce to his friend that all that had been spoken of a world to come was most certainly true; and that it behooved him (De Précy) to amend his life without delay, as he would himself be slain within a very brief period. Finding his hearer still incredulous, the Marquis exhibited a deadly wound below the breast, and immediately disappeared. The arrival of a post from Flanders confirmed the vision. The Marquis had been slain in the manner mentioned. De Précy himself fell in the civil war then impending.

(The speaker here cited a number of kindred examples belonging to the period, such as, in later days, have found parallels in the well known stories of Lord Tyrone and Lady Betty Cobb, Lord Lyttelton and M. P. Andrews, Prince Dolgorouki and Apraxin, the ex-queen of Etruria and Chipanti, with a long list of similar cases; and then addressed himself to the terrestrial facts.)

It was proved by Magdalene Paret that the treasure was actually found. By the witness Deleuil, it was traced into the possession of Auguier. By other witnesses it was shown that Auguier had made use of some artifices to obtain the custody of the gold, cultivating a romantic attachment for this humble laborer, and seeking to inspire him with fears for his personal safety so long as he retained possession of so large a sum. Upon the whole, unless it had been practicable to secure the attendance and oral testimony of the very phantom itself, the claim of Mirabel could hardly address itself more forcibly to the favored judgment of the court.

It may be that this little deficiency in the chain of the evidence weighed more than was expected with the Parliament of Aix. At all events, they demanded further proof; and the peasant Bernard was brought forward, and underwent a very rigid examination.

He stated that on a certain day in May Mirabel informed him that a ghost had revealed to him the existence of some secreted treasure; that on the following morning they proceeded together to the spot indicated by the apparition, but found no money; that he laughed at Mirabel, snapped his fingers at the story, and went away; that he nevertheless agreed to a further search, — the witness Magdalene Paret being present, — but found nothing; that subsequently Mirabel declared that he had discovered eighteen pieces of gold, then twelve, finally thirty-five, but displayed none of them; that Mirabel had, however, sent by him twenty sols to a priest, to say masses for the soul of the departed, to whom he owed so much; and that he had spoken of handing over the treasure to Auguier, and taking the latter's

receipt, which certainly seemed to be the same now produced, signed "Louis Auguier."

The matter was obscure and puzzling. There was, by this time, no question that this large sum of money had somehow come into the possession of Mirabel. He could not, by skill or labor, have realized the hundredth part of it. No one had been robbed, for the notoriety of the case would at once have produced the loser. If Mirabel had found it (and there were the witnesses who proved the discovery many feet below the surface, in an undisturbed corner of the terrace), who revealed the precious deposit to this poor simple clown? The scale was inclining, slowly and steadily, to the spectral side, when some new and startling evidence appeared.

Auguier proved that *subsequently* to the alleged delivery of the treasure into his hands, Mirabel had declared that it was still concealed in the ground, and had invited his two brothers-in-law from Pertuis to see it. Placing them at a little distance from the haunted spot, he made pretence of digging, but suddenly raising a white shirt, which he had attached to sticks placed crosswise, he rushed towards them, crying out, "The ghost! the ghost!" One of these unlucky persons died from the impressions engendered by this piece of pleasantry. The survivor delivered this testimony.

The case now began to look less favorable for the spectre. It was hardly probable that Mirabel would take so unwarrantable a liberty with an apparition in which he believed, as to represent him, and that for no explainable purpose, in an old white shirt! Was it barely possible that Mirabel was after all a humbug, and that the whole story was a pure fabrication, for the purpose of obtaining damages from the well-to-do Auguier?

It does not appear to what astute judicial intellect this not wholly impossible idea presented itself. At all events, a new process was decreed, the great object of which was to discover in the first instance how and whence came the money into Mirabel's possession.

Under the pressure of this inquiry, the witness Paret was at length brought to confess, first, that she had never actually beheld one coin belonging to the supposed treasure; secondly, that she did not credit one word of Mirabel's story; thirdly, that if she had already deposed otherwise, it was at the earnest entreaty of Mirabel himself.

Two experts were then examined as to the alleged receipt. These differed in opinion as to its being in the handwriting of Auguier; but a third being added to the consultation, all three finally agreed that it was a well executed forgery.

This, after twenty months, three processes, and the examination of fifty-two witnesses, was fatal to the ghost. He was put out of court.

The final decree acquitted Auguier, and condemned Mirabel to the galleys for life, he having been previously submitted to the question. Under the torture Mirabel confessed that one Etienne and Barthélemy, a declared enemy of Auguier, had devised the spectral fable as a ground for the intended accusation, and, to substantiate the latter, had lent him (for exhibition) the sum of twenty thousand livres. By an after process, Barthélemy was sentenced to the galleys for life, and the witnesses Deleuil and Fournière to be hung up by the armpits, in some public place, as false witnesses.

So far as records go, this singular case was the last in which, in French law-courts, the question of ghost or no ghost was made the subject of legal argument and sworn testimony. —*Judicial Dramas.*

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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.

THE GREEN BAG.

ANOTHER year has passed, and with the present number we close Volume II. of the "Green Bag." Two years is not, to be sure, a very mature age; but even at that early period of its existence the "Green Bag" has outstripped many of its more aged contemporaries, and is now read, we believe that we are speaking within bounds, by as many lawyers as any other legal periodical in the United States. Its success has been largely due to the kindly interest of its legal friends, who have, at the cost of much time and labor, furnished a vast amount of material with which to fill its columns. To them we tender our most sincere and heartfelt thanks, and trust that the excellent example set by them will be imitated by others of our readers, so that the "Green Bag" may become the repository of the bright ideas of the profession at large. We have done our best to keep the magazine up to the standard of excellence which we set for ourselves at its beginning, and we believe that our readers have appreciated our efforts in that direction. In one respect, however, we seem to have failed, judging from the comments of numerous correspondents. Hard as we have tried, we are told that our magazine, while very "entertaining," is not "useless," and that the term is one to which we can lay no just claim. This is all very complimentary; but we shall still keep that title flying at our mast-head, through the fear that if we haul it down we may be tempted to introduce something of a really "practical" nature into our columns. Our sole aim will continue to be to "entertain" our weary brethren in the law in as "useless" a manner as possible.

Wishing our readers, one and all, a Merry Christmas and a Happy New Year, we close this second volume, and prepare to open Volume III.

THE "Green Bag" for 1891 will contain much of interest for the legal profession. The series of Supreme Court articles will be continued, and will probably include the courts of Pennsylvania, Louisiana, Georgia, Maine, Tennessee, New Jersey, Missouri, Iowa, Indiana, Virginia, Kansas, and Illinois. All these articles will be profusely illustrated with portraits of eminent judges. Among other illustrated articles we shall publish sketches of "Osgoode Hall" (Canada) and the "Georgetown" Law Schools, and a brief account of the Superior Court of New York City (1855), accompanied by a full-page group of the judges. Arrangements have been made for a series of biographical sketches of famous American lawyers, to be written by well known members of the profession; and also a series of sketches of the "English Bench and Bar of To-day," by an eminent English lawyer. All of these will be illustrated with portraits. Prof. William G. Hammond will continue his "Short Studies in the Early Common Law," and a number of short articles are promised by distinguished legal writers. The Causes Célèbres will be continued, and will include several famous American cases. The usual supply of anecdotes, facetiæ, legal antiquities, etc., will be provided; and, altogether, we can safely promise our readers that they will find a rich treat in store for them.

THE January and February numbers of the "Green Bag" will contain an article on the SUPREME COURT OF PENNSYLVANIA, written by Owen Wister, Esq., of the Philadelphia bar. The January number will bring the history of the court down to the time of the Revolution; and the February number will continue that history down to the present time. Mr. Wister has bestowed much time and research upon the preparation of this article, and the result is a most interesting and

valuable contribution to legal literature. The article will be fully illustrated, and will contain more than twenty portraits of eminent judges of the past and the present bench.

SUBSCRIBERS whose subscriptions expire with this number should send in their renewals at once, accompanied by a check or P. O. order for $3.

WE will bind the numbers of Vol. II. for subscribers sending them to us, in half morocco, for $1.50.

LEGAL ANTIQUITIES.

THERE is extant a very particular account of a criminal calendar for Lichfield and Lincoln, wherein, in the fifth year of the reign of King John, ten or twelve criminals, being badly thought of (*malè creditè*) by the jury, are ordered to purge themselves either by fire or water. One of the prisoners was hanged because he would not submit to this kind of purgation; another, being a woman and sick, was permitted to defer the purgation by water.

IN the reign of Henry III. directions were given to the justices itinerant of the Northern Circuit, "not to try persons charged with robbery or murder, or other such crimes, by fire and water; but for the present, until further provision can be made, to keep them in prison under safe custody."

IN the reign of Edward II. prisoners peremptorily challenging above thirty-five jurors, and refusing to retract their challenge, were treated as standing mute, and subjected to the *peine forte et dure*. It was not until the third year of Henry VII. that an alteration took place in this respect. It was then agreed by the judges of both benches (without a thought of consulting the legislature on so trivial a question), that a man who challenged thirty-six jurors should be hanged, and not put to the penance; and it was resolved that this should be observed as the practice on their circuits, notwithstanding the contrary usage in former reigns. And though afterward, in course of time, as lawyers' minds softened, a humane opinion grew up (and was countenanced by Lords Coke and Hale) that such challenge should only be disregarded and overruled, the law was not so ascertained and settled by any statute until Sir Robert Peel's Criminal Consolidation Act provided that every peremptory challenge beyond the number allowed by law, in case of treason, felony, or piracy, shall be entirely void, and the trial of such persons shall proceed as if no such challenge had been made.

FACETIÆ.

OFFICER OF THE COURT. Prisoner at the bar, are you guilty or not guilty?

PRISONER. Sure it 's meeself as 'll wait.

OFFICER. Wait for what?

PRISONER. Wait and see fwhat koind av a case me lawyer 'll make out for me. — *Irish Law Times.*

SOME years since a patent-right suit was brought before Judge Nelson. Hon. William H. Seward was counsel on one side. In summing up, he occupied a whole day. The counsel on the other side made a long argument, and the judge charged the jury. After the jury had been absent about two hours they came into court, and the foreman said: "Your Honor, the jury would like to ask a question." "You can proceed." "Well, your Honor, we should like to know what this suit is about."

THE following decree, issued by a Colorado court, certainly deserves a place among our "Legal Facetiæ":

IN THE COUNTY COURT OF ROUTT CO.

In re.

SEPTEMBER TERM, A. D. 1888.

IN the matter of the application of ——, Esqr., of ——. in the county and State aforesaid, for a certificate of good moral character, etc.

This day comes into open Court ——, Esqr., formerly county surveyor of ——, county and State aforesaid, and civil engineer and gentleman, and moves the Court that a certificate of moral character and practical surveyor and civil engineer be granted: and it appearing to the Court from satisfactory evidence that said —— is a man of good moral character and a practical surveyor and competent civil

engineer, it is therefore considered, ordered, and adjudged by the Court that such be the judgment of the Court, and that the same be entered on the records of the Court, and a certificate of the same be granted accordingly.

—— ——, *County Judge.*

IT seems that a lawyer is somewhat of a carpenter. He can file a bill, split a hair, chop logic, dovetail an argument, make an entry, get up a case, frame an indictment, empanel a jury, put them in a box, nail a witness, hammer a judge, bore a court, chisel a client, and other like things.

CONDEMNED MURDERER (*to* LAWYER). You said you could get a sentence of imprisonment for life, and here I am to be hanged next month.

LAWYER. That 's all right; you will be imprisoned for life, won't you? — and only a month, instead of long, weary years. Be reasonable, man!

To some pungent remarks of a professional brother, a Western lawyer began his reply as follows: "May it please this Court, — Resting upon the couch of Republican equality as I do, covered with the blanket of constitutional panoply as I am, and protected by the ægis of American liberty as I feel myself to be, I despise the buzzing of the professional insect who has just sat down, and defy his futile attempts to penetrate with his puny sting the interstices of my impervious covering."

"I ASSURE you, gentlemen," said a convict, upon entering the prison, "the place has sought me, and not I the place. My own affairs really demand all my time and attention, and I may truly say that my selection to fill this position was an entire surprise. Had I consulted my own interests, I should have peremptorily declined to serve; but as I am in the hands of my friends, I see no other course but to submit." And he submitted.

MR. JUSTICE MAULE once addressed a phenomenon of innocence in a smock-frock in the following words: "Prisoner at the bar, your counsel thinks you innocent; the counsel for the prosecution thinks you innocent; I think you innocent. But a jury of your own countrymen, in the exercise of such common-sense as they possess, which does not seem to be much, have found you 'guilty,' and it remains that I should pass upon you the sentence of the law. That sentence is that you be kept in imprisonment for one day; and as that day was yesterday, you may now go about your business."

A TENDER-HEARTED North Carolina judge of "ye olden time," seeing that the evidence was going strongly against a young fellow who was being tried before him for his life, and dreading to pronounce the sentence which he felt to be inevitable, left the court-room under some pretext, to which he presently returned fortified with several strong drinks.

It chanced that the judge took more than he intended of the intoxicating beverage; and when the jury (greatly to the surprise of every one) brought in a verdict of "Not guilty!" he was slumbering heavily upon the bench, and had to be aroused in order to hear the decision.

With his mind still full of the dread which had overwhelmed him, and utterly unable, in the bewildered state of his brain, to take in the altered condition of affairs, the old fellow slowly erected himself. "Jones," he said solemnly, speaking in the nasal tone peculiar to him, and brushing an imaginary insect from his nose, as was his custom when under the influence of strong feeling, "it now becomes my painful duty — "

"Your Honor — " put in one of the jury.

"I beg, Mr. Robinson," replied the judge, "that you will not interrupt me. Mr. Jones," he continued, turning to the prisoner, "I knew your father, sir, an eminently respectable and respected citizen, who little thought that his son would come to the disgraceful end which is to be yours; for you are to be hanged by the neck, sir — "

"Your Honor," Robinson said again, almost imploringly, "permit me to explain — "

"Mr. Robinson," replied the judge, "I must insist that you do not interrupt me again [striking at the imaginary fly] while I am performing the most solemn duty, sir, that belongs to my office. Mr. Jones [turning again to the prisoner], I know, sir, that this sentence, which I feel constrained to pronounce, is breaking the heart of your poor old mother there [pointing

to the wife of the murdered man, who, sitting somewhat apart, was looking daggers at the jury], "and, sir, bringing her gray hairs in sorrow to the grave. For you are to be hanged, sir, — to be — "

"S——," broke in Robinson, unable to contain himself any longer, and dropping the judicial title in his desperation, "you are making a —— fool of yourself. The jury has brought in a verdict of 'Not guilty'!" — *Harper's Magazine.*

NOTES.

"THUS the whirligig of time brings in its revenges." In People *v.* Wight, 38 Mich. 744, it was held that where a wife chokes a man while her husband robs him, the jury may find that she did not act under her husband's coercion. Mr. Bumble the beadle's indignant protest against the theory of marital coercion recurs to us, when, after being henpecked all his married life, he was told that in the eye of the law his wife had been coerced by him in committing a felony in his presence: "If that is the eye of the law, the law is a ass . . . and a bachelor."

IN the Chief Court of Law of Grenada there used to be a picture of a disrobed man with a large bundle of papers under his arm and certain words proceeding out of his mouth, of which these are a translation: "I, who won my suit, am now stripped to the skin; what, then, must be the fate of him who lost it?"

FROM John La Farge's "An Artist's Letters from Japan," in the April "Century," we quote, as follows, of the laws of Iyéyasŭ: —

"These laws, based on the old feudal habits, and influenced and directed by the great Chinese doctrines of relationships and duties, are not laws as we think of law, nor were they to be published. They were to be kept secret for the use of the Tokugawa house; to serve as rules for conduct in using their power, so as to secure justice, which is in return to secure power, that exists for its own end in the mind of rulers. These laws, some of which are reflections, or moral maxims, or references to the great man's experience, made out a sort of criminal code, — the relations of the classes, — matters of rank and etiquette, and a mechanism of government. They asserted the supremacy and at the same time destroyed the power of the mikado, and by strict rules of succession, residence, and continued possession bound up the feudal nobles. They reasserted the great individual virtues of filial piety and of feudal loyalty, and insisted on the traditions of military honor. 'The sword' was to be 'the soul of the Samurai;' and with it these have carried the national honor and intelligence in its peculiar expressions.

"Full recognition was given to the teaching, 'Thou shalt not lie beneath the same sky, nor tread on the same earth, with the murderer of thy lord.' The rights of the avenger of blood were admitted, even though he should pay the penalty of his life.

"Suicide, which had long been a Japanese development of chivalrous feeling and military honor, was still to be regarded as purifying of all stain, and, for the first time, allowed in mitigation of the death penalty.

"Indeed, half a century later, the forty-seven Ronin ('wave-people,' — Samurai who had lost their natural lord and their rights) were to die in glorious suicide, carrying out the feudal ideal of fidelity.

"You know the story probably: at any rate, you will find it in Mitford's tales of old Japan. It is a beautiful story, full of noble details, telling how, by the mean contrivance of a certain lord, the Prince of Ako was put in the wrong, and his condemnation to death and confiscation obtained. And how, then, forty-seven gentlemen, faithful vassals of the dead lord, swore to avenge the honor of their master, and for that purpose to put aside all that might stand in the way. For this end they put aside all else they cared for, even wife and children, and through every obstacle pursued their plan up to the favorable moment when they surprised, on a winter night, in his palace, among his guards, the object of their vengeance, whose suspicions had been allayed by long delay. And how his decapitated head was placed by them upon his victim's tomb, before the forty-seven surrendered themselves to justice, and were allowed to commit suicide by hara-kiri, and how they have since lived forever in the memory of Japan."

THE Court of Appeals of Kentucky recently decided a novel suit in regard to the enforcement of a promise for the cessation of the tobacco habit. April, 1880, Mrs. Sallie D. Stemmons, of Bourbon County, Ky., made an agreement in writing with her step-grandson, Albert R. Talbott, that she would give him five hundred dollars if he would never take another chew of tobacco or smoke another cigar from that time until her death. At the same time the grandson stipulated to refund double

that amount to his mother if he at any time within the prescribed period violated the agreement. The grandmother died in 1887; and as he fulfilled the conditions of his agreement and was never paid a cent, Talbott instituted suit for the recovery of the money from the executor of the estate. It was claimed that the condition was not sufficient in law to make the contract valid, and the lower court gave judgment against Talbott. On appeal the case was decided in the Superior Court and reversed, and again appealed to the Court of Appeals, which decided that Talbott fulfilled a plain contract, and is entitled to the money.

LORD COKE was quoted, — Calvin's Case, 7 Rep. 17, — that "All infidels are in law *perpetui inimici;* for between them, as with the devils, whose subjects they be, and the Christians there is perpetual hostility." But Willes, L. C. J., p. 44, said: "Lord Coke is a very great lawyer, but our Saviour and Saint Peter (Acts x. 34) are in this respect very much better authorities."

Recent Deaths.

JUDGE AUSTIN ADAMS of Dubuque, ex-Chief-Justice of the Iowa Supreme Court, who died the 17th of October, was born in 1826 in Andover, Windsor County, Vt. He was the son of representatives of two famous families. His mother, Phebe Hoar, was of the well-known Hoar family of this State; while through his father, Austin Adams, he was of the same stock with Samuel Adams, the Revolutionary patriot. He was educated at the Black River Academy in Ludlow and at Dartmouth College, which afterward conferred upon the Iowa jurist the degree of Doctor of Laws. He was principal of the West Randolph Academy for a term or two, and spent some time at the Harvard Law School. Admitted to the Windsor County Bar in 1854, he was connected for a brief period in legal business with ex-Governor Coolidge, and went West shortly after. He taught the Dubuque Academy for several months with Mary Mann, sister of the famous educator, as an assistant. He was president of the Iowa State Board of Education in 1868, and for twenty years was regent of the State University. He was elected a justice of the Supreme Court in 1875, and before retiring from the bench, after service of twelve years, he had been twice honored by the chief-justiceship.

REVIEWS.

THE AMERICAN LAW REVIEW, September–October, contains two articles which every lawyer should read; namely, "Bentham and his School of Jurisprudence," by John F. Dillon; and "The Ideal and the Actual in the Law," by James C. Carter. These addresses delivered before the State Bar Association of Ohio and the American Bar Association, respectively, are most finished and scholarly productions. The other contents of this number are "Legal Responsibility of Trustees under Corporate Bonds and Mortgages, or Deeds of Trust," by Robert Ludlow Fowler; "Privileged Communications in Suits between Husband and Wife," by Mary A. Greene; "Stranger Indorsing Note in Blank," by Webster Street.

THE HARVARD LAW REVIEW for October contains the sixth instalment of Professor Langdell's "A Brief Survey of Equity Jurisdiction." A paper on "Contracts in Restraint of Trade" is contributed by Amasa M. Eaton. A list showing the number of students in the Harvard Law School, Oct. 10, 1890, makes the number 273.

THE NEBRASKA LAW JOURNAL, a weekly Law Magazine, is the latest aspirant for professional favor. It is edited and published by W. Henry Smith, at Lincoln, Neb., and is devoted to reporting the decisions of the Supreme Court of that State, and those of the United States courts. The journal is attractive in make-up, and we wish the new venture every success.

THERE is a profusion and variety in the illustration of the November number which is remarkable even for the CENTURY, — varying from the actinic reproduction of rapid pen-work to the exquisite engraving of Cole in the "Old Master" series (a full-page after Signorelli). The great feature of the CENTURY's new year, the series on the Gold-Hunt-

ers, is begun with John Bidwell's paper, fully and curiously illustrated, on "The First Emigrant Train to California." Another important series of papers herein begun is Mr. Rockhill's illustrated account of his journey through an unknown part of Tibet, — the strange land of the Lamas. A notable and timely contribution to Dr. Shaw's series on municipal government is his interesting and thorough account of the government of London, with its warning for American municipalities. A pictorial series begins in this number, — "Pictures by American Artists," — the example given being Will H. Low's "The Portrait." The first of two articles on the naval fights of the War of 1812 appears in this number. The fiction of the number has as its most striking contribution the beginning of the first long story written by the artist-author, F. Hopkinson Smith; it is entitled "Colonel Carter of Cartersville," and is accompanied by a number of pictures by Kemble. Mrs. Anna Eichberg King has a story of old New York, with a dozen designs by George Wharton Edwards; and Frank Pope Humphrey has a ghost-story entitled "The Courageous Action of Lucia Richmond." The frontispiece is an engraving of a photograph of Lincoln and his son "Tad," accompanied by an article by Col. John Hay on "Life in the White House in the Time of Lincoln." In the prison series is a paper descriptive of adventures "On the Andersonville Circuit." W. C. Brownell makes note of the work of two original French sculptors, Rodin and Dallou.

THE complete novel in the November number of LIPPINCOTT'S MAGAZINE is contributed by Mrs. Jeanie Gwynne Bettany, the clever author of "The House of Rimmon." The story is entitled "A Laggard in Love;" and the scene is laid in England, principally in what is known as the "Black Country." Junius Henri Browne contributes a clever and appreciative article upon Balzac's women, entitled "Heroines of the Human Comedy." A sketch of Balzac, who is altogether too little known in this country, and a description of his peculiar methods of work, is weaved into this very entertaining paper. Ex-Senator B. F. Hughes, in "Some Experiences of a Stump Speaker," gives some entertaining experiences, and tells a great many good stories. In "A Philosopher in Purple" Mr. G. Barnett Smith exhibits Lord Chesterfield in a better light than is usually thrown upon him, and gives him credit for some admirable qualities. "Bond's" is a clever sketch of a summer hotel-keeper, signed by M. P.; and following it is an entertaining article by William Shepard, entitled "Accidents and Trifles." In "British Side-Glances at America" Miss Anne Wharton points out the many curious mistakes and misconceptions regarding us that our cousins across the water are continually indulging in. Mr. William J. Henderson — himself an experienced newspaper man — contributes an article, "Journalism versus Literature." Some excellent poems are contributed to this number by Charles Washington Coleman, Charles D. Bell, Mrs. E. W. Latimer, and Rose Hartwick Thorpe.

SCRIBNER'S MAGAZINE for November contains three remarkable illustrated articles of travel and adventure of widely differing characteristics, — "A Tale of a Tusk of Ivory," "Through the Grand Cañon of the Colorado" (the first trip ever made from the source to the mouth of that river), and "With Yankee Cruisers in French Harbors." Another unusual feature is an article ("A Day with a Country Doctor") written, drawn, and engraved by the same man, — Frank French. "Training Schools for Nurses" are described by Mrs. Frederick Rhinelander Jones, who has been interested in their organization from the very first. There is a long instalment of the anonymous serial "Jerry;" and a short story by F. J. Stimson, the author of "Mrs. Knollys." Two sonnets on Cardinal Newman are by the aged Irish poet Aubrey de Vere, and by Inigo Deane, a disciple and friend of the late Cardinal. A strikingly melodious anonymous poem "In Broceliande," and the last of Professor Shaler's papers on "Nature and Man in America," are among the other features of the issue. Frederic Villiers (the English war artist), R. F. Zogbaum, and Frank French illustrate single articles.

THE new serial, by Frank R. Stockton, author of "Rudder Grange," which opens the ATLANTIC MONTHLY for November, is entitled "The House of Martha." It abounds in that dry, whimsical humor, which is so difficult to analyze, and yet so easy to enjoy. The romantic title, "Along the Frontier of Proteus's Realm," comes rather

strangely after Mr. Stockton's delightfully matter-of-fact humor. The paper with this title is by Edith Thomas, and is a charming description of the sea in its various moods, enlivened by verses of which Miss Thomas is apparently the author. "The Legend of William Tell" is traced to its early beginning by Mr. W. B. McCrackan; and Mr. Frank Gaylord Cook has an instructive paper on "Robert Morris." "Felicia" has some interesting descriptions of life on the stage; and the mutual relations of the singer and his wife become more complicated. "A Successful Highwayman in the Middle Ages," the story of a Castilian bandit, is told by Francis C. Lowell, and is followed by "An American Highwayman," by Robert H. Fuller. "The Fourth Canto of the Inferno," by John J. Chapman, and the "Relief of Suitors in Federal Courts," by Walter B. Hill, furnish the more solid reading of the number; while Percival Lowell contributes a brilliant and interesting paper on Mori Arinori, under the title of "The Fate of a Japanese Reformer." Dr. Holmes bids the ATLANTIC readers farewell all too soon in the closing paper of "Over the Teacups," in which, for a few moments, he steps before the curtain, and speaks in his own person. Kate Mason Rowland contributes a bright paper on "Maryland Women and French Officers."

THE November number of HARPER'S MAGAZINE contains the first of a short series of papers on Southern California, — "Our Italy," — by Charles Dudley Warner. Illustrations from photographs and from drawings by distinguished American artists give additional value to this interesting paper. E. W. Mealey describes the quaint old town of Rothenburg, and gives an account of "Der Meistertrunk," the festival play which occurs there annually. His article is accompanied by nine illustrations from drawings by Otto Beck. The series of articles on South America by Theodore Child is continued in "Urban and Commercial Chili." The illustrations, which are numerous, present views of objects and scenery in and around Santiago and Valparaiso. Lafcadio Hearn describes "A Winter Journey to Japan" by way of the Canadian Pacific Railroad and the Pacific Ocean. S. H. M. Byers contributes an article on "Switzerland and the Swiss." "Princeton University" is the subject of a timely paper by Prof. W. M. Sloane. Daudet's inimitable story of "Port Tarascon" is brought to a conclusion. The other fiction includes "A Halloween Wraith," by William Black, with five illustrations; "Madrilène; or, The Festival of the Dead," by Grace King; and "Portraits," by Ruth Dana Draper.

BOOK NOTICES.

THE LAWS OF COLLATERAL INHERITANCE, LEGACY, AND SUCCESSION TAXES, embracing the American and many English Decisions, with Forms for New York State, and an Appendix giving the Statutes of New York, Pennsylvania, Maryland, and Connecticut. By BENJ. F. DOS PASSOS. L. K. Strouse & Co.: New York, 1890. $3.00.

No other work has, we believe, been published upon this important subject, and in those States in which the collateral inheritance tax exists this book will be of great value. In the performance of his official duties in the District Attorney's office of the county of New York, Mr. Dos Passos has had complete charge of the enforcement of the laws relating to collateral inheritance, succession, and legacy taxes, and is therefore eminently fitted for the preparation of a treatise upon the subject. That he has done his work carefully and conscientiously is evident, and the profession in the States to which the law applies will heartily welcome this book.

THE RULES OF PLEADING UNDER THE CODE, AND THE PRACTICE RELATING TO PLEADING, WITH AN APPENDIX OF FORMS. By EDWIN BAYLIES. Williamson Law Book Co.: Rochester, N. Y., 1890. Law sheep. $6.00.

While made to conform particularly to the rules of pleading established by the New York Code of Civil Procedure, this work will be found to be useful to the practitioner in other code States. The authorities cited have been taken from the decisions of the courts of every State in which a code has been adopted, and in some instances from the decisions of courts of other States holding the same rule of pleading. In addition to the statement of the rules of pleading, a few chapters are devoted to the practice relating to pleading, and an appendix of forms is given.

RIGHTS, REMEDIES, AND PRACTICE AT LAW, IN EQUITY, AND UNDER THE CODES. By JOHN D. LAWSON. Vol. VII. Bancroft-Whitney Co.: San Francisco, 1890. $6.00 net.

This volume completes Mr. Lawson's exhaustive work; and not only the congratulations, but the thanks of the profession are due him for the admirable manner in which his task has been performed. He has added a really valuable work to the list of legal text-books, one which will be the more appreciated the more that it is used. We are glad to see that a comprehensive digest to every point of law contained in the seven volumes is already in preparation.

A TREATISE ON THE RIGHTS OF PERSONS AND THE RIGHTS OF PROPERTY, WITH THE REMEDIES FOR THE PROTECTION AND ENFORCEMENT OF THOSE RIGHTS. By OLIVER L. BARBOUR, LL.D. Williamson Law Book Co.: Rochester, N. Y., 1890. Two volumes, law sheep. $12.00.

Mr. Barbour is so well known to the profession through his works on "Criminal Law" and "Chancery Practice," that anything from his pen is sure to attract the attention of the profession. In the present treatise the author has condensed within the limits of two volumes the law bearing upon the rights of persons and property; and considering the vast extent of the field covered, the result is eminently satisfactory. As a book of ready reference the practising lawyer will find it of much value, and no working library will be complete without it. The index seems to be very full and complete, and the publishers have spared no pains to make the work attractive both as to paper and type.

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