Gerard

New York

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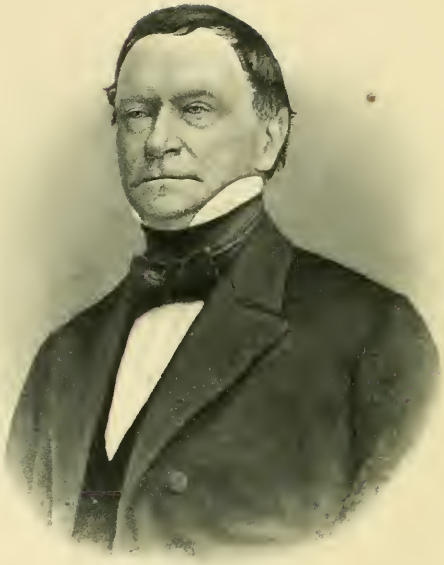

Ever Yours
James W. Gerard

Jany. 4th 1863.

LITHOGRAPHIC ENGR & PRINT CITY OF NEW YORK

THE

PROCEEDINGS AND SPEECHES

AT THE

PUBLIC DINNER

GIVEN TO

JAMES W. GERARD ESQ.,

BY THE

BAR OF NEW YORK,

JANUARY 14, 1869.

ON HIS RETIRING FROM PRACTICE.

NEW YORK:

PRESS OF DOUGLAS TAYLOR, LAW, BOOK AND JOB PRINTER,

Commercial Printing House, cor. Nassau and Fulton Sts.

1869.

LETTER OF INVITATION.

New York, November 20, 1868.

James W. Gerard, Esq.

Dear Sir :—It is with deep regret that your professional brethren of this City have learned that you are about to retire from the Bar, of which you have so long been an acknowledged leader and ornament.

They are unwilling that a relation so pleasant and profitable to them should be severed without an opportunity to manifest in a public manner their high appreciation of your worth, both as a Lawyer and Citizen.

We beg therefore that you will name an early day when you will meet the Bar of New York, at a dinner to commemorate your retirement from professional life.

Your Obedient Servants,

James T. Brady,
William Fullerton,
Clarkson N. Potter,
Edwin W. Stoughton,
Henry E. Davies,
Aaron J. Vanderpoel,
William Fullerton,
Charles O'Conor,
Henry Hilton,
John E. Burrill,
John W. Edmunds,
Hamilton W. Robinson,
Luther R. Marsh,
John E. Parsons,
Elbridge T. Gerry,
William Allen Butler,
Stephen P. Nash,
Clarence A. Seward,
Nathaniel Jarvis, jun.
Edward H. Owen,
Charles D. Burrill,
E. Delafield Smith,
Benjamin F. Dunning,
Richard H. Bowne,
Isaac P. Martin,
William C. Wetmore,
Augustus F. Smith,
Marshall S. Bidwell,
Dudley Field,
Charles E. Butler,
Edgar S. Van Winkle,
John Slosson,
Augustus L. Brown,
James Moncrief,
James Thomson,
Joseph S. Bosworth,
Francis F. Marbury,
John N. Whiting,
Charles A. Rapallo,
Henry A. Cram,
Ashbel Green,
Chester A. Arthur,
J. P. Girand Foster,
George R. J. Bowdoin,
A. Oakey Hall,
Henry E. Knox,
Andrew Boardman,
Enoch L. Fancher,
William E. Curtis,
Daniel D. Lord,
John W. Hamersley,
Charles Tracy,
Joshua M. Van Cott,
Henry Nicoll,
Dorman B. Eaton,
John K. Porter,
Samuel G. Courtney,
Frederick A. Lane,
John Adriance,
George F. Betts,
James Emott,
Charles P. Kirkland,
Stephen Cambreling,
David Dudley Field,
James J. Roosevelt,
Charles A. Peabody.

New York, December 3, 1868.

Messrs. E. W. Stoughton,

" Aaron J. Vanderpoel,

" Charles O'Conor,

" James T. Brady,

And others, Members of the New York Bar.

Gentlemen:—I have received your very kind and gratifying invitation to a dinner, proposed to be given to me by the Bar of New York, on my retirement from practice.

Never having held any judicial or other public position, this act of kindness and friendship is doubly gratifying as a free offering by the rank and file of the Bar to one of their own number, and as such, I esteem it as *the* compliment of my life.

I do not feel at liberty to decline this kind testimonial of the consideration of my legal brethren, and would suggest the fourteenth January next, if agreeable to you.

I am, with great regard,

Your Friend,

JAMES W. GERARD.

Committee on Invitations.

CHARLES O'CONOR.
CHARLES TRACY.
DAVID DUDLEY FIELD.
MARSHALL S. BIDWELL.
EDWIN W. STOUGHTON.
WILLIAM E. CURTIS.

Committee on Toasts.

JAMES T. BRADY.
WILLIAM ALLEN BUTLER.
LUTHER R. MARSH.
JOSEPH H. CHOATE.
HENRY A. CRAM.

Executive Committee.

CLARENCE A. SEWARD.
WILLIAM FULLERTON.
JOHN E. BURRILL.
DUDLEY FIELD.
STEPHEN P. NASH.
CHESTER A. ARTHUR.
AARON J. VANDERPOEL.

BANQUET TO JAMES W. GERARD.

SPEECHES BY FRANCIS B. CUTTING, JAMES W. GERARD, JUDGE BLATCHFORD, DAVID PAUL BROWN, OF PHILADELPHIA, DAVID DUDLEY FIELD, LUTHER R. MARSH, JAMES T. BRADY, AND OTHERS.

The complimentary banquet tendered by the bar of the City of New York to James W. Gerard, Esq., on his retirement from practice, came off last night at Delmonico's and was in every respect a very handsome testimonial to a professional gentleman worthy of this mark of respect and esteem. Almost every notability in city professional life was present, together with many judges and ex-judges, as well as eminent visitors from sister cities.

The banquetting room and tables were decorated with Delmonico's usual good taste, and the *carte* included viands of the most exquisite qualities. Among the *Pieces Montees* with which the table was ornamented were some that were comically appropriate to the occasion—as "The Torment of Tantalus," which would be suggestive of the agonies of many a client suffering from the "laws delay," and "Moses and his code," in frosted sugar! The wines were, as usual, of the rarest quality.

Grace before dinner was said by the Rev. Dr. Washburne, and after dinner by the Rev. Dr. Warren.

The chair was taken by the Hon. Francis B. Cutting, and on his right was the guest of the evening, James W. Gerard, Chancellor Zabriskie, of New Jersey; Rev. Dr. Gurney, David Paul Brown, of

Philadelphia; Judges Barbour and Sutherland, Frederick A. Talmadge, ex-Judge Henry E. Davies, Judges Daly and Brady, John A. Stewart, President of the United States Trust Company. On the left of the chairman were Rev. Edward A. Washburne, D.D.; Judges Blatchford and Benedict, of the United States District Court; Rev. Dr. Alexander McCosh, President of Princeton College, New Jersey; William B. Astor, Judges Ingraham, Barrett, Bedford, Jones, and Monell, and ex-Judges J. J. Roosevelt, Slosson, and Bosworth. Among the other prominent gentlemen present were Charles O'Conor, Samuel J. Tilden, Edward W. Stoughton, ex-Judge Whiting, R. Ogden Doremus, David Dudley Field, S. L. M. Barlow, William Fullerton, John Brougham, Charles A. Rapallo, Luther R. Marsh, Charles P. Kirkland, John McKeon, A. J. Vanderpoel, James T. Brady, Augustus Schell, and Edgar Ketchum.

Rev. Dr. Warren said grace after the entertainment, and then the following letters, among others received by the committee, were read:

LETTER FROM GOVERNOR HOFFMAN.

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
ALBANY, January 5.

Messrs. E. W. Stoughton, David Dudley Field and others, Committee, &c.:

GENTLEMEN:—I beg to acknowledge the receipt of your kind invitation, asking me to be present at a complimentary dinner, to be given by the legal profession of New York, to Mr. James W. Gerard, on his retirement from professional life.

Mr. Gerard's long and honorable service at the bar; his eminent abilities, and the genial warmth which has characterized his intercourse with his legal brethren, have united to win for him a reputation so pure and high that I should very much delight to join in the compliment which it is proposed to pay him on the 14th instant. But the pressure of official business compels me, reluctantly, to forego this pleasure.

You will please convey to those who meet on the occasion of the dinner my best wishes, and you and they, I am sure, will join with me in the hope that Mr. Gerard may live long to enjoy that repose which, by many years of studious labor, he has abundantly earned.

Very truly yours,

JOHN T. HOFFMAN.

LETTER FROM JUDGE LA TROBE.

BALTIMORE, January 7, 1869.

GENTLEMEN:—I have to acknowledge the receipt of your letter of the 2d instant, inviting me to meet Mr. James W. Gerard at a dinner, to be given to him on the 14th, by his legal brethren of New York on his retirement from professional life. Nothing but the absolute pressure of engagements that I cannot control prevents my accepting an invitation that would permit me to unite personally in doing honor to a gentleman as distinguished as Mr. Gerard, socially and professionally. As a lawyer he has long been known to me, and the mention of his name always revives the recollection of once meeting him among friends, when wit not barbed with bitterness, good feeling which was contagious, great general information, and rare conversational powers, while they rejoiced all around him, gave assurance that whenever he left the Bar, the compliment which it is now proposed to pay would be eminently deserved, not only on account of his professional standing, but by reason of his social qualities.

Regretting that absence at our Court of Appeals delayed the receipt of your letter until this morning, and most especially that on this occasion inclination has to yield to duty, I beg you to believe me,

Very respectfully yours,

JOHN H. B. LA TROBE.

Messrs. E. W. STOUGHTON and others, Committee, &c.

LETTER FROM CHIEF-JUSTICE HUNT.

ALBANY, January 7.

GENTLEMEN:—My duties at this place will prevent my acceptance of your invitation to attend the dinner to Mr. Gerard on the 14th instant. I should be most happy to unite in any proceedings intended to do him honor. He has now become a veteran in the legal profession, and during his long career as an attorney and counsellor he has always been regarded as a gentleman of learning, of high intellectual capacity, and of unsuspected integrity. Upon leaving the profession, he is well entitled to the honor you propose to do him.

I am, very respectfully,

WARD HUNT.

E. W. STOUGHTON and others, Committee, &c.

LETTER OF ATTORNEY-GENERAL EVARTS.

ATTORNEY-GENERAL'S OFFICE,
WASHINGTON, January 9, 1869.

GENTLEMEN:—I had the honor to receive some days ago your kind invitation to the complimentary dinner which the Bar of New York are to give, on the 14th instant, to Mr. Gerard, upon his retirement from the profession of which he has been so long a distinguished leader.

Although I have felt much anxiety lest the pressure of official and professional duties, during the session of the Supreme Court, might deprive me of the pleasure of bearing a share in this exhibition of our affection and respect for our friend and brother, yet, until to-day, I have not given up the hope that I would be able to be with you. I regret to say that I now find it will be impossible.

From the date of my first knowledge of the Bar of New York until now, Mr. Gerard has been among its most honored and most eminent leaders. His genial disposition and lively humor, his absolute integrity and sensitive honor, his talents, zeal, energy and great capa-

city for labor, his diversified employment in the courts, and his manifold successes, have, altogether, made up for him a professional and personal reputation with his brethren of the Bar and in the estimation of the public, which can scarcely be matched in the illustrious roll of our lawyers. We all owe him our good will, our homage, our applause, and none more than I,

With my best wishes for the prosperity of your feast, and with no little chagrin that untoward circumstances prevent me from sharing it,

I am, gentlemen, with great respect,

Your obedient servant,

WILLIAM M. EVARTS.

To E. W. Stoughton, and others, Committee, &c.

LETTER FROM JUSTICE NELSON, OF THE SUPREME COURT U. S.

Washington, January 11, 1869.

To E. W. Stoughton and others, Committee, &c.

Gentlemen:—I have received your invitation to the complimentary dinner to be given by the Bar to Mr. Gerard on his retirement from the active duties of the profession. Were it practicable, I would attend with pleasure this well-merited honor awarded him by his professional brethren. I have known Mr. Gerard in the profession since May, 1831, and from that time down to the present, he has practised before me, or before courts of which I was a member, both State and Federal, and in every instance, he is entitled to the praise of having thoroughly studied his case, collected the authorities, and argued it with clearness and ability. As a consequence of his thorough preparation, he always knew the controlling points involved, and these he discussed with learning, and skill, and stopped when he got through. (Applause.) He had great tact and resources in the trial of causes before a jury, into which his preparation beforehand was carried, as in cases in bank. I remember a case before me and a jury, involving

the issue whether his client was entitled to a certificate of discharge under the Bankruptcy Act of 1841. His adversary in summing up to the jury, had wearied them, as was apparent, by a long and tedious review of the evidence; when he sat down, it was late in the afternoon. Mr. Gerard rose to reply, took out his watch, laid it on the table before the jury, and announced to them that he would occupy but ten minutes of their time. This he was enabled to do from his thorough knowledge of the case, and that he had the right of it; he obtained a verdict from the jury in less time than he had detained them in summing up. (Applause and laughter.)

He has our hearty wishes in his retirement; that he may live long to enjoy the well-earned honors he has acquired by a life devoted to a profession of which we are justly proud.

Respectfully yours,

S. NELSON.

TOASTS.

1. "Our Guest."

JAMES W. GERARD.

2. "The Bench."

Hon. SAMUEL BLATCHFORD.

3. "The Bar of our Sister States."

DAVID PAUL BROWN.

4. "The Contemporaries of our Guest."

DAVID DUDLEY FIELD.

5. "The Junior Bar."

LUTHER R. MARSH.

6. "Our Fraternal Union."

JAMES T. BRADY.

7. "The Kindred Professions."

Rev. ALEXANDER McCOSH, D. D.
Prof. R. OGDEN DOREMUS.
Rev. EDWARD A. WASHBURNE, D.D.

The proceedings and speeches are taken from the reports in the *World* and *New York Herald* of the next day, but the reports being necessarily condensed and in many particulars erroneous from the short time allotted to the reporters before their papers went to press in the morning, they have been revised and corrected.

SPEECH OF MR. CUTTING.

The Chairman then said: Gentlemen: The very agreeable privilege has been conferred upon me to propose to you this evening the first toast. On an occasion so honorable to the Bar of New York, so worthily tendered to my friend on the right, and so magnificent in all its aspects, the toast I am requested to propose is that of "Our Guest." (Great applause.) It is usual, I believe, on occasions like this, for him who proposes the sentiment, to accompany it with something like a review of the merits and characteristics of the gentleman in whose favor the entertainment is given. But I confess to feeling some embarrassment this evening in so doing in consequence of the presence of my friend; for, in enumerating the long catalogue of his worth and merits, I am afraid I would oppress the sensibilities of my friend, and obtrude upon his fine and delicate sentiments. I will therefore defer till a better occasion and a better opportunity presents, for saying what, if he were not here, might very appropriately be said. Nevertheless, there are some points patent to all, notorious to all, of which everybody speaks; and the most fastidious, therefore, cannot object if I were to allude passingly to some of these traits. In the first place, during a very long life, through very stirring and occasionally angry scenes, did any one ever know our learned friend, our esteemed guest—did any one ever know him to forget that courtesy, that kindness, and conciliatory temper which has distinguished him throughout his long career? (Enthusiastic applause.) Did any of us ever know, under the most provoking circumstances, of his forgetting for a moment that genial kindliness of disposition which he has manifested at all times? In looking back, and calling to mind the many angry con-

troversies in which we have been engaged, and in which I was frequently opposed to my friend—and I am not insensible that I had less control of myself than he—it is a most remarkable fact that I cannot recall a single instance where my friend, as he might properly, ever threw back a retort, a bitter repartee; on the contrary, though so well capable of doing it, if he had allowed himself, my friend answered every harsh or impatient remark, with the kindness, geniality, courtesy and conciliation which has made him so agreeable at our bar. (Applause.) There is another characteristic to which I may be permitted to allude. Did any one know of any person so poor or so humble, who, if he needed the services of my friend, might not always have commanded them, with the same zeal he would have given to the richest and most powerful? (Ardent applause.) I may add besides, that through a very long, very active, and very stirring life, where naturally and necessarily my friend, as we all have been, has been brought more or less in contact with what our profession invariably must to a greater or less extent touch, did any person at the bar ever come out more bright or more fair than did our friend? Like a diamond, his hands were unsullied, his heart untouched by that to which I have referred. (Cheers.) I believe that, having for so many years been associated with or opposed to my friend in the courts, I am as well capable of comprehending, estimating, and valuing his resources as any person, and I here say that a more dangerous adversary it has never been my lot to encounter; and the weaker his cause, the more dangerous his opposition. (Applause and laughter.) And while skillful and daring in attack, he was wary and cautious in his defense; and it was difficult to say whether in defending a bad cause, or in urging a good one, he displayed the greater zeal or the greater intrepidity. And, gentlemen, when I saw for the first time a notice that your friend and mine was about to retire from the active walks of professional life, my first reflection was one of regret—regret for my fellow members of the bar, that in the difficult and thorny paths which they daily trod in their professional career they would miss the sunshine and genial humor which my friend always threw upon these

paths; and the next reflection was, what would become of my friend himself, who for so many years has trodden those paths. (Applause and laughter.) Who, for so many years filled with briefs, would now cast them aside and became briefless. (Laughter.) What would my friend do, surrounded by a host of clients, after having discarded them all, and found himself solitary and alone? I inquired, How will my friend, who has been so long accustomed to navigate in the stormy winds of professional life—how would my friend stand the drifting into a dead and perpetual calm? How would he, in this extraordinary contrast, be able to carry himself through? A little reflection, however, satisfied me that my apprehensions on that score were entirely misplaced. If I ever had any doubts before, when I came to retrospect and consider the life of my friend, I found that in the most busy time of his professional life, when hours and minutes were of high value, he could always find time for the furtherance of measures of philanthropy and useful public purposes. (Applause.) I suppose you all remember certainly I do—that during a summer in which he took an excursion to Europe, my learned friend's observation there tended to enlarge and enrich his store of knowledge, and when in London he seemed particularly struck with the discipline and capacity of the London police. He contrasted that establishment with ours, and when he came back, it was one of his opinions, which time has since sanctioned, among other matters, that the uniform worn in London gave self-respect to the men, and gave great aid to those who, in moments of necessity, desired to find an officer, and to be able to designate between him and citizens. On coming back he sought to introduce this reform, but found much opposition. Yet, with that vigor which distinguishes him, he urged the matter, and in less than a year he secured its adoption. Now the police would as soon think of throwing off their shirts as their uniform; and that uniform has been adopted in almost every city in the Union. My friend, under the pressure of business, found time for the accomplishment of that business. The speaker referred to another reform effected by Mr. Gerard—that of preventing the newsboys from crying their papers on the Sabbath, and that reform resulted

in benefit to all—to the newsboys and the papers, enlarging the circulation of the latter in greater proportion than the increase of population. You all know that my learned friend also found time for the promotion of the great system of public schools. By his presence and counsel he encouraged teachers and aided pupils. When I came to consider all these tendencies of my friend, I soon saw that if drifting into calm became disquieting and disagreeable to him, he could fill the leisure hours in attending to great matters of public concern, and do good to the whole community, and occupy agreeably his whole time, and consequently I dismissed all apprehensions. Now, gentlemen; let me ask you to fill and drink his health, happiness, and prosperity; and may he enjoy many years the recollection of this evening, and the unusual honor which this bar has conferred upon him. (Cheers.)

SPEECH OF MR. GERARD.

Mr. Gerard then arose amidst enthusiastic applause and said:

I have addressed various assemblages of people, on every variety of occasion, of all numbers up to ten thousand and I have never quailed, have never felt nervous nor intimidated—nor do I now; (applause.) But I labor under a feeling that oppresses me, arising from this great act of kindness of the old and younger members of the Bar in tendering me this beautiful compliment of a public banquet—a compliment as unexpected by me as I am afraid it is undeserved. (No, no, and applause). I ascribe it to the kindness of those with whom I have been so many years associated, and as an acknowledgement that for forty-five years I have endeavored to maintain the dignity of the Courts and the honor of the Bar. (Renewed applause.) Therefore I accept the compliment, and here I am, and when I have "got through I will stop." (Laughter and cheers.)

Some persons may object (for lawyers are always objecting) and ask—"Why do you make two valedictories? You bade the Bar good-bye at the recent Evart's Dinner, and here you are again to-night

about to make another valedictory." I will answer that objection by a plea in *confession* and *avoidance*. Every actor from the days of Roscius down to the present time, having gone through his characters on the mimic stage, is allowed to take many farewell benefits, and make divers valedictories, and if the mere actor can do this and repeat his last, parting, dying speeches, why cannot I, who have played many parts on the busy stage of legal life, in tragedy, melo-drama, comedy and almost farce—why cannot I have two valedictories? If I had known, when I made a speech at the Evarts' Dinner, that this compliment was to be tendered to me, I should not have spoken so much at length on that occasion, my first valedictory; for in so doing I committed a petit larceny on myself by stealing my own thunder, which I ought to have reserved for this occasion. (Laughter.) But I will endeavor to forge some new bolts for your accommodation and cast them harmlessly around.

It may also be asked, "Why do you retire from practice, while your health and strength appear to be such as to stand the wear and tear of the profession and the racket of the Courts?" I will give you some reasons. One is I have no necessity of working any longer. Another is, I have bothered my brains about other people's affairs quite long enough, and therefore I want some rest; some change, in the shifting scenes of life. A third reason is, I go on the democratic principle of *rotation in office*. (Applause.) I throw off my mantle and put it on the shoulders of my younger associates, and I hope that it may fit them and that they may wear it gracefully, Again: I do not want to be like the Bishop in Gil Blas, who, advancing in years, and his sermons not being quite so attentively listened to as formerly, told his confidential valet that the first time he saw in him any of the slightest symptoms of failure in his physical or intellectual powers, to let him know and he would stop preaching. After a while his servant did think that he saw some signs of weakness in his preaching, and gently suggested his retiring according to his promise, when the Bishop in a rage gave him a sound thrashing on the spot. Now I don't want to be put in the same category with the Bishop; I don't want to commit

an assault and battery on any of my friends who should give me a similar hint. (Laughter and applause.)

Now, what *subjects* shall I take for my remarks to-night? I am not going to deal in abstraction, generalities, or in dry platitudes of the profession, or in strains of lament over my farewell to Bar and Bench; I am going to speak cheerfully—mainly of myself—to give you a little of my early autobiography: of my struggles and mishaps, and of my disappointed hopes, and I will do it, not in strains to send my hearers weeping to their beds, but as showing that I was more of a laughing than a weeping philosopher; and I do it for the benefit of the junior members of the profession who are just offering themselves for practice in this busy city, in their contests with hundreds of aspirants, who, just like themselves, are struggling for distinction and the emoluments of practice, I want to give them my experience of what patience and determination will do under unfavorable circumstances; I want to let them know that they must strike from their vocabulary every such word as "*fail*," and if that they would succeed they must stamp in letters of gold over their office-door "*Excelsior*," and that if they would *hit* high, they must *aim* high. With that motive I can talk of myself and my early struggles without being chargeable with offensive egotism, because having retired from competition at the Bar, and having made my last argument to the Court, and my last appeal to a jury, I have nothing to gain or lose as an advocate by giving incidents in my early practice.

In *what style* shall I clothe my thoughts; the grave or the gay; the lofty or the style natural to myself and which is familiar to most of you? I will not assume the mock gravity of the owl for that would not be natural to me. I will not mount on stilts and stalk above the earth, nor assume bird's wings and soar into the regions of fancy. I shall clothe my thoughts and illustrations in such language as suggest themselves to me on the inspiration of the moment. I have been asked by the reporters this evening, and on many other occasions, if I would let them have my speech, so as to send it down to their printing offices before I had delivered it. Now, I do not deliver written

speeches; I have never since I have been at the Bar, ever delivered a single sentence before Court or jury, which I had written or committed to memory, nor shall I this night. But, understand me, no lawyer could or should ever address Court or jury, or any assembly on any occasion whatever, without having his ideas well digested and arranged in his mind so that he can have his whole subject, as they say, at his finger's ends. He who speaks without preparation, even to fully arranging his thoughts on paper, does not do justice either to himself, his subject, or his audience. Now here is my speech to night (shaking a small piece of paper at the reporters) and if you can make anything out of its cabalistic catch-words you are welcome to it. It is a lean skeleton of the subjects on which I shall treat—framework of my thoughts. As I go along I shall fill it up with muscles, flesh, sinew, ligaments and nerves, to make it as passable a speech as possible; and in doing so I trust in two splendid helpers which have never deserted me and I hope they will not to-night, viz., PROVIDENCE and SPONTANEOUS COMBUSTION. (Roars of laughter and applause.)

Years ago I belonged to a debating society in this city called the *Forum*, consisting of young lawyers and students. We charged the public six cents at first for admission, had crowded houses, and received a good deal of money which we gave away in charity. The only person now living who took an active part in the debates besides myself is my friend Hiram Ketchum—would he were here to-night! I took out my license as a lawyer when the Forum was in full blast, and then had a great deal more conceit of myself than I have ever had since; it has been rubbed and knocked out of me, and my friend, the President, (Mr. Cutting) has helped to do it. Well, I hired a very humble office in William street, at a rent of a hundred dollars a year, put up my sign and waited for clients, (laughter) but none came. (Cheers and laughter.) I had no commercial patronage; I had plenty of fashionable friends, but they make poor clients. I waited with patience, and wondered at the stupidity of people in not employing me. No one came "tapping at my office door." *Silence* was there "and nothing more." One day I heard a heavy tread in the entry; I

took up hurriedly a bundle of papers which I had borrowed for the occasion and placed them ostentatiously before me. (Laughter.) In came my worthy friend, *Harman Westervelt*, the Notary. He said, "I have come to give you an opportunity at last of making a speech before a jury." I replied that was what above all things I desired, and added "I hope the cause will involve some great principle, or, at all events, a large amount of money." At this his countenance fell, and he replied: "I do not think the cause will fall within either category." I said, with some degree of importance, "please state the case." He said "that it was a case of *Ireland* against *Germany*." That sounded very large, and I asked him to "state the particulars." He said the plaintiff lived np in Greenwich, which yon know was then out of town. She was a female baker, and had a German for a neighbor living next door who was a baker of the masculine gender, and he being jealous of the quality of her bread, and of her success in business, had kicked over a barrel of her bread, and had cast it, not upon the waters, but in the mud. "Now," he said, "all Greenwich is in arms, and I am commissioned to ask you to volunteer for the plaintiff. You will have a very large audience, for there is the greatest excitement between Ireland and Germany." I assented, and on the day of trial I went to the Court room of Justice Constantine, and a dark gloomy hole it was. I was introduced to my client who was fat, but not fair, and more than forty. There, too, was our German adversary with his counsel and witnesses, and the trial went on. After the evidence was in we summed up the cause to the Jury. I depicted to them in the most exciting terms I could use, the barbarity of the German upon the widowed plaintiff; how he not only injured her bread but her *feelings*. The Judge delivered his charge – the Jury retired and soon returned, with their verdict—*I triumphed*. They gave me a verdict of *twelve shillings* damages. (Roars of laughter and applause.) The impetnous Irish were full of gratitude. They vociferously gave three cheers for Ireland and three groans for Germany. The men took me by force over to the nearest corner grocery, and insisted upon my taking a dose of the decoction of Fusel. (Cheering and laughter.) A depu-

tation of females came over to invite me to take tea at the plaintiff's house. I went there where I found them dancing their national jig, and I had quite a frolic with the Irish girls. If I was not Gerard, the *lion-killer*, that evening, I was at least the lion of the party; the pet of the petticoats. That was what I call the *first* legal triumph of my life. *This* splendid ovation is my last. What a contrast there is between them!

I must tell you one very pleasant incident connected with that humble trial. On the jury was a gentleman who eyed me very closely, and when the trial was over, he came to me, shook hands and introduced himself to me, and said he was pleased to make my acquaintance. That gentleman and I became friends and remained so until his death; I had transactions with him involving thousands of dollars. He has trusted me with thousands without a voucher. That gentleman was Jacob B. Taylor, the agent of Mr. Astor, and father of Moses Taylor, now one of the merchant princes of New York.

I will give you a little reminiscence of my first *criminal* case. I was called upon to defend a boy who was indicted for stealing a canary bird. He was a very handsome lad of about fourteen years of age. He belonged to a reputable family although his education, both intellectual and moral had been neglected, and he became a reckless, wild boy. He was tried before Mr. Colden, Mayor of the city, and a jury, and Hugh Maxwell was District Attorney. I urged the plea of *feræ naturæ*, and that the bird was not a subject of larceny. The Mayor overruled the plea, and we went to the jury on the question of *intent*. I urged that if the boy was brought in guilty and sent to prison, he would be ruined for life; his association there with old and hardened thieves would confirm him in a life of crime. The jury listened to my appeal and let him off. There was a sequel to that story. The boy became a confirmed thief when a man—he was bad in grain. He died not many years since in the State Prison, and while there he was left a fortune of $80,000.

The circumstances connected with this case led me to think that something might be done for the reformation of juvenile criminals. I

saw that it was wrong to place young offenders in contact with persons hardened in crime, and I made up my mind that I would endeavor to reform it. There was a society existing in this city for the *prevention of pauperism and crime*, of which I was one of the managers, and, I believe, the youngest. In 1823 I was asked to deliver a public address, and to select such subject as might tend to lessen poverty and crime. I visited the prisons; consulted the police justices; saw that old and young offenders were mixed up together in very defective prisons, and that the untried and unconvicted were confined in the same apartments with the old and condemned convicts. To meet the evil I took for the subject of my address, the propriety of establishing a House of Refuge to separate the young offenders from the old, and to educate them for future usefulness in life by teaching them trades which they could pursue when let out again upon the world. The proposition took well with the public, and the managers agreed to establish a House of Refuge, and to merge their existence into that as a specialty. John Griscom was placed at the head of a committee, by the managers, to draw up in detail a plan of rules and regulations carrying out my proposition, which he did, and which were very much the same as those upon which it is now conducted, and the *House of Refuge* for juvenile delinquents has been adopted in a majority of the States of the Union as the grand reformatory institution of the present day. But for that little incident of the canary bird, the stately palaces which adorn the Sound, the beautiful buildings of the House of Refuge, would probably never have been erected.

I may be asked to give my experience as to *how* are juries to be approached? I answer, by creating an *atmosphere* around the cause favorable to your side, and which will bear the test of the barometer. How is that to be done? First, by having none but good causes if you can, but if there is question about the merits of your cause, then by presenting it before the jury in the most attractive manner possible; by modestly stating your case and not overstating the facts; by forbearance to the other side, courtesy to the opposing counsel, and deferential respect to the decisions of the judge, and never offend the

prejudices of a jury. *When* should you try to create this atmosphere? In the very *opening* of the cause. Formerly the openings were very brief—very shortly stating the bare facts without commenting on them, as if the object of the opening was to *conceal* the strong points of your cause from the adversary. Then it was customary in the first place to give as little evidence as possible to save a non-suit, and then in reply to pour out the strength of your proof. The defendant opened his case in the same manner, and reserved the strength of his case to the end of the cause. In this manner a trial was a *see-saw*, both in the openings and evidence, and fatigued the jury. My friend, Mr. O'Conor, after his return from Europe, by objecting to this mode of trial, broke it up, and the respective parties were compelled to give in all their evidence on the first opportunity, and were only allowed afterwards to give evidence in rebuttal. I believe I was the first victim of Mr. O'Conor (laughter) in the application of this rule, by which I was shut out of a great part of the evidence in a cause which I had reserved for the last (cheers for Mr. O'Conor). But I, in return, had my revenge by making others the victims of this rule (renewed laughter). The idea of the old practitioners was to reserve the strength of their case until the summing up. I never practised on that supposition, but generally poured out all the force I could muster in the opening, and then, if possible, win the cause by the atmosphere that was created. *Take* your castle on the *first* opportunity, for it is an easier matter *to defend it* through the trial than *to take it* at the end. The jury make up their minds long before the summing up. My theory is that many more causes are won in the opening than in the summing up. The use of summing up is only to supply the jurymen who are in your favor with the arguments to enforce your views on their fellow-jurymen when they retire to deliberate on their verdict.

As to the *style* of addressing juries, that depends upon the size of the court-room. If small, you cannot raise a tempest in a tea-pot. As a general rule (except in sensational causes) I think the colloquial by far the most effective style. The *London* court-rooms being very small, a trial in them, even of very important and sensational causes,

is carried on in the subdued, colloquial style that references are with us. You must not be too intellectual, for the jury will not understand you; you will shoot over their heads: not bombastic, lugging in flowery figures of speech, for they probably have not studied Blair's Lectures. I was, in a very important case, opposed to John McKeon when he was District Attorney. In defending the parties indicted I put on stilts and played the lofty. Mr. McKeon following me, replied in the most simple colloquial style, and mainly read the evidence. He then coolly brushed away all the eloquence I had expended, and beat me very handsomely. Mr. Gerard said that great changes had taken place in the *time* allotted to address juries since he was first in practice. It was formerly *unlimited.* The bar was monopolized by half a dozen great lawyers who made oratory their study, and their summings up were models of eloquence. The jury were generally merchants; the circuits were open at nights; the city was small, and the Court-house was the centre of population. Amusements were few, and late at night the vaulted roofs of the City Hall would ring with splendid bursts of eloquence by such legal giants as Emmet, Wells, the elder Hoffman, Griffin, and their associates. The Judges encouraged eloquence and would listen for hours, and their charges were eloquent. Then there was *no hour-glass,* with its swiftly falling sands, which limited their speech, nor did the Judges think of their mutton boiling at home, as a reason for adjourning Court.

Some modern Judges are in the habit of rushing causes through, as the lawyers often think, to the prejudice of their causes. One very distinguished Judge of the Superior Court (now no more) whose great perspicuity of mind saw at the *beginning* the very *end* of the cause; was in the habit of saying that the cause was in *a nut shell* and confining the lawyers to a very narrow discussion. He had applied that expression to me very often, and I took the liberty of rising up one day with as much gravity as I could assume and saying, "True, your Honor, but I think that the Court is judicially, bound to take notice that nut shells are of various sizes from a hazel nut up to a *cocoanut.*" The Judge took my reply very kindly, and gave us our time to try the cause.

How are lawyers *to prepare* causes? By becoming masters of the *facts*, not minding much the Law; the Judges know the law and will take care of it, and every lawyer understands its general principles; the difficulty lies in applying the *rules of law* to a given state of *facts*. I never went into Court without taking a full reconnoissance of the camp of the enemy, and having committed to writing a sketch of the *cross*-examination of every main witness expected to be produced on the other side.

Another piece of advice. Do not *cross-examine* too much; it is a dangerous thing. I have seen many a cause lost by a general rambling *cross*-examination, having no particular point in the mind to carry out. If a witness who appears to be fair and intelligent testifies against you, take his shot without wincing, and meet him by the strength of your own contradictory testimony. The trial of a cause is very much a game of *chess*, and a game of chance, and more depends upon the skill of the advocate in many cases than on the law of the case. *Pawns* are to be taken, and the enemy is to be *check-mated*. *Knights* are to be unhorsed *kings and queens* to be dethroned and *castles* to be taken and defended, and when your cause is doubtful *compromise* and make a drawn game.

Jurors have sometimes very weak spots and often render verdicts without any assignable reason. They will listen to your summing up with intense interest, and you will think you have caught them all, when they will retire. and in a few minutes render a plump verdict against you. Sometimes you will find a man listening to you attentively, but he does not understand a word you have said. *Hans* is a conscientious man, and never excuses himself from serving on a jury on the ground that he does not *understand a word of English*.

I have said that the opinions and verdicts of jurors are often unaccountable, from whim or prejudice, or the behavior, or dress even of a party to a suit.

I was on a trial in the Circuit, and was required by the Judge to open the cause late at night. I did so very much against my will, for it was a cause in which I was very much interested for the plaintiff,

and I made a full opening as strong as I well could for the jury to sleep upon. The next morning the evidence was poured in by both sides; at three there was a recess, the Judge having gone out and the jury standing at ease, familiarly talking with the lawyers, when one of them said, and others seemed to agree with him, that the cause was not altered a particle from what it was *last night; no evidence* had been given in, only the *opening*.

On another occasion the evidence lasted a day, when at the end of it, several of the jury who had got tired of the cause, told the Counsel and the Judge that there was no use in summing up the cause; that they had *all made up their minds*, at which the Judge and Counsel were astonished, but as the jury said they had made up their minds, there was no use to waste time in summing up. The Judge thereupon gave a formal charge to the jury, and told the clerk to enter their verdict, when some of the jury began *to nod*, and others *to shake* their heads and then consulted together, when they announced that although they had *all* made up their minds, *six* of them were *one way* and *six* the other, no agreement of course.

On another occasion I defended a physician who was sued for an assault and battery by a female *clairvoyant* who was sailing around the exhibition room in a pretended trance, singing out a monotonous chant in a slumber from which she said nobody could wake her. The Doctor thought *he* could do it, and had brought with him some *cayenne pepper* which he applied to her lips as she approached him. She soon became *wide awake*, threw off her feigned trance, and being a very strong woman she pummelled him on the spot and then *brought an action* for burning her with the pepper. When the jury retired in the afternoon, the general expectation was that there would be an immediate nominal verdict of six cents for the plaintiff, because there was no denying the application of the pepper, but the Doctor had proved that she was an imposter and her trance a humbug. But the jury remaining out, the Court broke up and they were directed to bring in a sealed verdict in the morning, which they did, having been out the greater part of the night, when it appeared that eleven of the

jurors had agreed upon a six cent verdict as soon as they went out, but that *one* man would neither agree, nor give any reason why he would not, although frequently importuned during the night to do so. At last one of the jurors approached him, and asked him to tell him confidentially why he refused to join in the verdict. He said he would tell him, and asked him, "Did you not see the Doctor, all through the trial have in his hand a large *gold-headed cane*, with which he was knocking his chin?" The fellow juror responded "Yes." "Now," says the obstinate one, "I will never give a verdict for a man who comes into Court with a gold-headed cane, especially if he keeps *knocking it against his chin.*" "Well," said the other juror "that is my sentiment exactly; but suppose you were assured that instead of being *gold*, the head was *brass*, what would you say then?" "Oh, I would agree to the verdict immediately." "Well," says the juror, "I am a brass founder, and I did not like the ostentatious display of the gold, and during the trial I had a chance of examining the cane, and I believe it is nothing but *brass!*" The verdict was signed immediately.

Mr. Gerard continued, I have seen great changes in the law since I began to practice. I have practised under the Revised Laws of 1813; under the Revised Statutes of 1830, and under the present Code of 1848, whose author now present, (Mr. Field,) deserves great credit for the talent, industry and obstinate perseverance with which he framed the code and caused it to be forced upon the bar, against its general opinion, and which entitles its author to the well-earned appellation of the MODERN JUSTINIAN. It was at first pretty hard to digest, but it has become incorporated into our system, and the lawyers (and its author with them) have become rich under its enactments, and the whole bar may now be said to be in favor of it. I have had under these different systems, much law to learn, and much to unlearn, and the latter is the more difficult of the two to accomplish. I have practised in the SUPREME COURT when it consisted of *five* judges, and splendid judges they were, when it consisted of *three* judges, and now when it consists of *thirty-three.* I have gone through for forty-five years, a fiery ordeal of trying all sorts of causes, for and against all kinds of

men, good, bad and indifferent. I have had to contend with all sorts of lawyers, and have had to come in contact with some of that class of litigants whom Mr. Cutting has referred to, but I have always endeavored to hold fast of my integrity, and to keep the hem of my garment free from fire and smoke.

I am surrounded at this table by a mass of *intellect*, judges and lawyers, who (allowing *twenty years* to the study and practice of each of the *two hundred and fifty present*) make *five thousand years* of legal study, more than half the Biblical age of the world. I am surrounded by Judges that *were*, Judges that *are*, and by many who *hope to be* Judges. I am surrounded by many of my contemporaries, and by very many of junior members who are just starting on their legal career, and all of whom expect to attain eminence, and I have no doubt that many will. In my remarks at the Evarts dinner, I hailed the gentlemen then present as all *Brothers-in-law*. Now, as I believe I am the oldest practitioner present, I may claim that I am *father-in-law* to you all. (Laughter and applause.) I have seen Chancellors, Judges and eminent lawyers in long procession, depart from the scenes of their triumphs, and vanish like dissolving views, falling around me like autumn leaves; many in the hey-day of their physical and mental strength, others who had accomplished their full measure of days on earth. Recently we have held our funeral eulogies on Walworth, the last, and one of the greatest, of our *Chancellors;* on my friend, Mr. Lord, the great mercantile lawyer of our city, and on Judge Robertson the favorite of the bar, and the esteemed of many friends.

At the table opposite to me are *eleven* of my former students who have come to do me honor. Others have gone to seek their fortunes in the Western country, and others have gone to that country from whence they will never return. There should have been twelve; one is absent, a favorite student, Jeremiah Larocque, who came to me when a mere lad, in a round jacket, and remained with me until he went to join the respected house of extensive practice with which he was connected up to his death. He fell a victim to a highly excitable nervous temperament and a too active and overworked brain. Peace

to his ashes, a tear for his untimely fate, and respect to his memory (Here the assemblage rose up in silence.)

I must inform the junior members of the bar that there is no royal road to legal eminence. *Genius* avails but little in getting into practice. I rarely knew a great genius make a great lawyer. Energy, untiring industry, perseverance and patience are the elements that enter into a lawyer's success. But, when he gains the pinnacle of his ambition, he declines and dies. THE LAWYER HAS NO IMMORTALITY. If he makes a great legal argument before the Court, when the volume of reports comes to be printed, the only notice he receives is "*Smith*, for the plaintiff, *Brown* for the defendant" while the results of his labors are incorporated in the judge's opinions. (Laughter and applause.) Let him make a brilliant speech before a jury, with many admiring listeners, and gain great fame at the time, in a few days it is forgotten and the report of his speech in the newspapers in a short time is forgotten amidst the many exciting events of the day, and serves the cook *to light the kitchen fire*, going off in a blaze one way if not in another. (Laughter and applause.)

Now my friend Mr. Cutting was anxious to know, what would become of me; where I should go, and how I should occupy my mind, fearing that I who have rode the storm and whirlwind of trials so many years cannot navigate in the calm of a dead, motionless sea.

I have no apprehension that I shall slide down into listless apathy. My time will be fully occupied. I shall have enough to do. I go from the bustle of the law, not into listlessness, but into a large and active scene of usefulness. I shall give the principal part of my time and energies to the Public Schools—the largest and most splendid system of popular education, which is known in any part of the world, and that is one great motive of my giving up the practice of the law. I have been for twenty years, a peripatetic educational missionary, and although my especial ground is confined to the 15th and 18th Wards, yet my walks have extended over the whole city from the Battery to Harlem; from the East to the North Rivers; and I intend to devote my energies to the welfare and interests of the rising generation of the

working classes of this city. (Applause and cheers.) The school system as organized in this city is perfect; it requires no change; no amendment; and only let the politicians keep clear of it and its success will be certain.

The doors of its attractive school-houses are opened to receive without money and without price, the children not only of the native, but of all immigrants, no matter from what part of the world they come nor what language they speak; no matter what is their nationality, what their social condition or their religion. The doors are open to Jew and Gentile, and Christians of all denominations,—the Protestant, the Catholic, the Episcopalian, Presbyterian, Methodist or Baptist—all meet on a *neutral* ground, and they acquire as good a practical education (both sexes) as any boarding or day-school in the country or in any country can afford. To a gentleman of any taste or refinement, nothing is more agreeable, and, I may say, instructive than to pass an hour or two in the morning in the class-room and see the development of mind, and the ambitious strife between the different nationalities, of the masses of children, who, with happy faces, go through their exercises under a mild, but beautiful and gentle discipline, with no harsh or loud orders given, but the discipline of the whole school led by the music of a piano or the sound of a little bell. In any discussion relative to the merits of the public schools, remember that *universal intelligence* is the *bulwark* of a Republic, and if you will have *universal suffrage*, you must have its antidote *universal education.*

Now there is one hour in the day which is sacred in this great city, and which is enough to redeem it from much of its sin and wickedness. As the city bells toll out the hour of nine in the morning *a hundred thousand children are engaged in prayer in more than a hundred lofty buildings;* a hundred thousand tongues with eyes cast upwards to the skies, are repeating in solemn, subdued accents that beautiful prayer to their God which our Saviour taught on earth; *a hundred thousand voices* pour forth a solemn chant in praise of the great Creator who has given them the light of another day;—and the sweet music of children's voices pouring forth strains of sol-

emn music is more acceptable to heaven than any holy incense every thrown from silver censer. There is *sublimity* in the thought.

I shall now conclude my remarks. This beautiful banquet will ever be a green spot in my memory, which I never, never can forget. It is the greatest compliment that could possibly be paid to me. It is unprecedented to a mere lawyer who had never wore the ermine, or held judicial office, and was simply one of the rank and file of the bar. As we now part, I wish you all, individually, health, happiness and prosperity for many years to come. May your lines be cast in pleasant places. May you be plagued with few of the ills of life which flesh is heir to. May your paths be strewed with roses, and may there be but few thorns among them. (Prolonged applause.)

In response to the second toast, "*The Bench*," the Honorable Samuel Blatchford, Judge of the District Court of the United States for the Southern District of New York, said:

I feel highly honored, Mr. President and gentlemen of the bar, at being called upon, on this occasion, to respond to this sentiment, The Bench, in the presence of members of the Bench, my seniors, not only in years but in service, and so much better able to do justice to the occasion. But I have felt that I could not refuse the request so kindly made of me by the committee, that I should make a few remarks on the occasion of this festivity, given in honor of our distinguished friend. In what I shall say to you I shall be very brief, for, after the highly intellectual entertainment we have already enjoyed, and in view of what is still to follow, I feel that it becomes me to detain you but a few moments. I shall speak, therefore, as tersely as I can to the sentiment itself which has been given.

The Bench has two functions, as known in our jurisprudence. One is the conservation of public order, by the suppression of violence and crime; and the other is the adjudication of disputes on civil matters between the individuals who constitute the community. Under

Anglo-Saxon jurisprudence we have succeeded, as, I think, not only the legal profession, but the community, generally recognizes, in reconciling the antagonism which long existed, in the history of the world, between public order and popular liberty. The success we have met with in reconciling that antagonism is due, in my judgment, in an eminent degree, to the constitution of our judicial tribunals, in three marked particulars. The first great feature in which the judicial system of Europe and of the United States differs from that of ancient Rome, is the recognition, in the constitution of judicial tribunals, of the political principle, that the judicial function must be separated from the executive function. The second principle is, that the tenure of judicial office shall be independent of the pleasure of the executive authority. That principle is carried out whether the appointment of judges be made by the executive authority or by popular election. In either case, the judicial office is independent, in its tenure, of the appointing authority. The third feature, and one of the most important features to secure the result to which I have alluded, is the freedom of judges from personal responsibility to litigant parties. That is a peculiar feature of the English and the American systems. Among some, if not all, of the continental nations, the judicial functions are separated from the executive functions, and the tenure of office of the judge is independent of the pleasure of the executive authority, but the judge is personally responsible to litigants. Under the French law, at this day, a judge is liable to be sued personally by a party against whom he has rendered judgment. That same feature obtains in some other European countries, and the doctrine is laid down, in some of the books which enforce that principle, that a judge who evokes a case from an inferior tribunal under the pretext of an appeal, and then does not dispose of it, is liable to be sued for not deciding it —a principle which, perhaps, if applied here, might, in some cases, involve very severe consequences to the judges who were sued. So, also, the general principle is laid down, under the French system, that a judge who denies justice is liable to be sued personally by a litigant party to whom he has denied justice, and to be made respon-

sible therefor, if the fact can be established. But, as you all know, the great principle was long ago settled, in Anglo-Saxon law, that no private suit lies against a judge of a court of general jurisdiction, for error of judgment, or even for misconduct in the exercise of his judicial functions. The enunciation of that principle serves to show how broad, and deep, and weighty is the responsibility that lies upon the judge under this system. With these high prerogatives, with the watchful scrutiny of an enlightened and learned bar, and with the force of public opinion manifested by free discussion in the public press and otherwise, every opportunity is afforded to a judical officer to exercise favorably and beneficently the high functions which are conferred upon him.

An allusion has been made by our guest this evening to the colloquial style and manner of the English courts. There is a marked contrast, in that respect, in the administration of justice, between the English courts and our own, with which I have been forcibly struck. During a visit abroad, which I made a few years since, I went into the Court of Exchequer, in Westminster Hall, and was invited by one of the Barons to take a seat on the bench, while he was engaged in the trial of a cause. The court was held in a very small room, much smaller than the rooms which many of the gentlemen present occupy for their private offices. There were the jury, and the court, and the barristers. The case on trial was one involving no important principle and a small sum of money; and I recollect that no less distinguished an advocate than Sir Fitzroy Kelly, afterwards Chief Baron of the court, was engaged in talking to the court and the jury in very much the same colloquial manner in which you would talk to a client in your office. As soon as the judge became possessed of the facts, he stopped the counsel and said: "Gentlemen, you must settle this case." "May it please your Lordship, we will endeavor to do so," was the reply. The counsel for the respective parties consulted together, and in a few minutes the case was settled and disposed of. That is the daily practice in those courts, and not only in cases of minor importance, but in cases of great importance. There is, in the

English courts, that feature which my friend has alluded to, of plain common sense and straightforward business habits, which is quite in contrast with what we sometimes see here, and which greatly conduces to the settlement of litigation and the despatch of business.

The importance of a learned, acute, intelligent and high-toned bar, to the proper discharge of the functions of the bench, cannot be too highly estimated. The stream can never rise higher than the fountain. The bench will always be what the bar makes it. No judge can ever brave the force of the united opinion of a disapproving bar, and every judge is sustained and supported, in the discharge of the duties which are thrown upon him, by the watchfulness, the labor, and the zeal of such a bar as that which I now see before me. To say nothing of living judges and living lawyers, we can refer to those judges and lawyers who have passed away, after having adorned the annals of our jurisprudence, and find a perfect warrant for what I have said. For, when the bench was graced by the learning and the wisdom of Marshall, and Story, and Shaw, and Kent, and Spencer, the advocates at the bar were Daniel Webster, and Rufus Choate, and Jeremiah Mason, and Samuel Dexter, and Thomas Addis Emmet, and John Wells, and William Wirt, and William Pinkney, and Robert Goodloe Harper, and Luther Martin. The acuteness, the zeal, the learning and the character of the bar always have their response in the bench, or they have no response at all; and I am happy to be able to bear my humble testimony, from what experience I have had, that the bar of New York is no whit behind the bar of former times, or the bar of any other part of the country, in all those high qualities to which I have alluded. Our distinguished friend, in whose honor we have met here this evening, and who, as he himself has told you, has never had any political patronage to bestow, and has never held a political office, is, in all his public, professional and social qualities, a marked instance of what can be achieved by assiduity, integrity, fidelity and high-toned character, no matter how humble be the position from which the start in life is made. It is upon such men that the community must rely to fill its judicial and other positions under a free govern-

ment. With these few remarks I close, trusting that I have succeeded, in some measure, in interpreting the true character of the sentiment which you have offered in honor of the Bench.

THIRD TOAST. "*The Bar of our Sister States*," was responded to by David Paul Brown, Esq., of Philadelphia.

MR. PRESIDENT, GENTLEMEN AND BRETHREN OF THE NEW YORK BAR.—I think it is Horace, who says, that a moment is an indefinite lapse or period of time. If so you will allow me to say, that I shall speak to you *but* for a *moment*. I have traveled *one hundred* miles, and I would have traveled *one thousand*, for the purpose of uniting with you in this testimonial of regard for one of your most deserving and distinguished members, and one of my earliest and best friends. I am here now, as I am informed, representing by appointment, the associated Bar of your neighboring States. In return for *that* compliment, and also in return for the incidental compliment *to myself*, I beg leave at the outset to say, *with all my heart*, I thank you!

This perhaps in ordinary civil and social, or convivial intercourse might be deemed satisfactory; as we are told by high authority that the grateful mind "by owing owes not, but still pays, at once indebted and discharged." Yet I am given to understand that I am not to be restrained to this *frugal honesty;* but am expected to deliver a SPEECH. Well! that is no very difficult thing, and certainly I have *no excuses* to offer. In the fashionable slang of the present day, I am *not* "unaccustomed to public speaking," for I have been a speaker after a fashion, almost ever since I was born, nor am I taken by *surprise*. No man, and certainly no lawyer, has a right to plead surprise in being the recipient of the hospitality, generosity and kindness of the citizens of New York, and especially of the members of the legal profession, who may truly be said to be the *head* and the *heart*, and looking around me, I may be permitted to say, the very *stomach* of

New York. While however, I feel bound to express my acknowledgements for the favors conferred, I am still not unmindful, that of late, public speaking has, if not entirely proscribed and prohibited, been severely reprimanded, and that too from the highest official authority in the land. With all my soul, I *protest* against this doctrine. It is unconstitutional! The constitution secures to every man the privilege of *free speech;* this is therefore a violation of the chartered rights of the community! But as regards the *legal profession*, it is almost *high-treason*, or, in the language of Dogberry, it is 'flat burglary at least.' What! to deprive a lawyer of the right of speech! upon which not only his life and liberty, but his character and property depend—nay, upon which often depend, the life, the liberty, the property, the character of his fellow-citizens! "You take my house, taking the prop which doth sustain my house. You take my life, taking whereon I live." Notwithstanding, this modern and exalted condemnation of speech, I think ancient doctrine may well be referred to, as much better entitled to regard. Quintillian for instance, one of the princes of oratory, if I remember rightly, in a fit of enthusiasm exclaims. "May I perish, if the Almighty Ruler of the Universe, and architect of this world has endowed man with any quality which so eminently distinguishes him from other animals, as the faculty of speech."

We need not look to the poets for superadded authority. They tell you, that speech is the very morning of the soul, exhibiting all its beauties, its majesty, and its perfection, which also lie furled or buried in the mind. It attracts, sustains, countervails, or controls men and nations at pleasure—"wielding at will the fierce democracy." It is terrible as an army with banners.

Speech, however, must depend undoubtedly, in order to be effective, upon the fitness of the theme and the occasion—a proper adaptation of thought, or, in a word, on good taste—which would seem to imply everything. And here you must allow me to say, in all frankness, that dinner-table speeches, are sometimes, neither profitable nor commendable. The reason is obvious. On such occasions the mind and the

body, are often opposed, and of course divided. The reason and the appetite may not exactly concur. In other words, the mind would seem, like Desdemona, to hold a divided duty, and to become distracted in its choice.

Allow me also to suggest another objection—it too frequently happens that set speeches are prepared. That while the enjoyments of dinner destroy the memory—the exercise of the memory destroys the enjoyments of the dinner. Nothing contributes more to those enjoyments than familiar and agreeable colloquy. But when the brain is engaged in reflections upon a prepared speech, it is naturally impossible for any man, to be an accomplished colloquist or an attentive auditor. Practically to illustrate this view, permit me to refer to several occasions, which will be calculated to confirm what I have said on this subject.

I recollect various occurrences in life, upon the combined influences of which the opinions thus expressed have been founded.

When in my early manhood, I was once privileged to be present at a great dinner, given to a great man, Chief-Justice Marshall, in Washington, at which were assembled many of the most eminent members of the Bar,—together with those of the Senate and the House of Representatives. Among them was John Randolph, an erratic, and eccentric, though still a distinguished man. The tables groaned with the weight of the feast—the soup, the first course, was just served, when all at once, Mr. Randolph, mounting a temporary rostrum, commenced a eulogistic address to the Chief-Justice, which continued upwards of twenty minutes. In the excitement of his speech he entirely forgot that while he was getting warmer, the soup and the guests were getting colder—and, in short, he gave a perfect damper to the whole proceeding, and rendered it perhaps as stupid a dinner as could well be conceived. So much for great talents and bad taste.

I remember also a few years after, a great entertainment was given to the Marquis LaFayette, at the Masonic Hall in Philadelphia. Most of the magnates of the land were of course present, and among them, and inferior to none, DeWitt Clinton of the State of New York:

The first toast of course was to the Marquis, who returned the compliment, in that easy, simple and impressive manner, for which he was so very remarkable.

The next toast was to DeWitt Clinton, who rose in stately and majestic form, and replied, substantially in these words, "I feel highly "honored by the compliment thus paid to me by this distinguished as-"semblage. I have no words adequate to express my gratitute. I did "not come prepared to meet such unmerited honors"—and then he faltered and began to stammer—and finally it resulted in his pulling out his written speech, and deliberately reading it to those around him —so much for want of candor, and want of memory—and a written speech.

The last instance that I will give you, occurred at a great banquet given at Washington-Hall, in commemoration of the landing of William Penn; one of the largest and most splendid displays which this country has witnessed. A regular programme was timely prepared, the most eminent, and those who were not so eminent, had their different parts assigned them. Mr. Rawle, Mr. Edward Livingston, Mr. Gallatin, Mr. Dallas, Mr. Duponceaur, Mr. Ingersoll and men of that stamp, were present at the repast. Now the misfortune of the whole business, was this—all the speakers came prepared with written or premeditated speeches—of course it followed that there was no conversation at all—everyone was absorbed by his own memory and duties. Finally, as I carried my speech in my head and not in my pocket, and as I attempted some conversation, unhappily, while addressing a gentleman, I capsized a glass of wine into the lap of another, who was studying his speech, which he held under the side of the table. "I beg your pardon, "sir," said I, "sincerely." "Oh!" responded he, "there is no harm "done." "Oh, but there is harm," I replied: "I am afraid I have wet "your speech—however, you will have this consolation at least, that I "have imparted some *spirit* to it, and at all events, it will be more "fluent."

Having thus presented to you my humble views upon the privilege and proprieties of speech, allow me, after again thanking you for being

permitted to share in the enjoyment and fraternal sympathy of this magnificent banquet, in conclusion, to offer you this sentiment :

"An able and impartial judiciary—and a patriotic and enlightened Bar.—Always the best Bulwark of a Republican Government."

David Dudley Field then responded to the next toast, "*The Contemporaries of Our Guest.*"

SPEECH OF DAVID DUDLEY FIELD.

Mr. Chairman and Gentlemen.—In his long and honored life our friend and guest has seen many illustrious men. Beginning with those who flourished in his earlier years, and ending with those who are just enacting distinguished parts, what an array of names will come into light as we seek to recall them. In his youth, he saw Hamilton, the most consummate genius that ever adorned our bar, whose fame as a lawyer is only eclipsed by his fame as a statesman, and whose writings and speeches are to this day an inexhaustible mine from which constitutional arguments are drawn. When our guest came into the profession, Kent sat in the seat of the Chancellor, and was beginning that career as judge and commentator which has made his name famous throughout the world. Smith Thompson, afterwards Associate Justice of the Supreme Court of the United States, was our State Chief Justice, and Spencer sat beside him, while Van Vechten was Attorney General. What a noble figure was Van Vechten as he stood before the judges. I can fancy him now as I last saw him debating a motion before Chancellor Walworth, erect, immovable, in full dress, his sonorous voice ringing through the courtroom.

Among the men immediately preceding and following Mr. Gerard in their admission to the bar, were Samuel Sherwood, whom we all remember as a vigorous common-law lawyer; John Duer and Thomas J. Oakley, Judges of our Superior Court, how like in eminence, and yet how unlike in mental qualities—the one all genius, the

other all reason, and both unequalled, save by their associate, once chancellor, Samuel Jones; Samuel R. Betts, for more than a generation Judge of our Federal District Court; Henry R. Storrs and Elisha Williams, eloquent advocates: Daniel Cady, the acutest of reasoners; Talcott, whose learning was only equalled by his genius; Thomas Addis Emmet and John Wells, the rivals of their day; Griffin, Ogden, Slosson, Anthon, Codwise, and friends of my youth, Henry and Robert Sedgwick, of whom I cannot speak without emotion—names, all of them to be held in honorable remembrance.

I have heard our friend say that he once belonged to a debating club, the Forum, I think it was called, of which Henry Wheaton was a member—that Wheaton whose works on international law have carried his name through America and Europe, and beyond the Indian Seas. Of those who came later to the bar, and who have passed away before their seniors, I should like to enumerate the eminent names, the Sandfords, Jordan, Beardsley, Bronson, Wood, Butler, Lord, Bonney, Robertson, and especially would I speak of Noyes and Bradford, to whom I am drawn by years of common labors. Of the living, who bear the honors of long success, some of whom still wear their armor, though most of them have put it away, there are not a few at these tables, come to manifest their sympathy with our friend in this his triumphant hour. Here is Talmadge, scion of a sturdy race from the Litchfield hills. Here is Roosevelt, grave and judicial as ever, whose eye is not dimmed, nor his natural force abated. Here is Kirkland, whose praises are daily chanted by grateful birds that have come to us over the sea, to make music before his door. Ruggles and Vanderpoel, who began their professional life together, and have travelled different roads, have settled down in luxurious homes side by side; Ketchum, who combines the shrewdness of the Dutch burgher with the vigor of a New England Puritan, is not here, but sends the expression of his sympathy. Murray Hoffman, though absent in body, is with us in spirit, the most learned of all our profession in the laws of our city, the surviving representative of a family of lawyers, Josiah Ogden Hoffman, and Ogden Hoffman.

Though the lawyer's greatest efforts are made within a narrow circle of auditors, it would be a great mistake to suppose that his labors perish with the occasion. When the voice which utters wise and eloquent words ceases, when the audience which heard them, departs, and no written record remains, the work nevertheless endures. The great fabric of our jurisprudence is the monument of lawyers and judges, on which they work, day by day; it stands on foundations of rock and rises to the sky. The names of the workmen are scattered through the books, memorials of their labors; as in the cathedrals of the old world, I have seen wrought into tablets built in the walls, the names of the builders who have carved in stone the ideals of their genius.

The men whom I have named were specially the contemporaries of our own guest. But in a more general sense, we are all his contemporaries. We have taken part in many of the same transactions. We have lived through a portion of the same great history. We, like him, are the inheritors of the renown of his predecessors. May we hope, like him, to transmit to our successors an honored name and a useful example. After so many years of service he retires from our ranks, and we meet to salute him as he retires. A veteran of many victories he withdraws his shield from the lists and steps from the arena. And, though we hope long to see him among us, to enjoy that ease with dignity, which the philosopher thought so becoming to age, we here bid him adieu as a member of the bar. In that sense we say to him, in the language of the ancients, Friend, comrade, brother, "Hail and Farewell!" (Great applause.)

Fifth Toast. "*The Junior Bar*," was next responded to by Luther R. Marsh.

SPEECH OF MR. MARSH.

Mr. President: The brevity of your toast is not very suggestive of topics to a speaker. Not so a toast I have just heard, as given at a lawyer's dinner in Vermont. They have there, it seems, an action of

"Book Account," into which have been drifting, for many years, all sorts of doubtful remedies. When ever there was doubt as to the proper form of a contemplated suit, safety was found in the comprehensive action of "Book Account." The sentiment was: "The action of Book account: Like freedom, it is constantly enlarging its area; like necessity, it knows no law; and like the Gospel, it passeth understanding."

One feels strong here to-night amid so many counsellors—of such rich and varied gifts and experience—and all on the same side. With the Bar and the Court unanimous, and no obstinate twelfth juryman, I do not well see how we can fail to get a verdict. We encounter here no formidable opponent, alert to detect the slightest error; all are ardent and sympathizing friends, and supporters. This is not our usual lot. We cannot, ordinarily, in the practice of our art, assert any fact, or any proposition of law, but there will spring up, on the other side of the table, a vigilant opponent, ready to qualify, if not to deny. If we aver that common law affirms, or modern decision adjudges, or that statute enacts a given proposition, we are met, at the threshold, with a prompt denial, or a counter-averment of reversal or repeal, or a wire-drawn distinction between that proposition and the case in hand, or, at least, as the mildest form of controversy, with an ominous *dubitantur*. If we trace our doctrine back to the dawn of jurisprudence, we are met, if not by some ancient Doomsday book, yet by some modern book of doom, the first of Daly, the tenth of Bosworth, the fiftieth of Barbour, or the thirty-ninth New York, which shakes our theory to its fall. If we may find and quote the very words of some judge, now descended to and meeting us in the forum, he will

> ——"sever and divide
> A hair 'twixt north and north-west side;"

and, if compelled to admit the correctness of his principle, will demonstrate that it has not the slightest application to the case at bar. Thus live we in perpetual opposition, struggle, strife, anxiety: in constant expectation that some apparent rock whereon we stand will prove, after

all, only a beguiling quicksand, to sink beneath us in the hour of trial—or that, as we stretch out our eager hands to grasp the victory, some masked petard will hoist us out of sight. There need return to us no Hobbes, from across the solemn bourn, to inform us that the normal state of a lawyer is a state of war. All the world agrees, and accords us belligerent rights.

We have not always the same enemies, nor the same allies. Our foe of yesterday may be our associate of to-day, our petitioner to-morrow, and on the next day, our judge or referee.

But hail this auspicious night! Here are we, daily combatants, now hand-in-hand and all together. Our bugles sing truce. The master-wranglers are silent. Even the bench is not impatient.

It is proper and just and grateful that the bar of New York, symbolized by this large assembly—joined by eminent representatives of foreign bars—proving that State lines have not bounded the reputation of our brother—should yield its tribute of affection and regard to one who, much to our surprise and more to our grief, while yet his eye is not dim nor his natural force abated—as I have had occasion recently to experience—chooses to withdraw from the arena of many a desperate conflict and many a brilliant triumph—an arena in which he has ever borne himself with unswerving fidelity and stainless honor and knightly courtesy; loyal ever to his profession, to his client, to his own manhood; in which he leaves no personal enemy, and in which the blows he has given, however hard and fast they fell, however unexpected, however they may have sought out the very weakest point of our armor, we must acknowledge, were always fairly, as well as deftly dealt. It is left for hours like these to hang about the brows of our legal champions, some crown of laurel, some offering of delicate sympathy and cordial affection, more precious in its perfume of appreciative testimony, than more solid remunerations; and it is a pleasure to us to bring to our feast an earnest friendship to pay tribute to unblemished honor, and a noble career.

The forensic experience of our distinguished guest stretches back, as we have just been told, into a period which embraces the golden age of

American jurisprudence, and holds the starry names that stud our legal sky,—names amongst which his own rises to its conspicuous place.

My toast permits me to speak only for the junior, while my memories are carrying me to an elder bar,—memories hard to resist, since they bear me back to a studentship with Freeborn G. Jewett and Samuel Beardsley, to a partnership with Henry R. Storrs and Daniel Webster, and to a relationship yet more intimate with Alvan Stewart. But this theme has been committed to an abler hand. I may not leave it, though, without the mention of some names that will awaken in your breast, Mr. President, lively emotions. The ocean is still chanting its plaintive requiem over the stately form of Edward Sandford. The banquet and the court are no longer enriched by the mellow, clarion tones of Ogden Hoffman. George Wood no more pursues his luminous path through the intricacies of the law, making that plain which was, before, obscure. Jones, and Oakley, and Duer—a mighty judicial triumvirate—are gone. Judge Samuel R. Betts, with golden and full-eared sheaves, the earth has taken to its bosom. Quite recently have we contributed of our leaders, William Curtis Noyes and Benjamin West Bonney and Daniel Lord, to the world beyond; while the absence of Judge Anthony L. Robertson from a festival he would have so heartily enjoyed, reminds us of a still fresher bereavement. But I may not pause to swell the catalogue.

I bear to our guest the thanks of the Junior Bar for the inheritance he bequeaths them, of his fair fame, of his bright example, and of the memory of his skill and eloquence. But shall these, and others, be transmitted by us to the yet Junior Bars fast coming on—though their heads may not yet have risen over the horizon into view—only by oral traditions, which a few generations will entirely efface: a destiny too often—Alas! must I not say, almost always—befalling the efforts and the career of all, even the greatest advocates our Order has known. Will he not enhance our gratitude, as he now retires from the field, amid the congratulations and regrets of his associates, by devoting some of the hours now about to spread their tempting leisure before him, in giving chronicle to the past—by gathering, in enduring form,

the fast fading reminiscences of the great lawyers he has met, in amity or combat, and of the interesting causes in which he has himself participated? Is there any trade, business, science, art or subject which has not come under his review and study? What new discovery—as of railroads or telegraphs, what new business has grown up; what new advance in civilization, but has required his plastic hand to mould the ancient principles to their new adaptation? If he shall do so, let him, I pray, impart to us, the younger bar, the secret of his charmed and charming life; how it is that labors most intense and exacting, exhausting excitements and anxieties, and the tainted air of crowds, and even old Time himself, have not been able to invade his unbroken and rosy health; so that the period of his retirement from forensic effort comes to him, if frosty, yet kindly; how, amidst the disappointments, the revulsions, and the emergencies of *nisi prius*, he has always maintained such geniality of temper; how he has managed to unite so much of social joy and public benefaction with so much of legal toil. The mystery of his persuasive speech, his quick insight and tact, those lightning jets of wit, and that peculiar humor, which, in the sharpest collisions, however disastrous to the opposing case, never ruffles a feather in his adversary's plume, I do not expect him to communicate; they have their homes in his own genius, and are alike incapable of imitation or of rivalry.

But it is now so late that it is almost to-morrow, and I must no longer keep your ears from those who are to follow. Among them I see one, [James T. Brady] worthy to splinter lance with our eloquent guest; and who, with the exception of yourself, Mr. President, can tell us more than any one else, of the peculiar mode in which our friend was accustomed to organize and to accomplish his successes. I see also, in the list of those you are to hear, the learned Professor [Doremus]—known abroad, as at home—who holds the many-warded key which unlocks the arcana of nature—who has but to point his finger at some dark tube, and there is light—and who, however he may play with acids, in conjuring new chemical combinations, permits no touch of vinegar upon his own qualities.

And, now, my compeers and my juniors, let us learn from this example that whatever natural endowments we may be crowned withal, we cannot fly at the high rewards—that there is no patented velocipede to bear us smoothly and rapidly along a royal road to the conquest of the law—that it is only by steady, faithful, persistent, and long-continued labor we can become entitled to, or can receive, the honors of the bar.

Hon. James T. Brady then responded to the sixth toast, "*Our Fraternal Union*," in his usual humorous vein.

Mr. Brady having made his speech very late in the evening, and the reporters having left, no report was made of it in the papers. This was the last speech he ever made. A short time afterward he was taken suddenly ill, and died in three days.

It was a brilliant effort, and he is said to have expressed himself as being more satisfied with it than any speech he had ever made on a similar occasion.

In response to the toast "*The Kindred Professions*," Dr. R. Ogden Doremus said:

Mr. President, Ladies and Gentlemen: The lateness of the hour forbids my responding as I had intended, to the toast, with the tertiary part of which I am honored, of "*The Kindred Professions*."

A comparative analysis of the three learned professions, was humorously presented by the Attorney General of the United States, in a recent address before a medical class, at the Academy of Music.

He remarked that the doctor had an advantage over his professional brethren, inasmuch as every man had a *body*; that unfortunately for the lawyer, few clients possessed *estates*; and it was a question of theology, whether every one was provided with a *soul*.

To the chagrin of the doctor, his fees cease with the death of his patient; whereas, for the lawyer, affairs were often in a more favorable position after the demise of his client than before.

Mr. Evarts stated that a legal brother had promised to take a trip to Europe, during the approaching summer; but that, when the time arrived, he said he was unable to go, for a wealthy client had died, and should he be absent from home three months, *the heirs would get all the property!*

The minister, like his Master, as he also advised us, is as a sheep among wolves; whereas the lawyer and the doctor are as wolves among sheep; we (of the legal profession) look after the fleece, while you walk into the mutton.

He also accorded a privilege to members of my profession, after the modulus of Dr. Franklin, that every man, when he attains the age of 40, is either a fool or a physician. Gentlemen of the medical class, he said, you can congratulate yourselves, that *you may be both*—the one by nature, the other by degree.

Another differential diagnosis might be cited of the young recipient of collegiate honors, who, deeming the soul the most important part of man, undertook the study of theology. He soon discovered his error, and that bodily interests were more thought of than spiritual ones. He perfected himself, therefore, in the science of medicine. After receiving his degree, he found that the mass of humanity cared more for property, than for body or soul, and he culminated his professional labors with that of law.

As a representative of the profession which deals with ultimate atoms, and the mysterious laws which invest them, I must beg you to acknowledge, that in the sumptuous dinner you have so heartily partaken of, you have all kneeled at the shrine of chemistry.

When we would honor a fellow being, we "drink his health" in some refreshing, diffusible stimulus; or, believing in the doctrine of reconstruction, we offer a more substantial repast, and mysteriously transmute bread and butter, with the varied burthens of the social board, into bone and brain.

But, gentlemen, I feel called upon to represent another profession—that of the teacher.

He has no trammels obligating him to read the Scriptures as a Ro-

manist or a Protestant, a Baptist or an Episcopalian. Nor is he called upon to look with legal acumen for precedents. Nor, again, to become an advocate for any "pathy;" but, like the man of science, ever seeks for truth.

This should be one of the most liberal of all the learned professions, for, more than any other, it is charged with the weighty responsibility of developing the new generation. Daily intercourse with pupils, for the purposes of instruction, affords the teacher opportunities not accorded to the three acknowledged learned professions.

His work is with *developing* humanity; theirs with *developed* humanity.

And, gentlemen, what greater honor can we boast of, than that, as our illustrious guest, with all his varied experience and erudition, leaves your profession, he has this evening announced that he will devote his energies to the profession of the teacher.

But this is no novel occupation for him. Not a child in our public schools is unfamiliar with the name of Mr. Gerard; and did time permit, I could testify to many a lecture, replete with instruction and entertainment, which, for years, it has been his custom to offer as an expression of his interest in the welfare of the young, and his appreciation of our splendid system of free education.

Would that other eminent men would emulate his example. Gentlemen, as he leaves your profession, with open arms we welcome him.

Rev. Dr. McCosh made a very short but pertinent speech on the education of young men, but it was not reported.

Rev. Dr. Washburn, on account of the lateness of the hour, did not address the company.